MEDIA LAWS AND ETHICS

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ACADEMIC
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Ph. No: +91-11-23281685, 41043100, Fax: +91-11-23270680
E-mail: academicuniversitypress@gmail.com

Year of Publication 2024-25

ISBN : 978-93-6284-628-0

Printed and bound by: Global Printing Services, Delhi
10 9 8 7 6 5 4 3 2 1

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Preface

Media laws and ethics form the backbone of responsible journalism, ensuring that information dissemination is conducted with integrity, fairness, and accountability. These principles are crucial for upholding the public's trust in the media and safeguarding the fundamental principles of democracy. Media laws encompass a broad spectrum of regulations governing freedom of speech, defamation, privacy, intellectual property, access to information, and media ownership. They provide the legal framework within which journalists operate, setting boundaries to protect both individual rights and the public interest.

In tandem with legal regulations, ethical considerations play a pivotal role in guiding the conduct of media professionals. Ethical principles such as truthfulness, accuracy, objectivity, fairness, and transparency serve as the moral compass for journalists as they navigate complex news landscapes. Upholding these principles is essential for maintaining journalistic credibility and integrity. Journalists are tasked with balancing the public's right to know with ethical concerns, ensuring that information dissemination serves the common good while minimizing harm.

The relationship between media laws and ethics is symbiotic, with each informing and shaping the other. While laws provide a regulatory framework, ethical guidelines guide journalists' day-to-day decision-making processes. However, tensions can arise between legal obligations and ethical imperatives, requiring journalists to navigate delicate ethical dilemmas in pursuit of truth and public interest.

In the preface of "Media Laws and Ethics," readers are introduced to the multifaceted landscape of media regulations and ethical considerations. The book aims to provide a comprehensive exploration of the intersection between legal

frameworks and moral principles in contemporary journalism. Through case studies, analysis of landmark legal cases, and examination of ethical dilemmas, readers gain insights into the complexities of media law and ethics and their implications for media practices and society at large.

In today's rapidly evolving media landscape, where digital technologies and social media platforms have democratized information dissemination, media laws and ethics face new challenges. Issues such as fake news, misinformation, privacy breaches, and the influence of special interests on media content have heightened the importance of ethical journalism and robust legal protections for freedom of expression and information. Upholding media laws and ethics is essential for maintaining public trust in the media and safeguarding the role of journalism as a cornerstone of democracy.

By delving into the intricate balance between legal constraints and ethical standards, the book sheds light on the evolving dynamics of media regulation and ethical journalism. It underscores the importance of upholding media laws and ethics in fostering a vibrant, responsible, and trustworthy media ecosystem. In an era of rapid technological advancement and information proliferation, understanding media laws and ethics is essential for media professionals, policymakers, and citizens alike. Through informed discourse and critical engagement, we can work towards ensuring that the media remains a cornerstone of democracy, serving the public interest with integrity and accountability.

In this book, we delve into the intricate balance between legal frameworks and moral principles guiding media practices, offering insights into the evolving landscape of media ethics and regulations.

–Author

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Legal and Policy Framework

The first challenge is to establish a solid legal or policy framework for the media – providing independent media organisations the certainty that they need to invest and operate. This begins with establishing the legal rights of its population. Democratic societies are based upon the rule of law and should spell out the rights of the citizens in clear and unambiguous terms. Such laws have the advantage of making it clear to people what their rights are, and what the obligations of public administrators are in respect of those rights. It helps the watchdog function of the media – and of civil society – immensely by providing benchmarks to measure progress. In this field the most important law is one guaranteeing freedom of expression, and the basis for any such law is clearly set out in a range of international standards. In fact freedom of expression is one of the most protected human rights in international law – we find it in global treaties such as in Article 19 of the Universal Declaration on Human Rights (UDHR), or Article 19 of the ICCPR. We also find it guaranteed in all three major regional human rights systems, at Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, Article 13 of the American Convention on Human Rights, and Article 9 of the African Charter on Human and Peoples' Rights. However in some new or restored democracies, it may be that there is no functioning legal system and the government's remit may not extend throughout the country as a whole (for example Afghanistan, or some parts of central and west Africa). In these circumstances, the very minimum that a government can do (and this will also apply to international agencies if they are exerting any political authority) is to have clear public policy on the media that complies with the relevant international

standards mentioned above. Any public administration should state that it will respect the right to freedom of expression of the people as a whole and will recognise the unique role the media play in implementing that right. Relations with the media should not be subject to political discretion but should – as a minimum– be guaranteed in a clear public policy, if not a law. The transparency that this involves is an important element of establishing the rule of law, which rests fundamentally on the notion that no-one – not even the most powerful – is above the law – that there are certain principles which everyone has to respect.

STRUCTURE OF THE MEDIA

A healthy media environment should be plural and diverse, able to carry the wider range of views, information and opinion that exists in any society. For example it may be that the media environment is fragmented, or politically partisan. The history of dictatorship, repression or conflict may mean there is little tradition of independent professional journalism. Each set of circumstances will require a different approach. In most societies there is some kind of state broadcaster, however discredited. Alongside the stimulation of a healthy and vibrant private media it is important not to neglect the state broadcaster.

New and restored democracies should begin the process of transforming it into a genuine public service broadcaster. The requirements of the print media and the broadcast media are quite different in this respect. Within the general confines of the law, the print media can be left alone to develop in so far as the market permits. But to achieve the right plural mix of broadcast media – the balance between public service broadcasting and straightforward commercial interests-requires state intervention.

The first, basic task is for any administration to ensure that people can access the means of communication – including the reception of broadcasts, provision of electricity supplies, access to telephones and Internet. There is a need to ensure the infrastructure exists to develop a broadcast industry.

INDEPENDENT REGULATOR

Another early task should be the creation of an independent regulator to allocate wavelengths and undertake the necessary licensing procedures. This body should be established by law and be independent of any government interference, either directly by appointing its membership, or indirectly by controlling its funding.

Its members should be chosen through an open and public process and it should be accountable to the wider public through the legislative arm of the state. (For a more detailed elaboration of these principle see *Access to the Airwaves* published by Article 19). The regulatory authority should rapidly produce a frequency plan showing how the airwaves will be shared between the public and private broadcasters and community broadcasters. In addition – where relevant-it should specify the regional and local allocations and how the status of minorities will be guaranteed.

PUBLIC SERVICE BROADCASTING

It is sometimes assumed that the policy objective in a new or restored democracy is simply to allow the maximum private ownership of the media, on the grounds that this will produce the widest and most diverse range of voices. Some caution should be exercised however.

In a bitterly divided society, the profusion of media, with no overall "national voice" capable of helping foster an imagined community can exacerbate rather than heal divisions.

In these circumstances a high priority should be given to establishing a national public service broadcaster whose composition and programming can reflect the diverse strands of the society in question. Experience shows that the production of programmes, which are informative, educative or demonstrate distinct cultural or linguistic strands, which are crucial to the development of national identity – are most easily achieved by the creation of an effective public service broadcaster.

This is not an easy task however. A public service broadcaster requires a clearly articulated vision, some kind of national consensus on its objectives, complete freedom from political interference and a conscious attempt to engage viewers and listeners. The goals of public service broadcasting should be defined in law.

These will include the provision of comprehensive and balanced news coverage, the promotion of local programme production – including through the use of quotas – guaranteed universal access and a commitment to serve all regions, cultures and linguistic groups.

The first stage is to establish the PSB overseen by a fully independent governing body whose autonomy and independence is guaranteed by law–as with the regulatory authority.

Specific guarantees should be given on editorial independence and on funding arrangements. The governing body should be accountable to a multi-party body of some kind – the legislative assembly if one exists-and its primary role will be to appoint the managers to run the PSB and to ensure subsequently that the public service mandate is being fulfilled. The governing body should not interfere in the day to day running of the broadcaster; appointments processes should be open and transparent and staff be protected from unfair dismissal.

Another option is to establish a framework where all media have a public service function. In this case, public service obligations will be placed upon all broadcasters, probably through the regulatory authority that issues licenses. This approach needs to be considered very carefully.

It may well be appropriate in a very divided society where all the media has been affected by conflicts in the transition to democracy, or in circumstances where state revenues are so scarce that there is no realistic possibility of providing any state funding for a single PSB (as is the case where fiscal revenues are very low).

Whichever approach is adopted, independent civil society has a role to play as a watchdog, ensuring that the public service remit is fulfilled. Consideration should therefore be given to the creation of media forums which involve civil society and which can consider the performance of the public broadcaster and the policies of the governing body.

There needs to be a consistent commitment to consultation with the public, through civil society organisations and through the political parties and other forums. In new or restored democracies establishing the legitimacy of a single national voice is vital. There needs to be – for example – news bulletins and programmes which everyone in the society can watch, regardless of their position on issues of the day, confident that they are receiving balanced and authoritative coverage.

PRIVATE BROADCASTING

A crucial role for the governing authority and the regulator is providing the ground rules that enable fair competition between the public broadcaster and the private broadcasters. The government's main responsibility is to ensure a level playing field economically. In particular there should no attempt to use the tax system to favour one broadcaster over another.

The allocation of government advertising must be strictly monitored to ensure fair access by all media. License fees should not be set so high as to favour the wealthiest and most powerful corporations – the ideal is to create relatively low entry costs.

In general, while it is impossible to be prescriptive in the abstract, any economic measures that affect the media should be fair, transparent and non-discriminatory. The regulator has an important role to play in overseeing more complex issues that involve the fostering of a dual broadcasting system (public and private). It is unrealistic to think that modern PSBs can be created solely on the basis of public funds – they will nearly all require a degree of advertising. There is a role for a competition regulator in this field as well as the broad cast regulator – the mix of powers being dependent upon the general capacity of the state to support such institutions.

ECONOMIC SUPPORT

In many societies the market for the media is very weak. In these circumstances the media, particularly newspapers are funded by powerful groups – parties, factions, businesses – to act as mouthpieces for their own interests. A good public service broadcaster is one possible antidote to this. Creating a climate where a genuine media market can develop is another. International support can be crucial in providing support with start up costs, professional expertise, even equipment and materials.

What new and restored democracies should be wary of however is allowing the international community's funding to act as a substitute for the development of a domestic market.

One possible model is to establish a Media Development Fund, administered by respected local media professionals from across all communities, which can provide low cost loans to help new media get established. Models for this exist in different parts of the world. Loans are preferable to grants as they encourage serious business plans and moves towards genuine economic independence. While financial support should not be made conditional upon a particular editorial approach, which would compromise the independence of the media, it is reasonable to impose some conditions that will help produce professional balanced journalism. For example, financial support could be made conditional upon non-discriminatory employment practices, or on an insistence that jobs are not the exclusive preserve of one ethnic group. Another approach would be to establish a not-for-profit holding company that has a major stake in leading media companies, which guarantees editorial independence and uses its profits to promote the objectives of free expression through grants and activities.

CULTURE AND JOURNALISM

Laws are the foundations of a democratic society and economic structures and reality determine the broad shape of the media. Neither however is any guarantee of independent, balanced, professional journalism. They can provide the conditions for independent professional journalism to flourish but no more than that. New and restored democracies should consider how to help build a culture of professional journalism. There are a number of international organisations of journalists and employers that support this activity and the programmes may be of value. In some areas media centres have been established to provide a professional base for journalists to work, receive training and support. It seems sensible for new and restored democracies to encourage media organisations to cooperate in establishing such a centre – in the past competing proposals or even competing centres have complicated the media environment.

Journalism training should be given a high priority. Past experience suggests that such training concentrates on the following areas:

- Building a general awareness of democracy and human rights
- Encouraging independent analysis and thought
- The techniques of investigative journalism.

Most professionals are influenced by their peers – in fact peer pressure is the most likely means of improving skills and ethics. For this reason the establishment of an independent journalist association should be given a high priority, linked to a respected international association like the International Federation of Journalists. Such an association can provide a direct advocacy on behalf of the profession, particularly on pay and conditions issues and on questions such as unfair dismissal cases between local staff and employers, in which it would be unwise for the international community to intervene. In parallel to this, steps should be taken to foster – through civil society initiatives – the development of employers associations, linked in turn to the World Association of Newspapers or the Association of Independent Broadcasters.

The most important role for these associations is in creating a climate of self-regulation. Self regulation is always better than imposed regulation because it is likely to be more effective (people are always more committed to freely chosen values than to those forced upon them) and, of course, it respects the independence of the media. Such associations provide useful means of disseminating good practice, and can help create peer pressure to respect editorial independence, human rights norms and democratic values.

CIVIL SOCIETY

Trade unions and employers associations are one manifestation of civil society but there are many others which play an important role in helping foster the conditions for media development. One weakness that may have to be overcome in a new or restored democracy is the absence of a stable civil society and of a culture in which the values of freedom of expression are assumed. While regulation can play and important role in creating the climate for this culture, it cannot guarantee it. A whole range of civil society groups will have an interest and a stake in the media coverage of their society. They can monitor the media regularly and can play an important role during elections checking for evidence of bias. They can also play a significant role in helping shape media policy providing an interface between the practitioners, public officials, the international community and the general public.

Providing the structural stability for the media in new and restored democracies requires the right blend of a mix of approaches. It will almost certainly need a legal and policy strand, some kind of economic support, careful thought given to establishing the right mix of media structures. It will require fostering an active climate of professional journalism and civil society intervention.

In these circumstances there will be a need for on-going research, monitoring and evaluation of the approach adopted. Local organisations and media professionals can work with international organisations and experts but primacy should be given to local control and direction of policies. New and restored democracies should be aware that the media environment of a country is not just shaped by domestic forces. Local communities will have access to international media outside of the country's context – the World Service, Voice of America and a range of European alternatives will provide coverage that does not derive from local experiences.

The internet and VoIP protocols permit a new kind of citizen journalism that transcends traditional media boundaries. The priority for a new or restored democracy is to create a domestic media that can help support democracy and human rights in the country concerned. This in turn will require sustained and serious commitment by the country and by any international donors that are involved in reconstruction. It will also require the ability to learn from past mistakes– a process that is assisted enormously if new and restored democracies can share information and expertise.

MEDIA AND THE COURTS

No area of media law has attracted more attention by the courts in both countries than the one involving media coverage of the courts. This area directly involves the conflict of constitutional guarantees: first, freedom of the press with its companion need to gather information and cover government, including the courts and, second, the defendant's constitutional right to a fair trial. In the United States, the conflict is between the First and Sixth Amendments. In Canada, it is the conflict between freedom of the press and other media of communication in Section 2(b) and the right to a fair and public hearing in Section 11(d) of the Charter of Rights and Freedoms.

In Canada, prior to the enactment of the Charter in 1982, the rights of individuals and the media to attend and report on court proceedings were much more limited than was the case south of the border.

Since then, however, the courts in Canada have issued important decisions that have expanded these rights considerably, but still not to the extent that the courts have in the United States. For example, trial court judges in Canada still have considerable authority to restrain the publication of certain information arising from hearings (publication of evidence tendered in a preliminary hearing is usually banned until after a full trial can be held before an unbiased jury), and journalists have no general right of access to court documents unless specifically provided by statute or court rule.

During the first year of the new Charter, the Ontario Court of Appeal ruled that an absolute ban on the press and public from attending court proceedings was a violation of Section 2(b). While recognizing that the guarantee of freedom of the press is not absolute, the Court acknowledged that "There can be no doubt that the openness of the courts to the public is one of the hallmarks of a democratic society. Public accessibility to the courts was and is a felt necessity; it is a restraint on arbitrary action by those who govern and by the powerful."

It concluded, however, that while absolute bans excluding the press and public from court proceedings did not constitute a reasonable limit, such closures requiring judicial discretion would be allowed under Section 1 of the Charter. The Supreme Court of Canada offered further instruction in the application of Section 1 in matters relating to the courts in one ruling that struck down an Alberta law prohibiting publication of materials from court proceedings, ruling that such limits were not justified under Section 1.

In another decision, the Supreme Court ruled that an injunction restraining picketing and other activities calculated to interfere with the operations of the court was justified under Section 1, even though the lower court record included an affidavit from a member of the Law Society of British Columbia explaining that the "picket line was orderly and peaceful" and that "Persons appearing to have business inside the Courthouse entered and left the building at will and at no time appeared to be impeded in any way by the picketers."

Further, in Canadian Newspapers Co. v Canada (A.G.), the Supreme Court held that a mandatory ban on publishing the identity of a sexual assault victim

was allowed under Section 1, since it was required to achieve Parliament's objective of facilitating complaints by victims of sexual assaults. In a recent decision, the Canadian Supreme Court set aside a ban on CBC from broadcasting a fictional account of sexual and physical abuse of children during a trial in Ontario with similar facts and circumstances.

While ruling that such a ban did not meet the "reasonable limits" test of s. 1, the majority justices offered an interesting observation about differences between the Canadian and American constitutional approaches to issues like this: "Publication bans, however, should not always be seen as a clash between freedom of expression for the media and the right to a fair trial for the accused. The clash model is more suited to the American constitutional context and should be rejected in Canada." This review of developments in three areas of media law in Canada shows that, while the courts on both sides of the border have expressed a strong commitment to the principle of a free press, Canadian courts have been less likely to provide strict protections for the media to publish without government restraint or interference. This is most obvious in matters related to coverage of the courts, where judicial restraints on the news media have been more allowable in Canada, although the Court has moved in recent years to balance the importance of press freedom and the constitutional right to a fair trial. Also, Canadian courts have permitted government bans on the publication of truthful information, lawfully obtained, while American courts have held that such bans constitute an unconstitutional prior restraint.

And while media in the United States are allowed greater latitude to criticize public officials, Canadian courts have been reluctant to adopt the American approach to public libel and false light privacy. In other areas, however, involving newsgathering, the duty to testify, and access to information, the courts in both countries have attempted to balance the individual rights of the news media against the broader community interests of society.

DIFFERENCES IN JOURNALISTIC PRACTICE

In order to make some generalized comparisons of journalists and journalistic practice in the United States, in English-speaking Canada, and in French-speaking Canada, it is necessary to indulge in some oversimplifications about groups which, in themselves, tend to be rather complex and diverse. Lysiane Gagnon, in her discussion of "Journalism and Ideologies in Quebec," offers a useful starting point in her review of the classic work by Siebert, Peterson, and Schramm on The Four Theories of the Press, which provides a framework for generalizing about differences between these three groups of journalists and for beginning to identify the French, English, and American influences on the practice of journalism in North America.

While the so-called "social responsibility" theory of the press grew out of the 1947 report of the Hutchins Commission on Freedom of the Press in the United States, American journalists have tended not to accept its basic premise, which calls for government intervention when and if the media fail to act responsibly.

For the most part, they continue to subscribe to the more libertarian view and its imperative that the press be free from government control and influence. However, the most recent national survey of journalists in the United States reveals a shift in the perceived functions of journalism favouring some of the original recommendations of the Hutchins Commission. As Weaver and Wilhoit explain, "most journalists in 1992 appeared to have a `belief system' that reflected the Commission's goal of investigating `the truth about the facts' and providing `a context which gives them meaning.'"

Concerning the appropriate role for government, journalists in English Canada, who share British traditions allowing for more government secrecy and control of information and the reporting of information, are more tolerant than their American counterparts of government intervention and control. And by further comparison, journalists on French-language media in Quebec subscribe even more to the tenets of the social-responsibility theory and are willing to accept an even greater role for government involvement in media matters to assure the public's right to information.

According to Fulford, English-Canadian journalists have inherited most of their techniques from Britain and the United States, except for the extensive foreign correspondence of British journalism and the investigative reporting in the United States. Further, and perhaps more important, is his observation that English-Canadian newspapers tend to mix elements of British and American heritage and share the ideal which involves truth, completeness, and justice.

Explaining that English-Canadian journalists seek "to report the truth," Fulford quotes publisher Stuart Keate who wrote that "Any publisher, editor or reporter worth his salt recognizes that he has only one basic duty to perform: to dig for the truth; to write it in language people can understand; and to resist all impediments to its publication."

While changes in English-Canadian journalism during this century have paralleled similar changes in the United States, journalism in Quebec has been more influenced by French models that include government distribution agencies, newspapers with more readily identifiable political leanings, and greater acceptance of government intervention in media affairs. The latter is linked to the basic tenet of the social-responsibility theory of the press which, according to Gagnon, has become more accepted by journalists in the province of Quebec than anywhere else in North America. One of the recent presidents of Quebec's federation of professional journalists, Real Barnabe, supported this observation by writing: "Now that they have acquired the conditions under which they may practice their profession with dignity, never have they Quebec journalists been so preoccupied by their responsibilities."

Gagnon further explains that the notion of freedom of the press, which was widely accepted by Quebec journalists in the 1940s and 1950s, has given way to a more complex concept of the public's "right to know," and that this has enjoyed considerable success in Quebec, certainly more than it has in English Canada and, with even more reason, the United States. Part of the explanation

for this has to do with the French traditions and perspectives which place a greater value on collectivism over individualism. As Siebert, Peterson, and Schramm explain in their classic work, the social responsibility theory is "in closer harmony with a collectivist theory of society than with the individualistic theory from which the libertarian system sprang."

Other ways in which the French tradition has contributed to differences between French and English journalism and journalists in Canada include: the emphasis on analysis over simple reporting of facts; the tendency to treat matters conceptually rather than in terms of people and events; the need to rationalize; and a greater personalization of articles and editorials. This is not to say that Quebec journalists are less committed to the facts and to being factual. A recent study by Pritchard and Sauvageau, for example, found that Quebec journalists are more likely than other Canadian journalists to think that it is important to accurately report comments from news sources. Similarly, an earlier study by Langlois and Sauvageau, which also documented this commitment to the facts, found there to be considerable variation among newspaper journalists in Quebec.

Concerning the greater personalization of articles and editorials, mentioned above, Siegel found in his study of the coverage of the FLQ crisis in 1970 that the French-language papers tended to project an image of self-importance in a variety of ways including "frequent reference to media and journalists; personalized coverage which, at times, included the raising of rhetorical questions which they then proceeded to answer; and editorials written in the first person."

Another conclusion he reached point to still another important difference between journalism in English and French Canada. Following a comparison of coverage of several major issues or events, as well as a comparison of French and English broadcasting, Siegel found a homogeneity of outlook in the French press system.

"Of particular interest is the leadership role in French-Canadian society in which French-language journalists see them-selves. The articulation of a clearly defined value system is evident in French-language journalism, a practice that goes back a long time."

He found no such uniformity of outlook on the part of the English press, which he termed "fragmented." His conclusion is reinforced by David Thomas, an English-speaking journalist from Quebec: "Unity of thought was, and remains, infinitely more obvious in Quebec's French-language media—a phenomenon implicitly recognized by politicians and journalists who repeatedly point to the harsher treatment accorded the government by the English media."

Dominque Clift, a Montreal author and free-lance journalist who worked for major Canadian newspapers in both French and English Canada, characterized this uniformity of French-language journalists in a different way: the way in which they viewed themselves and their role in Quebec society. In his article, "Solidarity on a Pedestal: French Journalism in Quebec," he charged that "French journalists see for themselves a much more exalted role in society than do their

English-speaking counterparts," adding that: "It is in the actual practice of journalism that French and English writers differ in the most pronounced manner. It has to do with the way in which journalists look upon themselves, their profession, their public, as well as on their employers."

But Florian Sauvageau, in his more systematic study of journalists on French-language dailies in Quebec, could find no such homogeneity in Quebec's journalistic circles. Instead, he found changes in Quebec media to parallel those in the modern corporate media of North America. Those include: the tendency to view newspapers as, first and foremost, businesses and journalists as "news workers"; journalists talking not so much in terms of "news" but of the "product"; and business and marketing functions gradually replacing the news function.

Journalists are far from all being those radicals trying to control the news, as depicted a few years ago with some help from the pronouncements of the most militant of them. There are some, of course, who still turn for inspiration to the theses of the news as a driving force, and journalism as a tool for development, seeing themselves as agents of change and keeping up with the rhetoric of the 1960s and 1970s.

However, a good number are content simply to report the remarks of the dignitaries they meet, or to get the news out as quickly as possible. The result, he said, is that the work of journalists is becoming more and more routine and fairly unfulfilling, and that this is partly due to the rigid application of certain clauses in collective agreements between journalists and management. In summary, this brief review of research and commentary on journalists and journalism in the United States, English Canada, and Quebec provides some insight into how the practice of journalism in these different settings has been influenced in a variety of ways by English, French, and American traditions. Our concern, however, is in how these different traditions or perspectives may have resulted in journalistic practices that vary in their tendencies to promote individualism or to serve the community or broader societal interests.

ANECDOTAL EVIDENCE

Despite the growing body of literature from systematic studies of journalists in Canada and the United States, most of the "evidence" about how journalists and journalistic practices differ between the two countries tends to be anecdotal rather than the result of formal research. There are some exceptions, of course. For example, we already reported how the most recent national survey of journalists in the United States shows a shift towards some of the values articulated by the Hutchins Commission, which advanced the "social-responsibility" theory of the press. Also, French-language journalists in Canada tend to be more willing than their English-Canadian and especially their American counterparts to perceive the press as a public service that can be regulated by the government. As evidence, Langois and Sauvageau found that nearly two-thirds of the French-speaking journalists in their study agreed that the state should intervene in the field of information. Even before the Kent

Commission issued its report and recommendations in 1981, Sauvageau argued that the government might intervene to assure the citizen's right to information, similar to the way it has done in education and health care.

More often, though, evidence is used to explain how the traditions and perspectives of journalists in Canada and the United States vary considerably in terms of tolerance for intervention by government and the courts in ways that limit the media and the practice of journalism. This chapter began with a good example of this variety by comparing reactions to the decision in the United States to publish the Unibomber's manifesto with reaction to CBC cooperation with the RCMP in meeting broadcast demands of a group of renegades in British Columbia. Another example is reaction to certain recommendations of the Kent Commission on Newspapers. Following the simultaneous sale of newspapers in Winnipeg and Ottawa by two major Canadian newspaper groups, the federal government established the Kent Commission in 1980 and authorized it to study the new newspaper industry and make recommendations to the government. One of the more controversial recommendations called for the establishment of a Press Rights Panel within the Canadian Human Rights Commission.

Response came mainly from representatives and publishers of newspapers owned by large newspaper groups in Canada. The reaction was tempered and mild compared to what one would expect in the United States if similar recommendations were to come out of a government committee that spent more than $3 million to investigate the daily newspaper industry. Reactions in the United States to any threat of government intervention or control in media affairs tend to be immediate and predictable. Media owners and spokespersons for associations of journalists, particularly in the print media, are quick to call "infringement" and issue charges of improper violations of cherished First Amendment guarantees of freedom of the press.

Still another example has to do with media coverage of criminal trials. During the months of exhaustive coverage and commentary related to the O.J. Simpson trial in the United States, a trial court judge in Ontario issued a restraining order on the media in the Paul Bernardo murder trial that included, as well, a ban on publication of most information from his wife's trial several months earlier. Canadian journalists complained but complied with the court order, while American journalists in neighbouring border cities did not, continuing what one U.S., newspaper editor had earlier referred to as a "border battle with Canadian law."

These examples help illustrate the differences between Canada and the United States in terms of their legal systems, judicial traditions, and accepted journalistic practice and show a stronger commitment in Canada to the values of community over the individual rights of journalists and the news media.

Discussion

Important differences in the traditions of law and in the practice of journalism in Canada and the United States result in different approaches to how the rights

of the news media are appropriately balanced against the needs of the community and the broader interests of society. To begin with, while the two legal systems share a similar tradition in English Common Law, their judicial and political approaches are different in important ways. As Lipset and Pool explain, while both nations seek to protect the rights of the individual while promoting and protecting the general welfare of the community, they do "strike different balances, with Canada tipping towards the interests of the community, and the United States towards the individual."

This review of the development of media law in the two countries shows that the courts on both sides of the border have expressed a strong commitment to the principle of a free press. However, Canadian courts have been less likely than those in the United States to provide strict protections for the media to publish without government restraint or interference. This is most obvious in matters related to coverage of the courts, where judicial restraints are more allowable in Canada. Also, Canadian courts have permitted government bans on the publication of truthful information, lawfully obtained, while American courts have held that such bans on the press or punishment for publishing such information is unconstitutional. Also, media in the United States are allowed greater latitude to criticize public officials than are media in Canada, where the courts have been reluctant to adopt the American approach to civil libel. In other areas, however, involving newsgathering, the duty to testify, and access to information, the courts in both countries have attempted to balance the rights of the news media against the broader interests of society.

Apart from differences in the law are differences in the practice of journalism in Canada and the United States. Journalists in Canada are more inclined towards a "social responsibility" view of the role of the media in society. While this particular perspective was proposed by the prestigious Hutchins Commission on Freedom of the Press in the United States, American journalists have tended not accept its basic premise, which calls for government intervention when and if the media fail to act responsibly. For the most part, they continue to subscribe to the more libertarian view and its imperative that the media be free from government influence and control. Canadian journalists, however, whether sharing British traditions that allow for more government secrecy and control of information or French traditions that are more accepting of government intervention in media affairs, tend to be more tolerant of government intervention in ways that directly affect the media while serving the broader needs and interests of society. The most recent national survey of American journalists suggests that there may be some shift towards some of the goals of the Hutchins Commission, which originally proposed the social responsibility model.

Some Future Considerations

There is, and has been, considerable discussion about the Constitution in Canada since the Charter of Rights and Freedoms was adopted in 1982. However, little if any of the controversy centers around concerns over government control

of the media or court limitations of Charter guarantees of press freedom. This is not to say that journalists and media owners in Canada do not have concerns about these issues or that they would not prefer greater freedom and less government control. It is just that these are not major concerns, at least not compared to the larger constitutional issues being discussed.

This is not the case in the United States, where journalists and media owners have long been eager and vocal critics of any attempts by government or the courts to limit press freedoms and violate their First Amendment guarantees. However, the growing criticism and concerns about court interpretations of the speech-press clause in the United States are coming from non-media sources who are concerned about too much freedom at the expense of other interests, particularly the rights and interests of disadvantaged groups like women and minorities. In particular, concerns being raised by feminists, critical scholars and, especially, critical legal theorists are that the court's continuing emphasis on protecting press freedoms serves only to advance the status quo and favours the special interests of corporate-owned media conglomerates.

These are variations of the same kinds of criticism and concerns expressed by Jerome Barron, who argued nearly thirty years ago that "Our constitutional theory is in the grip of a romantic conception of free expression, a belief that the `marketplace of ideas' is freely accessible. But if ever there were a self operating marketplace of ideas, it has long ceased to exist." He went on to argue for a legal right of access to the media to provide citizens with the kind of marketplace originally intended by the Founding Fathers.

Barron, an American, raises these same concerns over recent developments in media law in Canada, and a growing number of critical theorists and legal scholars in Canada are expressing concerns of their own about constitutional developments related to court interpretations of the Canadian Charter of Rights and Freedoms. Michael Mandel, for example, frames his criticisms in terms of what he calls "The legalization of politics in Canada," and argues that the representative institutions like Parliament, the legislatures, and municipal councils "are now being pushed from centre stage and told what they can and cannot do by judges elected by and accountable to nobody."

David Schneiderman, in his edited volume on Freedom of Expression and the Charter, explains that critics are not optimistic about the consequences of the constitutionalization of freedom of expression in Canada and are concerned that the Charter favours the value system of liberal individualism over the collectivist aims of the modern welfare state. In the United States, concerns are also being raised in journalistic circles about the status of American journalism, about public criticism of the press, and about the appropriate roles and responsibilities of the media in a free democratic society.

One of the best recent books on this subject is by Anderson, Dardenne, and Killenberg, who argue for a more ecumenical, constructive, participative, and democratically responsive role for journalism's institutional future. Other recent authors like Davis Merritt, Jay Rosen, and James Fallows have called for a

revision in journalistic practices in order to promote community through civic or public journalism. This approach has challenged the way responsible media report on and relate to the communities they serve. As Dennis and Merrill put it, "The new communitarians are waging a rhetorical war against Enlightenment liberalism—against individualism and libertarianism." More specifically, Christians argues that journalists should discard the liberal politics of rights, which "rests on unsupportable foundations," and that such rights should be "given up for a politics of the common good." In response, critics of this approach argue that it "confuses journalism with community organization, a social work concept" and are concerned that if journalists became activists and took positions on community issues, they would lose "any claim to impartiality and would sacrifice credibility." In summary, what emerges from a review of issues like these is the fact that some of the basic foundations of law and journalistic practice are being challenged in very significant ways by credible practitioners and scholars in Canada and the United States alike.

This is all part of the important ongoing discussions about how to appropriately balance the freedoms of the press and other media of communication against the larger interests of society, and about how to frame the practice of journalism in the best way possible to serve the democratic process. The quality of these discussions on both sides of the border can be enhanced by examining the experiences in both countries and, indeed, in other societies, to see how these issues are being played out against the backdrop of different traditions, practices, values, and beliefs.

STATE SHIELD LAWS

Currently thirty-two states and the District of Columbia have statutory shield laws. A number of state courts have also recognized a privilege based on their state constitutions, common law, or the First Amendment. The scope of protection varies dramatically from state to state.

Proceedings Where the Privilege Attaches: Several states recognize an absolute privilege for a reporter's sources and newsgathering materials in all proceedings, whether in a civil or criminal case or before an administrative agency or grand jury More commonly, state privileges are qualified, forcing the reporter's privilege to give way when the party seeking the information has demonstrated that (1) the desired information is important to the suit; (2) that other means of obtaining the information have proven inadequate; and (3) the balance of interests favours disclosure. Other state statutes recognize the privilege in only certain proceedings. In California, for instance, the shield law is most effective in civil lawsuits in which the media is not a party; in such suits, the private interests at stake are generally deemed insufficient to outweigh the public's interest in confidential sources. The privilege is often overcome in criminal matters, however, especially when the defendant has issued the subpoena. 180 In such cases, courts frequently conclude that the defendant's interest in a fair trial often outweighs the reporter's interest in confidentiality.

Some states explicitly reject the privilege when a media entity is a party to the litigation, a situation that typically occurs in defamation cases. Other states provide the media with some protection by requiring a plaintiff to demonstrate that the information is important for her case and that she has attempted to obtain the information through other means. Some states have imposed additional requirements, such as requiring a plaintiff to demonstrate the "probable falsity" of the challenged statements or to present a "prima facie case" of defamation.

Covered Information: There is also some disagreement among the states regarding whether shield laws should protect the identity of both nonconfidential sources and confidential sources; whether the privilege should extend to newsgathering materials; and whether publication is required before the protection can be invoked. In addition, some states exclude from protection eyewitness observations of criminal or tortious conduct. While some states protect only the identity of confidential sources. Other states protect both confidential and nonconfidential sources. Although states in the latter category frequently give less protection to nonconfidential sources. The majority of states with shield laws also extend the privilege to newsgathering material, such as unpublished notes, tapes, and any other data. The rationale for a broader privilege is the concern that the otherwise "autonomous press" would become an investigative arm for the government and private litigants. 191 One court has noted that journalists frequently gather information about accidents and crimes; as a result, discovery requests to journalists could easily impose a heavy burden on their time and resources and disrupt their newsgathering activities. 192 Some states limit this protection to unpublished information, 193 reasoning that requiring reporters to testify about published information, which typically requires them only to authenticate the publications, "should have no 'chilling effect' on the free flow of information." Other states draw a distinction between information received in confidence and nonconfidential information, on the grounds that requiring a journalist to reveal confidential information is more likely to curtail her ability to conduct newsgathering in the future. The privilege appears to be the weakest when a journalist witnesses criminal or tortious activity without any pre-existing promise of confidentiality, such as when she is on the scene of a car accident or an illegal arrest. Several state statutes explicitly carve out an exception to the privilege under such circumstances; 197 in other states, the matter is handled on a case-bycase basis, with the probative and irreplaceable value of the reporter's testimony weighing in favour of disclosure. In a similar vein, Oregon's statute makes clear that its otherwise absolute shield law does not apply when there is "probable cause" to believe that the person asserting the privilege "has committed, is committing or is about to commit a crime."

THE FIRST AMENDMENT

The first case to suggest that the First Amendment provides reporters with protection from subpoenas was the Second Circuit's decision in *Garland v. Torre*, in which the actress Judy Garland sued CBS for defamation. Garland

had subpoenaed a reporter who had quoted an unnamed CBS executive as saying that Garland was depressed because she was getting fat. The court stated that it would "accept at the outset the hypothesis that compulsory disclosure of a journalist's confidential sources of information may entail an abridgment of press freedom by imposing some limitation upon the availability of news." The Second Circuit went on to add, however, that "freedom of the press, precious and vital though it is to a free society, is not an absolute." The court ultimately concluded that the "obligation of a witness to testify and the correlative right of a litigant to enlist judicial compulsion of testimony" outweighed any First Amendment interest in confidentiality because the questioning "went to the heart of the plaintiff's claim."

The Supreme Court did not address the viability of a First Amendment reporter's privilege until 1972, in a case that raised more questions than it answered. In *Branzburg v. Hayes*, the Court decided four separate cases that involved reporters' invocation of the privilege before state or federal grand juries. Two of these cases involved Paul Branzburg, a reporter for a daily newspaper in Kentucky. He had written articles about the sale and use of drugs, which he had observed firsthand after promising not to reveal the identity of any of the individuals involved. The other two cases involved reporters who had spent time with the Black Panthers; these reporters were Paul Pappas, a television reporter subpoenaed by a Massachusetts grand jury, and *New York Times* reporter Earl Caldwell, who was challenging a federal grand jury subpoena.

Justice Bryon White's 5-4 majority opinion in *Branzburg* appeared to sound the death knell for a constitutional reporter's privilege, at least in the context of grand jury subpoenas. Throughout the majority opinion, Justice White emphasized the important role the grand jury plays in the American criminal system, explaining that the public's interest in prosecuting crime outweighed reporters' concerns that testifying would harm their relationships with confidential sources and their ability to collect information. In addition, the Court noted that the majority of States had not enacted shield laws— only seventeen had at that time—and that Congress on several occasions had failed to pass proposed federal shield statutes.

The *Branzburg* Court also took great pains to question the need for a reporter's privilege, emphasizing the lack of—and the impossibility of ever obtaining—empirical data showing that sources would not speak to reporters without a privilege, or that the free flow of information to the public would be affected in any significant way. The Court noted that the relationship between reporters and their sources is frequently "symbiotic," in that "often... informants are members of a minority political or cultural group that relies heavily on the media to propagate their views, publicize their aims, and magnify their exposure to the public." Justice White also questioned how valuable a qualified privilege would be. Given the ad hoc approach that a qualified privilege requires, the Court was skeptical that an uncertain privilege could be meaningful for "sensitive" sources.

When the *Branzburg* decision was first released, many media lawyers justifiably regarded it as a catastrophic blow to reporters. Until very recently, however, most lower courts did not construe *Branzburg* as rejecting a constitutional reporter's privilege. This response was based on several factors. First, in Justice White's majority opinion, the Court made clear that the press "'has no special immunity from the application of general laws'" and no greater right of access to information than the public, but then went on to say that "without some [constitutional] protection for seeking out the news, freedom of the press could be eviscerated." Given this statement, a few courts claiming to reject a constitutional privilege have, at the same time, emphasized that judges should review subpoenas to the media with a "heightened sensitivity" to First Amendment concerns and limit or refuse to enforce subpoenas that are not directly relevant to a good faith claim or seek information obtainable from a less sensitive source.

Causing by far the most confusion, however, has been Justice Powell's concurring opinion in *Branzburg*. Although Justice Powell cast the fifth vote in support of Justice White's majority opinion, his concurrence emphasized what he viewed as the "limited nature" of the Court's opinion. Justice Powell wrote that "[t]he Court does not hold that newsmen, subpoenaed to testify before a grand jury, are without constitutional rights with respect to the gathering of news or in safeguarding their sources," and suggested that courts use a balancing test to determine whether to recognize a privilege: The asserted claim to privilege should be judged on its facts by the striking of a proper balance between freedom of the press and the obligation of all citizens to give relevant testimony with respect to criminal conduct.

The balance of these vital constitutional and societal interests on a case-by-case basis accords with the tried and traditional way of adjudicating such questions. Because Justice Powell cast the deciding vote in *Branzburg*, many courts and commentators have read his concurring opinion as the controlling opinion in the case. The four dissenting Justices in *Branzburg* would have held that a privilege applied. Justice Douglas, standing alone, stated that journalists were entitled to an absolute privilege. Justice Stewart, writing for himself and Justices Marshall and Brennan, claimed that the reporters were entitled to a qualified privilege that could be overcome only if the government meets the following standard:

The government must (1) show that there is probable cause to believe that the newsman has information that is clearly relevant to a specific probable violation of the law; (2) demonstrate that the information sought cannot be obtained by alternative means less destructive of First Amendment rights; and (3) demonstrate a compelling and overriding interest in the information.

Other courts have refused to construe Justice Powell's concurring opinion as embracing a First Amendment privilege; instead, these courts explain, Justice Powell simply suggested that the First Amendment provides protection when a subpoena has been issued in bad faith or for harassing purposes. In the last few years, the minority view that Powell's concurring opinion is largely irrelevant has been gaining ground.

Even if *Branzburg* is correctly read to reject a constitutional reporter's privilege to refuse to testify before a grand jury it still remains unclear whether such a privilege exists in criminal and civil proceedings. Some have argued that the reasoning of *Branzburg* applies equally to criminal trials as to grand juries because, as one court explained, "surely the public has as great an interest in convicting its criminals as it does in indicting them." Other courts have read *Branzburg* as limited to grand jury proceedings and have held that a First Amendment privilege applies in both civil and criminal proceedings. Noting that it would be inappropriate to assume that a criminal defendant's Sixth Amendment and due process rights always outweigh the First Amendment interests at stake, these courts instead recognize a qualified privilege that permits a defendant's interests in a fair trial and due process to be taken into account in the balance.

Many courts have expressly held that a First Amendment privilege exists in civil cases. In civil cases, the interests favouring disclosure are often much less weighty, particularly when the press is not a party to the litigation. The courts disagree, however, whether nonconfidential materials should be given the same protection. Although some courts extend the protection to nonconfidential material on the grounds that the disclosure of such materials constitutes a worrisome intrusion into the newsgathering and editing process, most recognize that "the lack of a confidential source may be an important element in balancing the defendant's need for the material sought against the interest of the journalist in preventing production in a particular case."

In addition, courts reviewing First Amendment privilege claims have noted that in civil cases in which the reporter or his employer are parties, the balance is more likely—but not necessarily—going to tip in favour of disclosure so that the plaintiff can establish the relevant level of fault, whether negligence or actual malice. When courts have recognized a First Amendment privilege in defamation cases, they have recognized it as a qualified, not absolute, privilege, adopting Justice Stewart's three-part test in his *Branzburg* dissent. Courts are also hesitant to extend First Amendment protection to a journalist who has witnessed a crime. These courts rest their analysis largely on the fact that *Branzburg* itself held that reporter Paul Branzburg could not avoid a subpoena to testify before the grand jury after he observed the making of hashish.

Although the *Branzburg* majority invited Congress "to fashion standards and rules as narrow or broad as deemed necessary to deal with the evil discerned... as experience... may dictate," Congress has yet to take the Court up on this suggestion.

FEDERAL COMMON LAW

Given the current tendency of courts to reject a First Amendment privilege, courts have started to examine the possibility of a privilege based on Federal Rule of Evidence 501. Rule 501 provides that judges can decide whether a witness is entitled to a privilege under "the principles of the common law as

they may be interpreted by the courts of the United States in the light of reason and experience." In granting courts broad latitude to recognize privileges, Congress rejected the original proposal of the Advisory Committee on Rules of Evidence, recommending the adoption of nine enumerated privileges. Although the journalist's privilege was not among the nine enumerated privileges, the open-ended Rule 501 that Congress ultimately adopted allows courts to adopt such a privilege "in light of reason and experience." Indeed, the principal draftsman of Rule 501, Representative William Hungate, specifically noted that the flexible language of Rule 501 "cannot be interpreted as a congressional expression in favour of having no such privilege, nor can the conference action be interpreted as denying to newspeople any protection they may have from State newsperson's privilege laws."

In *Jaffee v. Redmond*, the Supreme Court stated that three principles governed the recognition of privileges under Rule 501: (1) the significant public and private interests that would be served by any proposed privileges; (2) the balance of the public and private interest in the privilege against the burden on truth-seeking that the privilege would impose; and (3) "reason and experience" based on state recognition of the privilege. In *Jaffee*, the Court held that these three considerations supported the recognition of a psychotherapist/patient privilege. The Court first noted that the public and private interest in the mental health of citizens requires "[e]ffective psychotherapy," which in turn "depends upon an atmosphere of confidence and trust in which the patient is willing to make a frank and complete disclosure of facts, emotions, memories, and fears." The Court held that the public interest in effective mental health treatment outweighed the loss of probative evidence that recognition of the privilege might entail because without the privilege, patients would be less likely to divulge the very confidential information at issue. Finally, the Court found it persuasive that all fifty states and the District of Columbia recognized some form of the privilege.

The relatively few courts to address whether Federal Rule of Evidence 501 supports a reporter's privilege have reached mixed results. At least two courts that were asked to recognize a privilege refused to do so because the material sought was not confidential. Some courts have held that, at least with respect to grand jury proceedings, the Supreme Court already conducted the relevant balancing inquiry in the *Branzburg* decision, where it concluded that the public's right to evidence outweighed the interest in continued confidentiality.

The District Court of the District of Columbia rejected the existence of a federal common law privilege in a civil case as well. 252 Other courts have held that the federal common law does provide a privilege.

The Third Circuit has recognized a federal common law privilege in criminal and civil proceedings. Although the D.C. Circuit was asked in the Judith Miller litigation to recognize a common law privilege, the panel was unable to reach a decision on whether to do so.

The Second Circuit also ducked the issue in *Gonzales v. New York Times*, holding that even if such a privilege existed, it would be qualified, and that the

government had made a sufficient showing in the case under review to overcome it. The application of the *Jaffee* factors appears to support the existence of a federal common law reporter's privilege. With respect to the first *Jaffee* prong, a privilege supports the press's truth-seeking function. Just as the lack of a privilege would chill communications between psychologists and their patients and prevent the information litigants seek from ever coming into evidence, the lack of a journalist privilege will chill communications from sources. As one court explained, "unless potential sources are confident that compelled disclosure is unlikely, they will be reluctant to disclose any confidential information to reporters," and "'the flow of information to the public will be diminished regardless of whether disclosure could have actually been compelled.'" In addition, reporters fearing a subpoena may be reluctant to publish information obtained from confidential sources.

The second *Jaffee* prong is also satisfied because the evidentiary benefit that would be lost from the privilege is minimal when compared to the loss of information to the public.

Journalists have relied on confidential sources to report not only on government misconduct, but also on organized crime, environmental and nuclear safety issues, and many other matters of indisputable public interest. Recognizing the federal common law privilege as qualified, rather than absolute, helps strike a proper balance between the competing public interests in those cases where the need for the journalist's testimony and evidence is compelling.

The third *Jaffee* consideration is easily met because thirtytwo states and the District of Columbia have statutory shield laws and fourteen additional states have recognized a privilege through judicial decision. Because most states recognize a reporter's privilege, failing to recognize a federal common law privilege would in many cases "frustrate the purposes of the state legislation that was enacted to foster these confidential communications.

The courts holding that a federal common law privilege exists have held that it is a qualified privilege that can be overcome with a showing of materiality and exhaustion. Judge Tatel's concurring opinion in the Judith Miller case, in which he reasoned that a qualified privilege existed under federal common law, added a suggestion that in cases where the government is investigating a leak, the court must also conduct a balancing test:

In leak cases... courts applying the privilege must consider not only the government's need for the information and exhaustion of alternative sources, but also the two competing public interests lying at the heart of the balancing test. Specifically, the court must weigh the public interest in compelling disclosure, measured by the harm the leak caused, against the public interest in newsgathering, measured by the leaked information's value. That framework allows authorities seeking to punish a leak to access key evidence when the leaked information does more harm than good... while preventing discovery when no public interest supports it....

Judge Tatel argued that in leak cases a balancing test was essential because the necessity and exhaustion requirements would be easily met in every case. Thus, for example, Judge Tatel argued in his dissent from the denial of the rehearing en banc petition in Wen Ho Lee's Privacy Act case that the court should have balanced the plaintiff's interest in receiving compensation from the government for leaking personal information about him against the public's interest in obtaining information about what was at the time believed to be nuclear espionage. Some have criticized Judge Tatel's proposed test because it puts the courts in the awkward and difficult position of determining what is sufficiently "newsworthy" to outweigh the subpoenaing party's interests.

2

Mass Media Laws

Mass Media laws in India have a long history and are deeply rooted in the country's colonial experience under British rule. The earliest regulatory measures can be traced back to 1799 when Lord Wellesley promulgated the *Press Regulations*, which had the effect of imposing pre-censorship on an infant newspaper publishing industry. The onset of 1835 saw the promulgation of the *Press Act*, which undid most of, the repressive features of earlier legislations on the subject.

Thereafter on 18th June 1857, the government passed the '*Gagging Act'*, which among various other things, introduced compulsory licensing for the owning or running of printing presses; empowered the government to prohibit the publication or circulation of any newspaper, book or other printed material and banned the publication or dissemination of statements or news stories which had a tendency to cause a furore against the government, thereby weakening its authority.

Then followed the '*Press and Registration of Books Ac*t' in 1867 and which continues to remain in force till date. Governor General Lord Lytton promulgated the '*Vernacular Press Act*' of 1878 allowing the government to clamp down on the publication of writings deemed seditious and to impose punitive sanctions on printers and publishers who failed to fall in line.

In 1908, Lord Minto promulgated the '*Newspapers (Incitement to Offences) Act*, 1908 which authorized local authorities to take action against the editor of any newspaper that published matter deemed to constitute an incitement to rebellion.

MEDIA PLANNING: NEW PERSPECTIVE

In India, we are experiencing an economic slow down. Consumer buying is on the decline. Ad spends are curtailed Agencies are becoming learner. Clients are becoming more discerning about media usage. Though they are cutting and budgets, they want more effectiveness. In common parlance, this is called 'more bang for the buck.' Clients have become extremely vigilant on how agencies spend their money on media. Intuitive media decisions and exploratory tactics are out. Everything has to be substantiated. It is necessary to stretch every media rupee more and more. Though the broader media mix is planned annually, media planners are continuously shuffling the actual vehicles they choose channels or programmes in case of TV and publications in case of print. Clients want to know how involved their target audience is with a particular programming. Even though demographics cover the reach objectives, the target audience may be a passive viewer. Research on the involvement of the target groups is getting more attention. Agencies are making use of proprietary consumer involvement tools that help them measure media preferences of target audiences.

There is a shift from planning based merely on reach to planning based on awareness/involvement. The client wants to know whether his target audience has actually seen the campaign. He wants to know whether the client was at home when the commercial was telecast. Media planning goes beyond media buying. It has to focus more sharply on consumer decision-making process and the importance of media in that process. Media has to make accountable. Media planners have started using more efficient media evaluation matrices. Audience involvement scores are now weighted while arriving at ROI on media spends.

MEDIA PLAN

1. The first step in media planning is the collection of useful information about the people or the market to be reached through advertising. The more detailed and specific the target market data available on geography, age group, sex, income, attitudes, interests, *etc.*, the more appropriate the media selection would be. However, it is well understood that the available advertising budget is an important guide to the media selection. The task is to select a medium most suited to the target market at a given budget cost. This concept of "what-can-you-afford?" in media planning is equally relevant to small as well as large companies, for they do have something like a budget or an appropriation of fund for promotion. Irrespective of the size of the company, it finally settles for how much money it can afford to put in for a particular market for advertising and/or for promotion.
2. The second significant step in media planning is to decide upon the nature of the message to be conveyed to the target market. However, this decision necessarily follows a thorough understanding of the consumer profile. The message or the copy, by which name it is more accurately called, is decided in the light of the aspect of consumer behaviour or motivation which is intended to be influenced.

3. Having gathered this significant information, the next logical step is to search for an ideal match of the audience characteristics of media with the target market profile and, at the same time, check for the perfect adaptability of the message (copy) requirement with the media. Following the media planning decision process, we have to take into account the other media concepts explained in the following paragraphs.
4. Reach is expressed in terms of the number of households or individuals reached by a given medium over a period of time. This is usually expressed in terms of percent of total households or individuals in the target market. Sometimes, there is a possibility of duplication, *i.e.*, two media may reach the target audience. National magazines have a different reach from that of the regional' ones or other media, such as TV, radio, *etc.* National readership surveys provide information about published materials, whereas several other conducted studies may provide the reach percent of other media. One can buy reach with print in a specific geographical market by taking a combination of newspapers or magazines.

Frequency refers to the average number of times different households or individuals are reached by a medium in a given period of time. The frequency of advertisement exposure of the target market depends upon the amount of reinforcement of the image required or the amount of reminding required having sustaining patronage from the target customers. The greater the frequency, the greater the probability of the advertisement message making a deep and lasting impression. To understand these concepts dearly consider the following illustration. A sample of viewers represents 10 TV Households (HHs)-Q to Z who watch a programme A over a four week period.

WHY THE MEDIA LIES

THE CORPORATE STRUCTURE OF THE MASS MEDIA

It was Walter Lippman who coined the phrase "the manufacture of consent", enjoining it as a means of population control. Lippman's concept may indeed be in effect today. In this regard, the status of the mass media and its faithful propagation of the established opinion that Western policy is fundamentally benevolent in intention, is an issue of paramount importance. What role has the media played in clarifying the real principles and motives of Western policy to the public, and what does this entail for the nature of Western democracy and the role of the population in the formulation of policy? The mass media is clearly one of the most powerful institutions in society; it is, for most of the public, the ultimate source of all their information. The structure of the mass media will therefore have fundamental implications for the political and cultural orientation of the public. Hence, an understanding of the mass media will throw considerable light on the structure of Western society, the relationship between the public and those who possess power, as well as the ideologies produced by

the media and their impact on the public. All scholars generally agree that the media do have the capacity to set the agenda of public discourse about political affairs, and it is widely recognised that the media has a significant role in actualising the diffusion of Western ideology and culture throughout the world. However, they differ over the degree to which the media limits the public's understanding of current affairs and the overall consequences of this.

Nevertheless, the vast extent of the manipulation of the media under the sway of business interests has been harshly revealed in the statement of John Swainton, Chief of Staff of the *New York Times*. "There is not one of you who would dare to write his honest opinion," he reprimanded his colleagues at his retirement party in September.

"The business of a journalist now is to destroy the truth, to lie outright, to pervert, to vilify, fall at the feet of Mammon and sell himself for his daily bread. We are tools, vessels of rich men behind the scenes, we are jumping jacks. They pull the strings; we dance. Our talents, our possibilities and our lives are the properties of these men. We are intellectual prostitutes."

THE INDEPENDENT MEDIA: A MYTH

It is generally clear that the media has failed to generate genuine public awareness of the actual nature of Western policy. Majid Tehranian, for example, who is Professor of International Communication at the University of Hawaii and Director of the Toda Institute for Global Peace and Policy Research, points out that:

"In their scholarship, William Appleton Williams, Noam Chomsky, Richard Falk, Ramsey Clark, Ali Mazrui, and other critics of US foreign policies have provided an abundance of evidence to support the charges on the counter-democratic role of the United States in much of Asia, Africa, and Latin America."

British historian Mark Curtis, former Research Fellow at the Royal Institute for International Affairs in London, similarly confirms:

"Mutual Anglo-American support in ordering the affairs of key nations and regions, often with violence, to their design has been a consistent feature of the era that followed the Second World War... Policy in, for example, Malaya, Kenya, British Guiana and Iran was geared towards organising Third World economies along guidelines in which British, and Western, interests would be paramount, and those of the often malnourished populations would be ignored or further undermined. Similarly, US interventions overseas-in Vietnam, Nicaragua, the Dominican Republic, Cuba, Chile, etcetera-were designed to counter threats to the Western practice of assigning the Third World to mere client status to Western business interests. British and US forces have acted as mercenary-and often extremely violent-mobs intended to restore 'order' in their domains and to preserve the existing privileges of elites within their own societies."

Development specialist Dr. J. W. Smith, who is Director of Research for the California-based Institute for Economic Democracy, is even more explicit: "No society will tolerate it if they knew that they (as a country) were responsible for

violently killing 12 to 15 million people since WW II and causing the death of hundreds of millions more their economies were destroyed or those countries were denied the right to restructure to care for their people. Unknown as it is, and recognizing that this has been standard practice throughout colonialism, that is the record of the Western imperial centres of capital from 1945 to 1990... While mouthing peace, freedom, justice, rights, and majority rule, all over the world state-sponsored terrorists were overthrowing democratic governments, installing and protecting dictators, and preventing peace, freedom, justice, rights, and majority rule. Twelve to fifteen million mostly innocent people were slaughtered in that successful 45 year effort to suppress those breaks for economic freedom which were bursting out all over the world... All intelligence agencies have been, and are still in, the business of destabilizing undeveloped countries to maintain their dependency and the flow of the world's natural wealth to powerful nations' industries at a low price and to provide markets for those industries at a high price."

That the media has failed to accurately portray the real nature of Western foreign policy to the public, playing instead the subservient role of a propaganda machine for elite interests, is therefore quite obvious. The question that then remains is, why does the media – conventionally believed to be critical of the establishment-behave in a way that conforms to the false picture presented by the government and corporate elite of their own policies? The anwer is simple: in a nutshell, the mass media *is* the establishment.

To begin our analysis then, we will discuss a propaganda model of the mass media. It is thus useful to begin with what is arguably the most thorough model of the media-that proposed by Edward Herman (Professor Emeritus of Finance at Wharton School in the University of Pennsylvania) and Noam Chomsky (Institute Professor of Linguistics and Philosophy at MIT), both of whom are leading critics of US foreign policy.

There are particularly pertinent reasons to begin with their model-the primary one being that it is arguably the most thoroughly researched and empirically verified model available. Herman and Chomsky's landmark study, *Manufacturing Consent: The Political Economy of the Mass Media*, comes under the recommendation of America's leading national media watchdog and research group, Fairness and Accuracy In Reporting (FAIR). It is also recommended as an essential resource for media literacy by the Grand Rapids Institute for Information Democracy (GRIID), affiliated with the US-based Community Media Centre (CMC). The Oxford-based research and publishing group Corporate Watch (not to be confused with the US-based organisation of the same name), which works in cooperation with a variety of other human rights and environmentalist organisations, describes the study as "one of the most incisive critiques of the media's role in society". The respected journal *Publisher's Weekly* gives the following review of *Manufacturing Consent*:

"Herman of Wharton and Chomsky of MIT lucidly document their argument that America's government and its corporate giants exercise control over what

we read, see and hear. The authors identify the forces that they contend make the national media propagandistic-the major three being the motivation for profit through ad revenue, the media's close links to and often ownership by corporations, and their acceptance of information from biased sources. In five case studies, the writers show how TV, newspapers and radio distort world events… Extensive evidence is calmly presented, and in the end an indictment against the guardians of our freedom is substantiated. A disturbing picture emerges of a news system that panders to the interest of America's privileged and neglects its duties when the concerns of minority groups and the underclass are at stake."

Indeed, according to the leading American media scholar Robert W. McChesney, Professor of Journalism and Mass Communication at the University of Illinois, any significant attempt to comprehend the structure and operation of the mass media must begin with Herman and Chomsky's study. He further observes that:

"This book promises to be a seminal work in critical media analysis and to open a door through which future media analysis will follow… Edward Herman and Noam Chomsky are certainly well qualified to provide a simple yet powerful model that explains how the media function to serve the large propaganda requirements of the elite. Together and individually, they have written numerous articles and books which have chronicled the ways in which the US media have actively promoted the agenda of the elite, particularly in regard to US activities in the Third World. Manufacturing Consent is a work of tremendous importance for scholars and activists alike… Each chapter is meticulously researched and most draw heavily on the authors' earlier works in these areas."

All this provides us with ample reason to begin with Herman and Chomsky's model. Contrary to the claims of the mainstream critique of radical media analysis, a propaganda model does not entail a grandiose conspiracy theory. Rather, this model is based on analysing the politico-economic influences on the mass media, and considering the extent to which those influences both have the potential to condition the media's reporting tendencies in accord with the interests of those who possess power. In other words, the model constitutes a 'guided free market' model, advocating that the media's reporting is influenced by the same factors that dominate corporate activities-the maximisation of profit and therefore the market. The next step is to document the occurrences where this potential is actualised. In this sense, according to the propaganda model the media is conditioned by the profit-orientated considerations of corporate elites. As Professor McChesney observes:

"Herman and Chomsky quickly dismiss the standard mainstream critique of radical media analysis that accuses it of offering some sort of 'conspiracy' theory for media behaviour; rather, they argue, media bias arises from 'the preselection of right-thinking people, internalized preconceptions, and the adaptation of personnel to the constraints' of a series of objective filters they present in their propaganda model. Hence the bias occurs largely through self-censorship, which explains the superiority of the US mass media as a propaganda system: it is far more credible than a system which relies on official state censorship."

FILTER 1: ELITE OWNERSHIP

Herman and Chomsky have forwarded their propaganda model of the media in terms of five 'filters' that act to limit what the media reports in accord with governmental and corporate interests. As McChesney notes:

"Only stories with a strong orientation to elite interests can pass through the five filters unobstructed and receive ample media attention. The model also explains how the media can conscientiously function when even a superficial analysis of the evidence would indicate the preposterous nature of many of the stories that receive ample publicity in the press and on the network news broadcasts."

The first filter consists of the size, concentrated ownership, owner wealth and profit-orientation of the most dominant mass media firms. Media ownership involves enormous costs, which naturally implicates rigid limits on who is able to run a media entity, even a small one. To cater to a mass audience, a media organisation must inevitably be a sizeable corporation. It will have to be owned either directly by the state or by wealthy individuals. In 1986, out of about 25,000 media entities in the US, a mere twenty-nine largest media systems accounted for over half the output of newspapers and for the majority of sales and audiences in magazines, broadcasting, books and films. These massive media firms are profit-orientated corporations, owned and controlled by wealthy profit-orientated people, which are also "closely interlocked, and have common interests, with other major corporations, banks, and government". Because they are often fully integrated into the stock market, they become subject to powerful pressures from stockholders, directors and bankers to focus on profitability. This means that they are united by a basic framework of special interests, even though they remain in competition:

"These control groups obviously have a special stake in the status quo by virtue of their wealth and their strategic position in one of the great institutions of society [the stock market]. And they exercise the power of this strategic position, if only by establishing the general aims of the company and choosing its top management."

As a result, major media corporations tend to avoid reports that question the status quo in terms of the actions of the wealthy: If media entities are owned by profit-orientated corporations that have a vested interest in maintaining the status quo, those corporations are clearly not going to employ individuals who question the status quo to run their media entities. McChesney observes:

"Many of these corporations have extensive holdings in other industries and nations. Objectively, their needs for profit severely influence the news operations and overall content of the media. Subjectively, there is a clear conflict of interest when the media system upon which self-government rests is controlled by a handful of corporations and operated in their self-interest."

A remarkably large amount of the information the public receives is controlled by a very small number of media sources. Freedom House records that within states, out of 187 governments, 92 have complete ownership of the television

broadcasting structure, while 67 have part ownership. Ownership of the world's media sources is similarly increasingly concentrated in a few giant corporations.

Thousands of other sources do exist, but in comparison their influence is negligible. The leading American media analyst Ben Bagdikan, noting that despite more than 25,000 media entities in the US only "23 corporations control most of the business in daily newspapers, magazines, television, books, and motion pictures", concludes that this endows corporations with the extensive power to exercise influence over "news, information, public ideas, popular culture, and political attitudes".

The result today is that about twelve corporations dominate the world's mass media. In his study of corporate leverage over the media, *Megamedia*, Dr. Dean Alger-who was fellow in the Joan Shorenstein Centre on the press, politics and public policy at Harvard University's John F. Kennedy School of Government-lists this 'dominant dozen' as follows in order of power: Disney-Capital Cities-ABC; Time Warner-Turner; News Corporation; Bertelsmann; Tele-Communications (TCI)-AT&T; General Electric-NBC; CBS Inc.; Newshouse/ Advance Publications; Viacom; Microsoft; Matra-Hachette-Filipacchi; Gannet. Alger quotes journalist and former top editor of the *Chicago Tribunal*, James Squires, concerning the escalating patterns of concentration of media-ownership in profit-orientated corporations:

"In its struggle for relevance and financial security in the modern information age, the press as an institution appears ready to trade its tradition and its public responsibility for whatever will make a buck. In the starkest terms, the news media of the 1990s are a celebrity-oriented, Wall-Street dominated, profit-driven entertainment enterprise dedicated foremost to delivering advertising images to targeted groups of consumers."

Richard Clurman, who was for years a leading figure in Time magazine, has similarly observed:

"As the news media became bigger and bigger business, the innovative traditions led by creative editorial dominance began to erode... The media had grown from a nicely profitable, creative business into a gigantic investment opportunity. It was becoming harder to think of them as different from any other business in free enterprise America."

Former newspaper reporter who became a journalism professor, Doug Underwood, also confirms this corporatisation of the media: "It's probably no surprise that in an era of mass media conglomerates, big chain expansion, and multimillion dollar newspaper buy-outs, the editors of daily newspapers have begun to behave more and more like the managers of any corporate entity."

It is well documented that the elites who dominate the various institutions of society share a common set of values and associations linked with their generally wealthy position as members of a highly privileged class. These elites include the decision makers over politics, investment, production, distribution; members of ideological institutions involving editorial positions, control of journals and so on; those in managerial positions, who manage corporations and have similar

roles. These different elite groups all interpenetrate one another in accord with their shared values and associations. Furthermore, due to their common social position, they are largely socialised into the traditional values that characterise their wealthy class. This has a significant impact on their outlook on the world, and consequently their attitude towards political affairs.

In Britain, the British Broadcasting Company (BBC) constitutes an obvious example. The board of governers on the BBC "tends to be drawn from the ranks of the 'great and good' and to mirror the predominance of the upper middle classes in the ranks of political life in elected and non-elected positions of power… *"Of the eighty-five governers who have served in the first fifty years of the BBC's history, fifty-six had a university education (forty at Oxford or Cambridge) and twenty were products of Eton, Harrow or Winchester. The political experience of Board members has come mainly from the House of Lords although there have been nineteen former MPs."*

Further documentation observes Bob Franklin, Reader in Media and Communication Studies at the University of Sheffield, illustrates that the elite "uses its privileged access to media institutions to produce programming which is partial and supportive of a particular class interest." Franklin refers to the series of *Bad News* studies by Glasgow University Media Group (GUMG), offering ample evidence "of a systematic skew in the reporting of certain kinds of news." For example, in their first study the Glasgow scholars concluded that "television news is a cultural artifact; a sequence of socially-manufactured messages which carry many of the culturally dominant assumptions of our society." In a later study titled *More Bad News*, they similarly concluded that television news reporting "consistently maintains and supports a cultural framework within which viewpoints favourable to the *status quo* are given *preferred* and *privileged* readings."

Former editor-in-chief David Bowman of the Australian newspaper the *Sydney Morning Herald* therefore confirms that "having thrown off one yoke, the press should now be falling under another, in the form of a tiny and ever-contracting band of businessmen-proprietors. Instead of developing as a diverse social institution, serving the needs of democratic society, the press, and now the media, have become or are becoming the property of a few, governed by whatever social, political and cultural values the few think tolerable". "The danger", he elsewhere observes, "is that the media of the future, the channels of mass communication, will be dominated locally and worldwide by the values-social, cultural and political-of a few individuals and their huge corporations."

The mass media may have the ideological orientation of its staffing broadly restricted to the agenda held by its corporate ownership, who obviously have significant control over the media's staffing. The cumulative result of this is that the media may become subservient in its general ideological orientation to the assumptions and interests of the elite. Bob Franklin elaborates that this is because "editors are simply workers-albeit at a high grade-and, as such, remain subject to the discipline of proprietors.

It would certainly be difficult to persuade an editor that proprietors are no longer in control of their newspapers. A succession of editors from Harold Evans to Andrew Neil acknowledge the power of proprietors in autobiographies which invariably detail their prompt removal from the editorial chair following a disagreement with the owner... Proprietors' power to 'hire and fire' makes them formidable figures, but they also control all aspects of a newspaper's financial and staffing resources."

The implications of all this have been summarised well by American analyst David McGowan:

"Following the same course that virtually every other major industry has in the last two decades, a relentless series of mergers and corporate takeovers has consolidated control of the media into the hands of a few corporate behemoths. The result has been that an increasingly authoritarian agenda has been sold to the American people by a massive, multi-tentacled media machine that has become, for all intents and purposes, a propaganda organ of the state."

Former Dean at the Graduate School of Journalism at the University of California, and a winner of almost every top prize in American journalism-including the Pulitzer-Ben Bagdikian, acknowledges the massive control over public life entailed by the increasing concentration in corporate ownership:

"In an authoritarian society there is a ministry, or a commissar, or a directorate that controls what everybody will see and hear. We call that a dictatorship. Here we have a handful of very powerful corporations led by a handful of very powerful men and women who control everything we see and hear beyond the natural environment and our own families. That's something which surrounds us every day and night. If it were one person we'd call that a dictatorship, a ministry of information."

The extent of the power that elites have over the media can be well understood when it is noted that even Western intelligence agencies have a grip over the press. For example, an internal committee of the CIA reported in 1992 that: "We [*i.e.*, the CIA] have relationships with reporters [that] have helped us turn some intelligence failure stories into intelligence success stories. Some responses to the media can be handled in a one-shot phone call." Former CIA Director William Colby was more forthcoming when he admitted: "The Central Intelligence Agency owns anyone of any significance in the major media." Consequently, it is easy to see how the legitimacy of elite interests can henceforth be presupposed by the mass media in terms of a general all-pervading set of assumptions.

Since these assumptions are rooted in the elite ideology, the mass media that is of course owned by the corporate elite, is generally unable to question seriously that ideology. Bob Franklin thus concludes that "while it is possible to cite cases where the media have toppled the powerful, there is a greater body of evidence to suggest that their role is more typically to serve as a source of support." It is therefore not surprising if debate within the media is largely restricted to the assumption of Western governmental and corporate benevolence;

the belief in the viability and legitimacy of the status quo. In this context, one can predict that dissent which stretches beyond these limits by choosing to question the very assumptions adopted at the outset by the media, will be neglected. Certainly, due to the sheer mass of news it is also predictable that the odd dissenting report may filter through-but the substantial majority of reports will "serve as a source of support" for elite interests.

As the American political scientist Michael Parenti documents, the result of corporate ownership of the media where staffing will be especially restricted to those who conform to the ideological requirements of corporate power, is that journalists "rarely doubt their own objectivity even as they faithfully echo the established political vocabularies and the prevailing politico-economic orthodoxy. Since they do not cross any forbidden lines, they are not reined in. So they are likely to have no awareness they are on an ideological leash." The distinguished British correspondent John Pilger-who has twice won British journalism's highest award, that of Journalist of the Year, as well as several other major awards-thus comments that "the true nature of power is not revealed, its changing contours are seldom explored, its goals and targets seldom identified. This is counterfeit journalism because the surface of events is not disturbed." A propaganda model thus clarifies the institutional structure of the media that explains why the facts of elite policy receive little in-depth critical analysis by the mainstream media. On this basis one may reasonably argue that permissible dissent becomes meaningless, being unable to question the ideological framework upon which the elite dominated social structures are based. The result has been noted by media analyst W. Lance Bennett:

"The public is exposed to powerful persuasive messages from above and is unable to communicate meaningfully through the media in response to these messages... Leaders have usurped enormous amounts of political power and reduced popular control over the political system by using the media to generate support, compliance, and just plain confusion among the public."

MEDIA COVERAGE OF LEGISLATIVE PRIVILEGES AND LEGAL SYSTEM

An oddly-phrased cricketing metaphor used by the editor of The Hindu – which prides itself on its 'proper' English – to describe the crisis occasioned by the decision of the Tamil Nadu Assembly to imprison the editor and senior staff of The Hindu and the Murasoli for breach of legislative privilege. This decision of the House Privilege Committee of the Legislative Assembly was adopted as a resolution by the majority in the House. The immediate provocation for this resolution was the publication of an editorial piece titled "Rising Intolerance", which criticized the alleged attempts of the Chief Minister and the speaker of the Legislative Assembly to muzzle the media. A Tamil translation of this editorial was published in Murasoli, a newspaper sponsored by the Dravida Munnetra Kazhagam (DMK), a leading regional political party. Predictably, the editors of The Hindu proceeded to the Supreme Court to obtain a stay on the

Assembly's orders and thereby authored another legal episode in the continuing struggle between legislative assemblies and the press. On previous occasions, these battles have raised some significant constitutional issues regarding the scope and nature of the un-codified powers of legislative privilege in the Constitution, and its claims of superiority over the fundamental rights guaranteed in the Constitution. This essay explores why the exercise of legislative privilege provokes the constitutional outrage that it does and attempts to clear some of the theoretical confusion that plagues such cases. This essay does not aim to comprehensively work through the dense legal argument that a full response to these issues would require. Instead, it illuminates some crucial themes that such cases raise.

SOURCE OF LEGISLATIVE PRIVILEGES

Unlike the conventional basis of privilege in the British Constitution, the source of legislative privilege may be traced to Articles in the text of the Indian Constitution. The Constitution sets out in Articles 105 and 194 the powers and privileges that Parliament and the State Legislatures are entitled to. These articles are identical in structure and content.

Clauses 1 and 2 grant members of the House the privilege of freedom of speech and immunity from civil liability for anything said or published under the authority of the House. Clause 4 extends both these privileges to apply to any person who is not a member of the House but who participates in proceedings of the House or its committees. These clauses ensure that participants in House proceedings are not impeded from performing their functions in the House in any manner.

Clause 3 allows the legislatures to define other powers, privileges and immunities by passing laws in this respect. Till such time as they pass these laws, the privileges they are entitled to in 1947 continue to accrue to them. The constitutional framers intended the legislatures to enjoy the privileges enjoyed by the British Parliament in 1947 till such time as they enacted new laws that spelt out these privileges. Unsurprisingly, the Indian legislatures have not passed any legislation on the subject and have cashed this blank cheque whenever they have seen fit! It is under the blanket authority of this clause that the Tamil Nadu legislature seeks to proceed against news persons for a breach of privilege.

We must note at this stage that the privileges of the legislature have both an external and internal effect. Clauses 1 and 2 in these articles protect the internal practices and conduct of members and non-members in the House in order to allow it to conduct its affairs as well as prevent members of the House from abusing their privileges in the House. Clause 3 empowers the House to deal with the conduct and expressions of outsiders who, for good reason, are found to have violated the privileges and immunities of the House. This essay is concerned primarily with the latter external effects of legislative privileges.

Interestingly the South African Constitution of 1996 anticipates the Indian scenario and provides for privilege rather differently. Section 58 sets out the

privileges of Parliament. This section adopts a structure very similar to that in Article 105 and 194. Apart from the rights to free speech and immunity from civil proceeding spelled out in sub-sections 1 and 2, Parliament is empowered to make national legislation to provide for other privileges and immunities.

The crucial difference lies in the approach to un-codified privileges. Till Parliament passes such a law, it is not entitled to any such privilege. By extinguishing any extant privileges and providing only for codified privileges, the South African Constitution avoids the possibility of any claims of unqualified privilege by Parliament.

Taking a cue from the South African Constitution, the Indian Supreme Court should deny the Indian Legislatures' claim to conventional privileges and compel them to legislate on this crucial subject.

Significantly, such a law would need to pass the test of compliance with the fundamental rights under Article 13, thereby ensuring that such a law would imbibe due process norms and respect the guarantees to life, liberty and speech. This step alone will guarantee against any future possibility of flagrant abuse. Till such time we would do well to engage with the problems of the debate as it presently stands.

A DEFINITION OF PRIVILEGE

One key element that plagues the debate in India is the absence of an acceptable definition of the idea of "privilege". Presently, the debate proceeds on the assumption that privileges are what the legislature defines them to be. So it would be useful to begin with a recent definition of legislative privilege developed by the Report of the Joint Committee on Parliamentary Privilege in the United Kingdom:

"Parliamentary privilege consists of the rights and immunities which the two Houses of Parliament and their members possess to enable them to carry out their parliamentary functions effectively. Without this protection members would be handicapped in performing their parliamentary duties, and the authority of Parliament itself in confronting the executive and as a forum for expressing the anxieties of citizens would be correspondingly diminished".

This definition does not work by setting out an exhaustive listing of privileges that the legislature may claim. Instead, it speaks to the functions that the doctrine of legislative privilege seeks to achieve. The definition marks out two essential functions: first, that legislative privilege allows the house to maintain independence and autonomy from the executive, and secondly, that legislative privilege maintains the representative capacity of the house.

A noteworthy omission from this list of functions is the reputation and dignity of the house and its members, which are not sought to be protected by the exercise of legislative privilege. In the Indian experience, the reputation and dignity of the House has sought to be invoked as the fundamental purpose of the powers of legislative privilege. By omitting these concerns, the Report does not suggest that these are unimportant, but only that these interests are best

protected by the ordinary civil law of defamation and libel and not through the constitutional powers of privilege. In the present case, there has been a tendency to conflate the interests of the executive wing of government with that of the legislature, so that legislative privilege may be invoked to protect the reputational interests of the executive wing of government, particularly that of the Chief Minister. Any attempt by the Supreme Court to circumscribe the scope of these privileges by naming the functions that they are to achieve would prevent the excessive range of interests that Indian legislatures have tended to protect using these powers.

LANGUAGE OF 'PRIVILEGES'

It is odd to come across a republican constitution that speaks in the language of privileges of the legislature. Despite the proud proclamation of the republican character of our Constitution in the Preamble, the inability of the courts to develop legal principles that reflect the republican aspects of the independence struggle has diminished our constitutional and political tradition. Madison in the Federalist Papers Number 39 opposes "republicanism" to a state founded on aristocratic, monarchical or feudal power.

At the very least, a republican constitution embodies the principles of legal authority that derives from the people at large and admits of no royal privileges, prerogatives or immunities. The United States Constitution does not grant Congress or the House of Representative the "privilege" to punish those who offend its sensibilities. It leaves it to the ordinary courts to mould remedies that protect the functioning of the Houses.

Given that our Constitution does use the word "privilege" in Articles 105 and 194, the courts are obliged to provide a reasonable construction of the term. The use of the word privilege to describe the powers of legislature no doubt has its origins in the English common law and political tradition.

As its inclusion in a republican constitution is anachronistic and hinders clarity of thought, the court should clarify the precise nature and scope of the "privilege" enjoyed by the legislatures in tune with the principles of public authority in a republican constitution.

The ideas about the interpretation of the Constitution set out above must not be seen as a disgruntled academic semantic complaint about the use of inappropriate words. As Adam Tomkins argues, the metaphorical use of the word "Crown" in English public law has prevented public lawyers from asking difficult questions that would have allowed them to develop "a modern and sophisticated understanding of the State" and ensured that they did not "underestimate the continuing and extraordinary powers of the Crown".

The use of the word "privilege" in Articles 103 and 163 of the Constitution has a similar effect. The language of privilege suggests a mystical source of power that lies beyond and above the Constitution, when the written Constitution sets out to be the exclusive and supreme source of secular and temporal power in the State.

While no constitutional arrangement of power can be completely written in a single document, or even in several documents, we must remember that conventions and other sources of constitutional authority are subject to the express arrangements and language of the Constitution. The granting of unnamed and unregulated privileges to the Houses of Legislature invites them to take an anachronistic view of such a power and thereby violate other constitutional guarantees.

LEGISLATIVE PRIVILEGE AND THE COURTS

The history of legislative privilege may be usefully divided into three stages. The early origins of the privilege clauses are closely tied to the history of conflict between the House of Commons and the Tudor and Stuart monarchs, during which successive monarchs utilized criminal and civil law to suppress and intimidate critical legislators. Subsequently, the courts and Parliament locked horns to delineate their respective boundaries of power.

The more recent history of the privilege clause is tied to its use by legislatures against citizens. In this last stage, citizens look to the courts to protect their rights of liberty and speech, thereby pitting these two types of powers against each other.

Though it is this last stage that we are concerned about in this essay, it is rewarding to pay attention to the previous conflicts between the courts and the legislatures on the exercise of privilege, as they provide us with insight into the historical context and attitudes that ground these conflicts. Two historical precedents will enhance our ability to see through the patterns arising out of such a conflict. The first of these relates to the state of the law in England.

In 1839 Hansard had, by order of the House of Commons, printed and sold to the public a report by the inspectors of prisons which noted that an indecent book published by Stockdale was circulating in Newgate prison. When Stockdale brought an action for defamation, Hansard was ordered by the House to plead that he had acted under an order of the House of Commons and that the House had declared that the case was a care of privilege.

The court rejected this defence and held that no resolution of the House could place anyone beyond the control of the law, and when dealing with persons outside the House, the courts would determine the nature and existence of privileges of the Commons. Though courts are willing to grant the House a wider brief to deal with matters of privilege internal to the House, they concede far less latitude to the House when dealing with outsiders.

But like all good stories, this one has a sequel! The sheriffs executing the order of the court had proceeded to recover damages of the princely sum of 600 pounds from Hansard.

The House committed Hansard and the two sheriffs who had intended to implement the orders of the court. Sensing the resolve of the House, the court backed down and refused to entertain a writ of habeas corpus to release the sheriffs from the custody of the House.

This particular sort of dispute was sought to be resolved by the Parliamentary Papers Act of 1840, which overturned the decision of the court in the Stockdale case and established that a non-member who published material on the orders of the House was immune from prosecution for libel. However, the broader question of whether it would be the courts or the House who would determine the scope of privilege is an open question that is yet to be settled conclusively.

The bright sides to this story are, first, that it reflected the position in English law 163 years ago, and secondly, that this is not the position in Indian law. Moreover, the Nicholls Committee which reviewed the English law on this point went so far as to suggest that the power to punish non-members of the House for contempt should be taken away from the Legislature and passed on to the High Court which would have the limited power to impose a fine. The Committee pointed out that with the passing of the Human Rights Act, 1998, the privileges which accrue to the Houses were thereafter subject to the right to free expression and fair trial guaranteed by Article 12 and Article 6 of the European Convention on Human Rights. Though the ideal solution would be the establishment of an independent and autonomous tribunal to try such cases, the least that should be followed is a procedure that affords a person accused of breach of privilege the procedural protections of the notice and hearing before any action can be taken.

The second incident which we will investigate was closer to home and relates to the Indian Supreme Court's ruling in the Keshav Singh case. Keshav Singh had published a pamphlet maligning a member of the State Legislative Assembly.

The House found him guilty of contempt and sentenced him to prison for seven days. He challenged this order before the High Court, which granted him interim bail.

The House responded by finding that the judges who issued interim orders were themselves guilty of contempt of the House and liable to be punished. The judges moved petitions before the High Court, which sat in a full bench and stayed the orders of the House. As this confrontation seemed to be spiraling out of control, the Union government requested the President to refer the matter to the Supreme Court.

The key argument before the Supreme Court was about the scope and nature of the power of legislative privileges. While the State Legislative Assembly contended that this power was sui generis, supreme and independent of the other provisions, the petitioners argued that the power, like all others in the constitution, was subject to the fundamental rights of citizens. The historical parallels between the circumstances in the Stockdale v Hansard and Keshav Singh cases end with the decision of Supreme Court.

The court rightly concluded that it had the power to review unspeaking warrants issued by the Legislature for compliance with the due process requirements under Article 21, among others, thereby asserting the supremacy of the Constitution in general, and some fundamental rights in particular, over the exercise of the privileges powers.

ON 'RISING INTOLERANCE'

Notwithstanding this assertion of constitutional supremacy in the Keshav Singh case, state legislative assemblies continue to exercise their powers of legislative privilege in an indiscriminate and uncontrolled fashion. A motivation for such an exercise might lie with an earlier ruling of the court which found that legislative privilege may be exercised even if it were to violate the rights of citizens to free speech under Article 19 (1) (a) The present case of The Hindu provides the Supreme Court with an opportunity to overrule this decision and spell out the limited scope and nature of legislative privilege in a republican constitution which guarantees fundamental rights. Legislative privilege, rightly conceived, would extend only to the protection of the autonomy of the House from the executive, and to maintaining its ability to represent the people.

PARLIAMENTARY PRIVILEGES AND FUNDAMENTAL RIGHTS

In Pandit M.S.M. Sharma's case it was also contended by the petitioner that the privileges of the House under A.194 (3) are subject to the provision of Part III of the Constitution. In supposrt of his contention the petitioner relied the Supreme Court's decision in Gunupati Keshavram Reddi v. Nafisul Hasan. In this latter case Homi Mistry was arrested at his B'bay residence under a warrant issued by the Speaker of U.P. Assembly for contempt of the House and was flown to Lucknow & kept in a hotel in Speaker's custody. On his applying for a writ of habeas corpus, the Supreme Court directed his release as he had not been produced before a magistrate within 24 hours of his arrest as provided in Article 22 (2). This decision therefore indicated that Article 194 (or Article 105) was subject to the Articles of Part III of the Constitution.

In Sharma's case the Court held that in case of conflict between fundamental right under Article 19 (1) (a) and a privilege under Article 194 (3) the latter would prevail. As regards Article 21, on facts the Court did not find any violation of it. In Powers, Privileges and Immunities of the State Legislature, Re, the proposition laid down in Sharma's case was explained not to mean that in all cases the privileges shall override the fundamental rights. The rules of each House provide for a committee of privileges. The matter of breach of privilege or contempt is referred to the committee of privileges. The committee has power to summon members or strangers before it. Refusal to appear or to answer or to knowingly to give false answer is itself a contempt. The committee's recommendations are reported to the House which discusses them and gives its own decision.

ARTICLE 194

Powers, privileges, *etc.*, of the Houses of Legislature and of the members and committees thereof.

1. Subject to the provisions of this Constitution and to the rules and standing orders regulating the procedure of the Legislature, there shall be freedom of speech in the Legislature of every State.

2. No member of the Legislature of a State shall be liable to any proceeding in any court in respect of anything said or any vote given by him in the Legislature or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of a House of such a Legislature of any report, paper, votes or proceedings.
3. In other respects, the powers, privileges and immunities of a House of the Legislature of a State, and of the members and the committees of a House of such Legislature, shall be such as may be defined from time to time be defined by the Legislature by law, and until so defined, shall be those of that House and of its members and committees immediately before the coming into force of Section 26 of the Constitution (Forty Fourth Amendment) Act, 1978.
4. The provisions of clauses (1), (2) and (3) shall apply in relation to persons who by virtue of this Constitution have the right to speak in, and otherwise to take part in the proceedings of, a House of the Legislature of a State or any committee thereof as they apply in relation to members of that Legislature.

This article that applies to the State Legislatures and members and committees thereof is an exact reproduction of Article 105, which applies to both Houses of Parliament and committees thereof.

Clause (1)-of this article declares that there shall be freedom of speech in the legislature of every State. This freedom is subject to the provisions of Articles 208 and 211. A member cannot accordingly raise discussions as to the conduct of a Supreme Court or High Court judge as A. 211 prohibits it. The provisions of the Constitution subject to which freedom of speech has been conferred on the legislators are not the general provisions of the Constitution but only such of them as relate

to the regulation of the procedure of the Legislature. The freedom of speech guaranteed to citizens under A. 19 (1) (a) is therefore separate and independent of Article 194 (1) and does not control the first part of clause 1 of A.194.

Clause (2)-emphasizes the fact that the freedom of speech conferred on the Legislatures under clause (1) is intended to be absolute and unfettered. Similar freedom is guaranteed to the legislators in respect of the votes they may give in the Legislature or committees thereof. Thus, if a legislator exercises aright of freedom of speech in violation of A. 211 he would not be liable for any action in any court. Likewise, if the legislator by his speech or vote is alleged to have violated any of the fundamental rights guaranteed by Part III of the Constitution in the Legislative Assembly, he would not be answerable for the said contravention in any court. If the speech amounts to libel or becomes actionable or indictable under any other provision of the law immunity has been conferred on him from any action in any court by clause (2). He may be answerable to the House for such a speech and the Supreme Court may take appropriate action against him in respect of it. Thus clause (1) confers freedom of speech to the legislators within the legislative chambers and clause (2) makes it plain that the freedom is literally absolute.

Clause (3)-the first art of this clause empowers the State Legislature to make laws Prescribing its powers, privileges and immunities. If the Legislature of a State under the first part of clause (3) makes a law which prescribes its powers, privileges and immunities, such law would be subject to Article 13 and clause (2) of that article would render it void if it contravenes or abridges any of the fundamental rights guaranteed by Part III.

The right of State Legislatures to punish for contempt can be discussed with the case law of Powers, Privileges and Immunities of State Legislature, Re. The reference was a sequel to the passing of an order by an unprecedented Full Bench of 28 judges staying, under Article 226, the implementation of the U.P. Assembly resolution ordering two judges of Allahabad High Court to be brought in custody before the Bar of the House to explain why they should not be punished for the contempt of the House. The two judges had admitted the habeas corpus petition of and granted bail to one Keshav Singh who was undergoing imprisonment in pursuance of the Assembly Resolution declaring him guilty of the breach of privilege. The resolution of the Assembly and the stay order issued by the Full Bench resulted in a constitutional stalemate. Consequently,

the president referred the matter under Article 143 to the Supreme Court for its opinion. The Supreme Court by a majority of 6:1, through an elabourate and learned opinion delivered by Gajendragadkar, C.J., held that in India notwithstanding a general warrant issued by the Assembly, the Courts could examine the legality of the committal in proper proceedings.

Other propositions were also laid down in the majority judgment. It said that Article 194 (3) cannot be read in isolation. The impact of Articles 226, 32 and 211 had to be ascertained in order to determine the scope of Article 194. Article 226 empowers the High Court to issue a writ of habeas corpus against any authority. This would include the legislature since no exception is made in favour of a detention order by the House for the breach of its privileges. Article 211 on the other hand unambiguously indicates that the conduct of a judge in the discharge of his duties can never become the subject matter of any action taken by the House in exercise of its powers or privileges conferred by the latter part of Article 194 (3). The fact that the first part of Article 194 (3) refers to future laws defining the privileges as being subject to fundamental rights is a significant factor in construing the latter part of Article 194. Such a state legislation would be law within the meaning of article 13 and the courts will be competent to examine its validity vis-à-vis the fundamental right. Although no opinion was tendered as regards fundamental rights in general, it was made clear that so far as Articles 21 and 22 are concerned, any privileges, *etc.*, which are claimed, must be consistent with these articles in the context of Article 208.

PARLIAMENTARY PRIVILEGE IN INDIA

The term parliamentary privileges is used in Constitutional writings to denote both these types of rights and immunities. Sir Thomas Erskine May has defined the expression ?Parliamentary privileges? as follows: The sum of the peculiar

rights enjoyed by each house collectively is a constituent part of the High Court of Parliament, and by members of each house of parliament individually, without which they cannot discharge their functions, and which exceed those possessed by other bodies or individuals.

PARLIAMENTARY PRIVILEGES

1. Subject to the provisions of this Constitution and the rules and standing orders regulating the procedure of Parliament, there shall be freedom of speech in Parliament.
2. No member of Parliament shall be liable to any proceeding in any court in respect of anything said or any vote given by him in Parliament or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings.
3. In other respects, the powers, privileges and immunities of each House of Parliament, and the members and the committee of each House, shall be such as may from time to time be defined by Parliament by law, and until so defined, [shall be those of that House and of its members and committees immediately before the coming into force of Section 15 of the Constitution (44th Amendment) Act, 1978].
4. The provision of clauses (1), (2), and (3) shall apply in relation to persons who by virtue of this Constitution have the right to speak in, and otherwise to take part in the proceedings of, a House of Parliament or any committee thereof as they apply in relation to the members of Parliament.

Parliamentary privileges-this article defines parliamentary privileges of both Houses of Parliament and of their members and committees. Article 194, which is an exact reproduction of Article 105, deals with the State Legislatures and their members and committees. To enable Parliament to discharge functions properly the Constitution confers on each member of the Houses certain rights and immunities and also certain rights and immunities and powers on each house collectively. Parliamentary privilege is an essential incident to the high and multifarious functions which the legislature is called upon to perform. According to May, the distinctive mark of a privilege is its ancillary character a necessary means to fulfilment of functions. Individual members enjoy privileges because the House cannot perform its function without unimpeded use of the services of its members and by each House for the protection of its members and the vindication of its own authority and dignity.

In defining parliamentary privilege this article adopts certain method. Two privileges, namely, freedom of speech and freedom of publication of proceedings, are specifically mentioned in clauses (1) and (2). With respect to other privileges of each House, clause (3) before its amendment in 1978 laid down that the powers, privileges and immunities shall be those of the House of Commons of the United Kingdom at the commencement of the Constitution until they are

defined by an Act of Parliament. Though since 1978 position has changed in so far as the privileges of parliament, its members and committees have to be determined on the basis of what they were immediately before the commencement of 1978 amendment *i.e.*, before 20th June 1979.

FREEDOM OF SPEECH

Article 105, clause (1), expressly safeguards freedom of speech in parliament. It says: there shall be freedom of speech in parliament. Clause (2) further provides that no member of Parliament shall be liable to any proceedings in any court in respect of anything said or any vote given by him in parliament or any committee thereof. No action, civil or criminal, will therefore lie against a member for defamation or the like in respect of things said in parliament or its committees. The immunity is not limited to mere spoken words; it extends to votes, as clause (2) specifically declares, viz. any vote given by him in parliament or any committee thereof. Though not expressly stated, the freedom of speech would extend to other acts also done in connection with the proceedings of each House, such as, for notices of motions, questions, reports of the committee, or the resolutions.

It may be noted that clause (1) of Article 105 is made Subject to the provisions of this constitution and to the rules and standing orders regulating the procedures of Parliament. The words regulating the procedures of Parliament occurring in clause (1) should be read as covering both the provisions of the Constitution and the rules and standing orders. So read, freedom of speech in Parliament becomes subject to the provisions of Constitution relating to the procedures of Parliament, *i.e.*, subject to the articles relating to procedures in Part V including Articles 107 and 121. Thus for example, freedom of speech in Parliament would not permit a member to discuss the conduct of any judge of the Supreme Court or of a High Court. Likewise, the freedom of speech is subject to the rules of procedures of a House, such as use of unparliamentary language or unparliamentary conduct.

The freedom of speech guaranteed under clause (1) is different from that which a citizen enjoys as a fundamental right under Article 19 (1) (a). the freedom of speech as a fundamental right does not protect an individual absolutely for what he says.

The right is subject to reasonable restrictions under clause (2) of Article 19. The term ?freedom of speech? as used in this article means that no member of Parliament shall be liable to any proceedings, civil and criminal, in any court for the statements made in debates in the Parliament or any committee thereof.

The freedom of speech conferred under this article cannot therefore be restricted under Article 19 (2). Clauses (1) and (2) of Article 105 protect what is said within the house and not what a member of Parliament may say outside. Accordingly, if a member publishes his speech outside Parliament, he will be held liable if the speech is defamatory. Besides, the freedom of speech. To which Article 105 (1) and (2) refer, would be available to a member of Parliament

when he attends the session of Parliament, no occasion arises for the exercise of the right of freedom of speech, and no complaint can be made that the said right has been invalid.

Article 105 (2) confers immunity, inter alia, in respect of anything said in Parliament the word anything is of the widest import and is equivalent to everything. The only limitation arises from the words in Parliament, which means during the sitting of Parliament and in the course of business of Parliament. Once it was proved that Parliament was sitting and its business was transacted, anything said during the course of that business was immune from proceedings in any court.

This immunity is not only complete but it is as it should be. It is one of the essence of parliamentary system of government that people's representative should be free to express themselves without fear of legal expenses. What they say is only subject to the discipline of the rules of Parliament, the good sense of the members and the control of proceedings by the speaker. The courts have no say in the matter and should really have none.

In a much publicized matter involving former Prime Minister, several ministers, Members of Parliament and others a divided Court, in P.V.Narsimha Rao v. State has held that the privilege of immunity from courts proceedings in Article 105 (2) extends even to bribes taken by the Members of Parliament for the purpose of voting in a particular manner in Parliament.

The majority (3 judges) did not agree with the minority (2 judges) that the words in respect of in Article 105 (2) mean, arising out of and therefore would not cover conduct antecedent to speech or voting in Parliament. The court was however unanimous that the members of Parliament who gave bribes, or who took bribes but did not participate in the voting could not claim immunity from court proceeding's under Article 105 (2). The decision has invoked so much controversy and dissatisfaction that a review petition is pending in the court.

RIGHT OF PUBLICATION OF PROCEEDINGS

Clause (2) of Article 105 expressly declares that no person shall be liable in respect of the publication by order under the authority of a house of Parliament, of any report, paper, votes or proceedings. Common law accords the defence of qualified privilege to fair and accurate unofficial reports of parliamentary proceedings, published in a newspaper or elsewhere. In Wason v. Walter, Cockburn, C.J. observed that it was of paramount public and national importance that parliamentary proceedings should be communicated to public, which has the deepest interest in knowing what passes in Parliament. But a partial report or a report of detached part of proceedings published with intent to injure individuals will be disentitled to protection. The same is the law in India. The Parliamentary Proceedings (Protection of Publication) Act, 1956 enacts that no person shall be liable to any proceedings, civil or criminal, in a court in respect of the publication of a substantially true report of the proceedings in either House of the Parliament, unless it is proved that the publication is made with malice.

OTHER PRIVILEGES

Clause (3) of Article 105, as amended declares that the privileges of each House of Parliament, its members and committees shall be such as determined by Parliament from time to time and until Parliament does so, which it has not yet done, shall be such as on 20th June 1979 *i.e.*, on the date of commencement of Section 15 of the 44th Amendment. Before the amendment this clause has provided that until Parliament legislates the privileges of each House and its members shall be such as those of the House of Commons in England at the time of commencement of the Constitution.

As the position till 20th June 1979 was determined on the basis of original provision, it is still relevant to refer to the law as it has been in the context of English law. In that perspective it may be emphasized that there are certain privileges that cannot be claimed by Parliament in India. For example, the privileges of access to the sovereign, which is exercised by the House of Commons through its Speaker to have at all times the right of access to the sovereign through their chosen representative can have no application in India.

Similarly, a general warrant of arrest issued by Parliament in India cannot claim to be regarded as a court of record in any sense. Also the privilege of the two Houses of Parliament, unlike the privileges of the House of Commons and House of Lords in England are identical. To each House of Parliament, accordingly, belong the privileges, which are possessed by the House of Commons in the United Kingdom.

In India freedom from arrest has been limited to civil causes and has not been applied to arrest on criminal charges or to detention under the Preventive Detention Act. Also there is no privilege if arrest is made under. Criminal Procedure Code. It has been held in K. Anandan Kumar v. Chief Secretary, Government of Madras, that matters of Parliament do not enjoy any special status as compared to an ordinary citizen in respect of valid orders of detention.

In India, the rules of procedure in the House of People give the chair the power, whenever it thinks fit, of ordering the withdrawal of strangers from any part of the House and when the House sits in a secret session no stranger is permitted to be present in the chamber, lobby or galleries. The only exceptions are the members of the Council of States and the persons authorized by the Speaker.

In Pandit M.S.M Sharma v. Shri Krishna Sinha, proceedings for the breach of privilege had been started against an editor of a newspaper for publishing those parts of the speech of a member delivered in Bihar legislative assembly which the speaker had ordered to be expunged from the proceedings of the Assembly. The editor in a writ petition under A. 32 contended that the House of Commons had no privilege to prohibit either the publication of the publicly seen and heard proceedings that took place in the House or of that part of the proceedings which had been directed to be expunged.

The Supreme Court by a majority of four to one rejected the contention of the petitioner. Das C.J., who delivered the majority judgment, observed that the House of Commons had at the commencement of our Constitution the power or

privilege of prohibiting the publication of even a true and faithful report of the debates or proceedings that took place within the House. A fortiori the House had at the relevant time the power or privilege of prohibiting the publication of an inaccurate version of such debates or proceedings.

Now Article 361-A inserted by the 44th Amendment with effect from June 20, 1979 provides that no person shall be liable to any proceedings civil or criminal for reporting the proceedings of either House of Parliament or a State Legislature unless the reporting is proved to have been made with malice. This provision does not apply to the reporting of proceedings of secret sittings of the Houses.

In India there also vest a right of the House to regulate its own constitution. When a seat of a member elected to the house becomes vacant, the Election Commission, by a notification in the Gazette of India calls upon the Parliamentary constituency concerned to elect a person for the purpose of filling the vacancy. In India, Article 103 expressly provides that if any question arises as to whether a member of either House of Parliament has become subject to any of the disqualifications, the question shall be referred to the President whose decision shall be final. The President is however required to act in this behalf according to the opinion of Election Commission.

As far as right to regulate internal proceedings are concerned Article 122 expressly provides that the validity of any proceedings shall not be called in question on the ground of any alleged irregularity of procedure, and no officer or member of Parliament in whom powers are vested by or under the Constitution for regulating the procedure or the conduct of business or for maintaining order in Parliament shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers.

MEDIA RESPONSIBILITY AND REGULATION

Having reflected on media and democracy, let us now focus on the mechanisms of media responsibility and accountability. As well shown by people such as McQuail (1997), all media under all circumstances are responsible and accountable either in the sense of liability or answerability. Christians & al. (1998) lead us further by asking who media professionals are responsible and accountable to.

To whom is moral duty owed? Five parties are singled out:

1. Themselves
2. Their clients (subscribers, supporters, *etc.*)
3. Their organization (company, *etc.*)
4. Their colleagues (workplace, association, *etc.*)
5. The society at large.

In the European tradition, the legacy of Enlightenment and human rights demands that the media should be free – free from coercion by the power holders and free for the pursuit of truth and creativity. However, no social institution can be absolutely free, and even the freest media are always tied to some social forces,

serving some political objectives – often indirectly and even unintentionally so but still, sociologically speaking, far from absolutely free. The question then is not whether the media are free but how they are controlled and held accountable.

Three main mechanisms of media control can be distinguished (Bertrand 1998):

1. Law promulgated by Parliament and other state bodies and executed by courts
2. Market based on private property, commercial advertising, *etc.*
3. Media themselves through various means of maintaining "ethics".

In most countries today (certainly in Europe), these categories are mutually dependent. They coexist. Thus, self-regulation is always accompanied by some degree of legal regulation to ensure than minimum standards of democratic order and human rights are respected. This form of self-regulation is a preferred alternative to more heavy-handed legislation Similarly, as media concentration and tabloidization increase, it is natural for society and the public to prefer this form of self-regulation over commercial markets. Media ethics as another way of highlighting self-regulation is today one of the booming areas of communication studies and literature.

Accordingly, while self-regulation is mostly accompanied by legal and market regulation, we should take it as a most valuable form of regulating the media in society. It is one aspect of a mega trend in contemporary thinking, whereby established political institutions, including nation states, lose their importance – at least in terms of their intellectual potential-and are gradually replaced by more flexible structures, such as grassroots approaches and networking. Part and parcel of this trend is a new emphasis on (ordinary) people as the main subject in communication – as consumers, citizens and 'owners' of the right to freedom of information– instead of journalists and media proprietors.

In fact, citizens and civil society could be added to Bertrand's list of regulatory mechanisms. Yet, in reality regulation on the part of civil society is possible only in small vehicles of communication owned by members of associations and in information networks formed by restricted interest groups. Citizens can bring influence to bear on the main media only marginally, by their own consumer behaviour (*i.e.*, as a market force) and by participating in the activities of pressure groups. Likewise, we must remember that citizens constitute the electorate which ultimately determines, in theory at least, what Parliament and the government – the whole state apparatus – is doing with the media.

The idea that the media are responsible to the general public made up of citizens is widely accepted, not least among journalists (as will be documented below). Journalists see themselves as using freedom of speech as the representatives of the citizens, and the professional ideal of the journalist typically embodies the roles of both a watchdog and an educator. On the other hand journalists, not to mention media owners, are anxious to remain independent, at least regarding the state, and therefore they are reluctant to accept laws to concretize their abstract responsibility. Accordingly, while media professionals speak warmly about responsibility, they remain lukewarm about accountability.

Upon closer examination the media present a constitutional dilemma. On the one hand, some countries have freedom of speech and a ban on advance censorship written into their Constitution (*e.g.*, the US First Amendment and corresponding provisions in many countries such as Finland). On the other hand the media, like any institution in society, including free enterprise, are to a certain extent accountable to a democratic society.

The responsibility of communication has been specified in international agreements on human rights, which both guarantee freedom of opinion and expression and set limitations on the dissemination of things like racist and warmongering propaganda. In general, human rights instruments set clear boundary conditions for the media, just as there are boundary conditions on other aspects of life. It is thus impossible for the media to use freedom of speech to justify their setting themselves above social norms and institutions. They have, on the contrary, a special responsibility, for in a democratic society both constitutional protection for freedom of speech and human rights agreements place the media in the position of a tool in the service of citizens.

PUBLIC SPHERE AND DEMOCRACY

Most directly, ''the public sphere is paradigmatically associated with discussions on democracy and its shortcomings''. In this respect, the public sphere is viewed as a resource for growth of democracy, promoting discussions of civil society and public life. The concept of the public sphere appeals to the nature of civil society as it attempts to explain the social foundations of democracy and to introduce a discussion of the specific organization of social and cultural bases within civil society for the development of an effective rational-critical discourse. Habermas (1992) saw the public sphere as a domain of social life in which public opinion could be formed out of rational public debate. Ultimately, informed and logical discussion, could lead to public agreement and decision making, thus representing the best of the democratic tradition.

Blumler and Gurevitch (2001) argue that the new interactive media have a ''vulnerable potential'' to enhance public communications and enrich democracy. Scholars of political sciences also ask if it is possible to foster democratic development with the help of communication technology. Hagen states that research on the relationship between communication technologies and democracy has turned up ample evidence illustrating that concepts of electronic democracy contribute both to democratic theory and our understanding of the working of a democratic political system in the information age (Newhagen, 2000).

Accordingly, it is the condition of the public sphere that differentiates democratic political systems from non-democratic ones. In the absence of the public sphere, people are deprived from a space through which they can govern themselves by themselves for themselves. ''The importance of the public sphere to democratic theory and democratic movements cannot be underestimated.

For a functioning and purposeful citizenry to develop, it is argued that they must have a space in which to engage debate and make decisions. This space is thought to exist outside of the governmental sphere and the private sphere. The public sphere is seen to lie between these two other parts of social life in order to develop solutions to social problems. Citizens in the public sphere are meant to leave their personal concerns behind, and transcend their limited subjectivities in pursuit of 'the common good'" (Franko, 2005).

Engagement in the public sphere defines the public, and it is best to envision the public sphere not necessarily as a public space, but as a purposeful interaction towards discussion and democratic decision-making. Habermas tells us that, "a public sphere comes into being in every conversation in which private individuals assemble to form a public body" (Franko, 2005).

To better understand the nature of the public space we need to differentiate it from other types of spaces. A space is private when given individuals are recognized by others as having the right to establish criteria that must be met for anyone else to enter it. Thus, we speak of a private room, a private meeting, and private parts. Such a space is belongs to someone that has the right to establish criteria by which access is allowed or denied. Sacred space is different and similar. Such a space is neither made by human action nor can it be owned. It is the God. The sacred space as identified here reflects the European view which is completely different from that of Islam, as there is no separation between private and public spaces from the Islamic point of view. At the other extreme, a space may be common to human beings. There are no criteria for common space. It is not owned or controlled and is open to everyone. Thus, the sea or forests are (or can be) common space. This is not a space to which one goes to speak with others and therefore, it is not a public realm, and its boundaries are not contestable per se. Public space is a space created by and for humans that is always contestable, and it is open to those who meet the criteria, but it is not owned in the sense of being controlled.

In the tradition of Western thought, the very idea of democracy is inseparable from that of public space. It is perceived as a disposition to open and contradictory debate with the aim of making possible a reasoned understanding between citizens with regard to the matter of the definition of institutions, the formulation of laws, and their enforcement. From this point of view, public means simultaneously: open to all, well known to all, and acknowledged by all. Public space stands in opposition to private space, because it is civic space and it belongs to the citizens. Historically, the public sphere has been associated with revolution. The public gathering of individuals, to make decisions and garner support is critical to most reform movements. Thus, Habermas defines the public sphere as "the scene of a psychological emancipation that corresponded to a political economic one".

The public sphere and democracy should not be considered as inseparable from one another, because the democratic political systems are based on the voice of the people and the rule of the majority that is likely formed through a

liberal public sphere in which people freely discuss the critical public issues. In Egypt, the situation is different from that of Western countries, as the separation between public sphere and democracy is the most likely dominant principle in the Egyptian milieu. The government is obliged to allow a partly-free public sphere. However, it restricts the formation of real public opinion and establishes the types of laws and legislations that perpetuate the dominance of the ruling party. Simply speaking, it seems that the government allows people to say whatever they want, while allowing itself to act whatever it wants. In this political atmosphere, it is difficult to find a link between public sphere and democratic transformations. However, a free or partly-free public sphere may eventually lead to formation of public opinion that will govern.

Habermas (1989) first conceived of the public sphere as a physical space that first emerged in coffee houses in England and salons in France in the 17th and 18th centuries with the rise of capitalism and the state. He describes the public sphere as a physical place where propertied, educated men who were members of the bourgeois joined together to engage in rational-critical discourse on public matters and other issues of the day. Even in the early public sphere, newspapers and journals were an enabling technology that helped create a network bringing the forums of the coffee houses and salons together to create the larger public sphere. For Habermas and Alexis de Tocqueville, the public sphere was a place where men gathered to rationally discuss issues of the day. Newspapers played a key role in the public sphere by supplying information, creating interest, and helping set the agenda for participants in the public sphere.

Conversation and action oriented around discussion define what the public sphere should be, according to classic theorists. John Keane describes the public sphere as "a particular type of spatial relationship between two or more people, usually connected by a certain means of communication…in which nonviolent controversies erupt, for a brief or more extended period of time, concerning the power relations operating within their given milieu of interaction and/or with the wider milieus of social and political structures within which the disputants are situated" (Rajagopal, 2004). The linkage between people via means of communication is critical here, whether this communication exists via conversation, in the press or on satellite television. Communication is essential for the public sphere, and in many ways, it is the only constitutive element of that space (Franko, 2005).

At a general level, the concept of the public sphere is defined by many scholars as designating a realm related to democratic political discourse. Here, the notion of "public" as in "public opinion" refers to a collection of politically significant shared common interests impacting ideologically upon the exercise of state of power. Of course not all politics (democratic or otherwise) take place through discussion (public or not). The public sphere, however, is a concept applicable to voluntary and violence-free political behaviour. For this reason, Habermas argues that the public sphere needs institutional guarantees of a constitutional state on the one hand, and on the other, a political culture in the broader society

of populace accustomed to freedom. This perception helps explain the importance of a democratic constitution and the rule of law as contextual conditions of media's optimum democratic role.

When Alexis de Tocqueville, a French nobleman and political scientist, visited the United States in 1831, he was so impressed with what he termed the "voluntary associations" of men in the United States; he devoted much study and later description of these associations in his treatise on American life, democracy in America. Although Tocqueville utilizes the term "associations" rather than "public sphere," a thorough reading of both men's writings leaves little doubt that they are talking about the same thing. There are obviously some differences between the European and American public spheres. These differences are both political and cultural, but the similarities are more numerous and profound than are the differences. Tocqueville even surmised that the notion of associations in America was imported from England and that the differences can be attributed to Americans' incorporation of their manners and customs.

There are numerous and profound similarities between the American public sphere of the 19th century as described by Tocqueville and the European public sphere of the 17th and 18th centuries as described by Habermas. Nonetheless, there are also discernible differences between the spheres with the greatest difference resting in the relationships between the spheres and their governments. The American public sphere did not clearly reside in the private realm; it was often tied to government. The stronger relationship between government and the American public sphere is logical when one remembers that the Americans were members of a self-governing democracy who believed they had a duty to take an active role in the official governance of their communities. The public spheres of Europe occurred at times and within countries where political power was still very much vested in monarchs and church leaders.

Another difference between the two public spheres is that within the American associations, people pursuing public interests coexisted with people pursuing private interests (Tocqueville, 1956 in Newhagen, 2004) Habermas believed that the pursuit of private interests displaced the pursuit of public interests in the European public spheres (Habermas, 1989in Newhagen, 2004) In Habermas' conceptualization of the public sphere he privileges face-to-face communication, believing the most valuable role for the media is to provide information for intimate exchanges. He accepts that the printed word played a significant role in the development of the bourgeois public sphere, but he did not fully conceive of the key role for media in the public sphere. In his writings he also expresses a distrust for mediated communication, seeing it as an obstacle to "discursive rationality and communicative authenticity".

Taking the aforementioned discussion into account, it is safe to state that public sphere depends to a large extent on the nature of the political system in which it exists. In Europe, the public sphere-which was achieved despite opposition from the state powers, is at odds with what transpired in the United States. Habermas' suggestion that the European public sphere was regulated by

its individual members is contradicted by the U.S.'s case, where the media emerge instead as the first and foremost project of nation-building. Starr considers three extended and overlapping "constitutive moments" when political choices and technological developments shaped the media's growth. "America's first information revolution" was the first constitutive" moment," extending from the colonial period to the onset of the civil war" (Rajagopal, 2006). Its distinctive trait was the deliberate development of inexpensive postage, schools, and newspapers through direct and indirect subsidies. The intent was to enable the people of the nascent and geographically dispersed republic to communicate with each other and thereby strengthen their internal ties. The result was a population that actively participated in public and political life. Thus, while European countries discouraged communication by placing taxes on the postal service, the early Post Office in the U.S., saw its goal as promoting intercourse, and reducing the mental distance between town and country. At one point, America's ratio of post offices to people was four times that of England or France.

Starr also notes the government's early realization of the importance of public education, although it was public schools of the North, not the South, that regularly increased enrollment. Starr explains at length the policies that made books and newspapers far less expensive in the United States than in Europe (among these was a disregard for European copyright laws that made windfall profits possible for U.S., publishers). Contemporary observers noted the effects of the early development of the press in the US. The private realm did not arise from a struggle against state absolutism, as in Europe, but as an effect of state formation. Not surprisingly, the constitution and the government are frequently granted cultural sanction to restrict the scope of these customs (Starr, 2004).

On the other hand, Arab political systems have created a politically repressive atmosphere to control the public sphere. The development of media and state in the Arab world confirm the fact that all Arab states controlled the media, especially radio and television, to prevent the establishment of a free public sphere, to restrict the formation of public opinion and to hinder any democratic transformation in the region. "There are several reasons for the predominance of government–owned broadcasting system in the Arab World. However, the most important factor is the intense government interest in the media as political instruments, media reach beyond borders and literary barriers; the government has a much greater interest in controlling them or at least keeping them out of hostile hands" (Rugh, 2004).

In his research on "Arab media and communication systems in the information age", Hamada concludes that democratizing the media and communication system represents a real threat to any undemocratic regime. The majority of Arab governments have never been interested in creating a democratic communication environment in which the citizens can have a voice regarding public issues. Government operated media agencies provide most of the information, and much of the content it supplies is politically biased, incomplete, and of poor quality.

Most Arab governments claim that the issues of development must take priority and that the time is not right for democracy. Therefore, democracy is not a part of most Arab leaders' political agenda.. Although democracy and development represent two distinctly different human endeavours, they are both required, to ensure success, sustainability, adequate levels of information and popular participation. The more objective and the wider the scope of information conveyed, the more likely it will be to sustain democracy and development. Modern communication technology is essential in the speed and efficiency with which data and news are processed and disseminated among different citizens of the society. Another common and related requirement for both democracy and development is an active and public participation (Attiga, 2001).

The bulk of the discussion on media pluralism as a political value continues to be based on the conceptual framework of the public sphere. As a general normative concept against which to assess the media, much of the debate draws upon Habermas's early work (1989) but also, more broadly, the public sphere is understood as a general context of interaction in which deliberation and discussion take place and citizens in general inform and form themselves into the public (Karppinen, 2004). Lippman conceives of public opinion as the aggregate opinion of persons whose individual opinions are pieced together from what they hear, read, see and are able to imagine. He also believes that their exposure to information is manipulated to create a certain opinion that meets the needs of elites. Lippman's idea of public opinion is quite different from Habermas' conception. Habermas believes public opinion is what develops in the public sphere as the result of rational discourse. He views public opinion as the culmination of sharing of information among enlightened individuals operating in the public interest.

The author completely agrees with Hbermas's notion of the priority of public interests as a condition for the public sphere. First, in order for the public sphere to exist, priority has to be given to social issues. If people left public issues behind and concentrate on their private interests, there will never be a space for the common good, common grounds for members of the public to exchange experience, but personal interests that work against the collective mind. In Egypt, the overwhelming majority are poor, illiterate, and unemployed people who spend much of their time trying to save their food. Hence, the majority is handicapped by illiteracy, poverty, ills and unemployment to such a great extent that they lack motivation to engage in the "public sphere". Also complicating the problem is the government's intolerance with the activities of the opposing parties and political movements. Due to this atmosphere, the role of new communication technologies, especially the Internet, in enhancing public sphere is limited.

3

Ethics and Legal Frameworks in Media

Criticism of corporate-speech regulation contends that such regulation is not justified and is not in the best interests of society. However, this study draws on Smith's concepts to argue the opposite. Essentially, Smith called for limiting government in order to allow the motivation of self-interest to flourish and generate material benefits for society because that advanced the utilitarian value of the common good, Smith's ultimate concern. However, he also emphasized that a system of justice was essential to protect all members of society as well as possible including protecting free markets from domination by the most powerful business interests.

The approach used in this study conceptualizes ethics as a rational process, which is based upon underlying principles, for addressing values in conflict. Smith's principles are argued here as an ethical basis for considering the conflicting values reflected in the debate over regulation of corporate speech. This approach draws upon utilitarianism, a school of thought from the teleological branch of ethics, which begins with the premise that consequences are important in deciding whether an act or a rule is ethical. Originally articulated by Jeremy Bentham and John Stuart Mill in the nineteenth century, utilitarianism proposes that justice can be determined through a process of ethical reasoning that considers the degree to which an action contributes to the greater societal good. "Act utilitarianism" is concerned with the ethics of specific decisions, while "rule utilitarianism" deals more broadly with the ethical justification for societal practices or institutions. The latter concept is employed in this study.

While ethics and law are separate concerns in one sense-law being concerned more with what is, and ethics more with what ought to be-they are hardly unrelated. Ethical considerations must underlie the development and interpretation of law in order for justice to be served, particularly when competing values are at stake in such ways that the letter of the law does not offer clear resolution. This study's application of ethical principles as justification for legal doctrine broadly reflects the Smithian concept of such a relationship between ethics and law. Behrman, for example, analyses Smith's work in terms of key institutions based upon societal values and expressed ethics-or values in action-designed to balance and maximize individual freedom and social good. Niebuhr characterized law as "a compromise between moral ideas and practical possibilities."

Broad philosophical concepts underlie or support many fundamentals of the law. American constitutional law, for example, begins with a priority on promoting the common welfare. First Amendment law reflects a philosophical interest in advancing such values as democratic governance, the search for truth, and individual fulfillment through freedom of expression. First Amendment issues frequently involve complicated questions of competing values, and this is very much the case in the debate over regulation of corporate speech. Therefore, this study seeks to advance the debate through an analysis of Smithian theory. That analysis supports a rule-utilitarianism argument that regulation of corporate speech is ethically sound in terms of the degree to which it contributes to the greater societal good.

In particular, this discussion will argue that Smith's essential tenets on free markets can be applied to the First Amendment marketplace-of ideas concept that has been prominent in shaping free speech rights for corporations. That is, Smith's concept of individuals competing equally in a free market towards the greatest good for society can be applied to the concept of ideas competing in a free market. His principles consistently provide support for this study's assertion that regulation efforts related to corporate speech do not reduce ideas in the political marketplace but enable more ideas to flourish-advancing utilitarian ideals of the common good.

As a professor of moral philosophy at Glasgow University in the second half of the eighteenth century, Adam Smith lectured in theology, ethics, and jurisprudence. He became part of a circle of scholars at the Scottish universities at Glasgow and Edinburgh whose work is often referred to today as "the Scottish Historical School" or "the Scottish School." Broadly, their work analysed historical changes in concepts of property and the effects of such changes on society. Smith became famous with the 1759 publication of The Theory of Moral Sentiments, in which he focused on ethical theory. In An Enquiry Into the Nature and Causes of the Wealth of Nations, published in 1776, Smith advanced his economic theories. After his death in 1790, students' notes from his lectures at Glasgow were published as Lectures on Jurisprudence, which focused on his theories of justice. Smith's main interest was in investigating "whether the effects

of market commercial society were good or bad for individuals and government," and his "ultimate normative goal was the improvement of men and government." Thus, "tlhe political significance of Smith's writings derives from his concern not only for the economic wealth of the nation, but also for the well-being of society as a whole and for the freedom of the individual within that society."

Yet the popular image of Smith remains that of an economist who advocated the pursuit of profits governed by nothing but the "invisible hand." Although Smith actually based his economic theories upon his theories of jurisprudence, and those in turn were based upon his moral theories, "Smith's modern followers tend to be economists without a strong sense of civic life, and so that is how his admirers and detractors see Smith himself."" As a result, "even in its traditional, run-of-theclassroom versions, the prevailing view of Adam Smith's philosophy renders him far more like Boesky and Gekko than even the most rabid reading allows."

After Smith's death, the interpretation of his ideas was taken up by many who were interested only in his work on political economy. Wealth of Nations was published the same year that American revolutionaries declared independence, and the book was influential in the new nation. However, too many Americans learned economics from texts that tended to "distort both Smith's moral theory and his economics. These texts emphasized laissez-faire, a word Smith did not use, and competitive individualism, at the cost of the benevolence and justice which Smith emphasized. "Because of these factors, "tlhe main impact of Wealth of Nations was to establish a powerful economic justification for the untrammeled pursuit of individual self-interest."

This essay argues that Smith's work in fact justifies the regulation of self-interest-but only to the extent that such pursuit endangers the common good. The next section briefly summarizes the corporate speech case law as established by Bellotti and related decisions. That is followed by a discussion of issues under debate concerning regulation of corporate speech. Then Smith's work is analysed in terms of the ethical arguments it supports concerning regulation of corporate speech.

MEDIA DEMOCRACY

Media democracy is a production and distribution model which promotes a mass media system that informs and empowers all members of society, and enhances democratic values. The term also refers to a modern social movement evident in countries all over the world which attempts to make mainstream media more accountable to the publics they serve and to create more democratic alternatives.

It is a concept and a social movement that has grown as a response to the increased corporate domination of mass media and the perceived shrinking of the marketplace of ideas. Its proponents advocate monitoring and reforming the mass media, strengthening public service broadcasting, and developing and participating in alternative media and citizen journalism.

DEFINITION OF THE TERM

Media democracy is a difficult term to define, since in addition to being a concept, it is also an advocacy movement being advanced by a number of academics and grassroots organizations, each with its own methods and goals.

It is also difficult to define because the term [democracy] itself is contested. Market liberals would claim that democracy is best served by the media if there is a minimalist state that allows for private media ownership, does not censor content, or require public-interest broadcasting. In this way, the market would facilitate technological innovation and provide whatever fare the consumer demands.

By contrast, media democracy advocates argue that corporate ownership and commercial pressures influence media content, sharply limiting the range of news, opinions, and entertainment citizens receive. Consequently, they call for a more equal distribution of economic, social, cultural, and information capital, which would lead to a more informed citizenry, as well as a more enlightened, representative political discourse.

More radical thinkers argue that media democracy remains an under-defined concept because of deliberate structural pressures that prevent individuals from questioning the connection between media and democracy. A leading proponent of this view is Noam Chomsky, who argues that

The concept of "democratizing the media" has no real meaning within the terms of political discourse in the United States. In fact, the phrase has a paradoxical or even vaguely subversive ring to it. Citizen participation would be considered an infringement on freedom of the press, a blow struck against the independence of the media that would distort the mission they have undertaken to inform the public without fear or favour... this is because the general public must be reduced to its traditional apathy and obedience, and driven from the arena of political debate and action, if democracy is to survive.

Despite the difficulties in defining the term, the concept broadly encompasses the following notions: that the health of the democratic political system depends on the efficient, accurate, and complete transmission of social, political, and cultural information in society; that the media are the conduits of this information and should act in the public interest; that the mass media have increasingly been unable and uninterested in fulfilling this role due to increased concentration of ownership and commercial pressures; and that this undermines democracy as voters and citizens are unable to participate knowledgeably in public policy debates. Without an informed and engaged citizenry, policy issues become defined by political and corporate elites. A related element of this concept examines the lack of representation of a diversity of voices and viewpoints, particularly of those who have traditionally been marginalized by mass media.

British and European Cultural Studies has spawned a range of alternative definitions of 'media democracy', including the idea that media audiences are the source of a new form of creative cultural politics. These are not simply audiences of public, Internet or alternative media, but include mass media

audiences as well. This radical idea suggests that a cultural democracy emerges through the everyday experiences and meaning-making of audiences. Clearly, such a notion of media democracy extends the familiar conception of institutionally-derived representative democracy. A key theorist in this area is Jeff Lewis (2005), who coined the notion of a globalizing mediasphere..

KEY PRINCIPLES

Media Ownership Concentration

A key idea of media democracy is that the concentration of media ownership in recent decades in the hands of a few corporations and conglomerates has led to a narrowing of the range of voices and opinions being expressed in the mass media; to an increase in the commercialization of news and information; to a hollowing out of the news media's ability to conduct investigative reporting and act as the public watchdog; and to an increase of emphasis on the bottom line, which prioritizes infotainment and celebrity news over informative discourse.

This concentration has been encouraged by government deregulation and neo-liberal trade policies. For example, the U.S., Telecommunications Act of 1996 discarded most media ownership rules that were previously in place, leading to massive consolidation in the telecommunications industry. Over 4,000 radio stations were bought out, and minority ownership of TV stations dropped to its lowest point since the federal government began tracking such data in 1990. In its review of the Telecommunication Act in 2003, the Federal Communications Commission (FCC) further reduced restrictions and allowed media corporations to grow and expand into other areas of media.

The past decade has also seen a number of media corporate mergers and takeovers in Canada. For example, in 1990, 17.3% of daily newspapers were independently owned; in 2005, 1% were. These changes, among others, caused the Senate Standing Committee on Transport and Communications to launch a study of Canadian news media in March 2003. (This topic had been examined twice in the past, by the Davey Commission (1970) and the Kent Commission (1981), both of which produced recommendations that were never implemented in any meaningful way.)

The Senate Committee's final report, released in June 2006, expressed concern about the effects of the current levels of news media ownership in Canada.

Specifically, the Committee discussed their concerns regarding the following trends: the potential of media ownership concentration to limit news diversity and reduce news quality; the Canadian Radio-television and Telecommunications Commission]] (CRTC) and Competition Bureau's ineffectiveness at stopping media ownership concentration; the lack of federal funding for the CBC and the broadcaster's uncertain mandate and role; diminishing employment standards for journalists (including less job security, less journalistic freedom, and new

contractual threats to intellectual property); a lack of Canadian training and research institutes; and difficulties with the federal government's support for print media and the absence of funding for the internet-based news media.

The report provided 40 recommendations and 10 suggestions (for areas outside of federal government jurisdiction), including legislation amendments that would trigger automatic reviews of a proposed media merger if certain thresholds are reached, and CRTC regulation revisions to ensure that access to the broadcasting system is encouraged and that a diversity of news and information programming is available through these services.

Media democracy advocates argue in favour of such legislative policies that encourage a stronger commitment to serving the public interest and a commercial framework that facilitates independent media ownership.

The 2004 documentary film *Outfoxed: Rupert Murdoch's War on Journalism* treats criticism about corporate media concentration.

ALTERNATIVE AND CITIZEN MEDIA IN THE WORLD

As a response to the shortcomings of the mainstream media, proponents of media democracy often advocate supporting and engaging in independent and alternative media, in both print and electronic forms as well as video documentary. Through citizen journalism and citizen media, individuals can produce and disseminate information and opinions that are marginalized by the mainstream media. In the book *We the Media: Grassroots Journalism by the People, for the People*, Dan Gillmor urges individuals who are concerned about media ownership concentration and the decreasing amount of public-interest broadcasting to use technology like the internet to create and distribute information they believe is not properly reported in the mainstream news media. This book details strategies that individuals and groups can use to democratize the media.

WIKIPEDIA AND WIKINEWS AS TOOLS OF MEDIA DEMOCRACY

Wikipedia has become a powerful media democracy tool. Anyone—regardless of educational background, experience, or in-depth knowledge—can edit, expand, or remove content. Individuals do not have to get the approval of an editorial board to post content. While there are administrators on Wikipedia, they have roughly the same powers as ordinary users. Wikipedia also lacks corporate control: Wikipedia operates as a not-for-profit, and accepts no advertising or corporate investment which can influence or silence particular ideas. Operating costs are paid by typically small individual donations.

However, there are criticisms. While internet access is pervasive throughout North America, there is far less access in many other parts of the world. Those without access obviously cannot benefit from, or add information to, Wikipedia. There is also a concern that Wikipedia's content is biased towards a particular group, since a small number of relatively similar individuals contribute much of Wikipedia's content. To address this concern, a group of Wikipedia users

have established Wikipedia:WikiProject Countering systemic bias to create articles and further develop existing articles in neglected subject areas on Wikipedia. In 2004, Wikimedia established a site called Wikinews dedicated solely to providing news coverage using wiki technology and the open collaborative philosophy. The site's mission statement commits it to, "present up-to-date, relevant, newsworthy and entertaining content without bias" in the spirit of participatory journalism. Wikinews contains synthesis articles, where a number of news sources are condensed into a single article, and original reporting, where individuals write news stories to fill the gaps of the traditional news media due to various systemic constraints, blind spots, and biases of traditional news media sources do not allow. Unfortunately, Wikinews has not received the same public interest as Wikipedia. Consequently, there is a relatively small number of contributors, and some stories are very short. However, the number of contributor accounts and new articles is increasing. In April 2006, the English edition of Wikinews reached 5,000 articles.

DEMOCRATIC MEDIA

Democratic media is a form of media organization that strives to have the principles of democracy underlying not only the production of content, but also the organization of the entire project.

DEFINITION OF THE TERM

Democratic Media is the concept of organising media along democratic lines rather that strictly commercial and/or ideological lines. Like the idea of democracy itself, democratic media looks to concepts such as transparency, inclusiveness, one-person-one-vote and other key concepts of democracy as principals of operation. This is in contrast to the idea that media should be run by commercial operations and with a agenda to make profit from providing media and where the media reflects the opinions and values of the owner and/or advertisers It is also in contrast to state-run operations where the media reflects the value system of the state itself.

Edward S Herman laysout what he thought the form that democratic media would take, "A democratic media can be indentified by its structure and functions. In terms of structure, it would be organized and controlled by ordinary citizens or their grass roots organisations....As regards function, a democratic media will aim first and foremost at serving the informational, cultural and other communications needs of members of the public which the media institutions comprise or represent.

BACKGROUND OF THE TERM

The idea of democratic media stems from the belief that media is a vital part of a democratic society;

"First, media perform essential political, social, economic, and cultural functions in modern democracies. In such societies, media are the principal

source of political information and access to public debate, and the key to an informed, participating, self-governing citizenry. Democracy requires a media system that provides people with a wide range of opinion and analysis and debate on important issues, reflects the diversity of citizens, and promotes public accountability of the powers-that-be and the powers-that-want-to-be. To therefore, if media is vital for democracy, democratic media argues that media itself needs to be organized along different lines to the existing forms;

" The evidence is clear: if we want a media system that produces fundamentally different results, we need solutions that address the causes of the problems; have to address issues of media ownership, management, regulation, and subsidy. Our goal should be to craft a media system that reduces the power of a handful of enormous corporations and advertisers to dominate the media culture.

The idea of democratic media is still in its infancy as noted by Carroll & Hackett (2006 where they term it 'democratic media activism' however the idea does have older roots; In 'Triumph of the Market: Essays on Economics, Politcs, and the Media' Edward S Herman wrote that democratic media was a condition of democracy;

A democratic media is a primary condition of popular rule, hence of a genuine political democracy. Where the media are controlled by a powerful and privileged elite, whether of government leaders and bureaucrats or those of the private sector, democratic political forms and some kind of limited political democracy may exist, but not genuine democracy.

The term has been used to describe a number of new media projects from Wikipedia to the Indymedia movement to describe how it saw itself;

Indymedia is a democratic media outlet for the creation of radical, accurate, and passionate tellings of truth.

E-DEMOCRACY

E-democracy (a combination of the words *electronic* and *democracy*) is a form of direct democracy representing the use of information and communication technologies and strategies by democratic actors within political and governance processes of local communities and nations and on the international stage. Democratic actors/sectors include governments, elected officials, the media, political organizations, and citizens/voters.

E-democracy suggests greater and more active citizen participation enabled by the Internet, mobile communications, and other technologies in today's representative democracy, as well as through more participatory or direct forms of citizen involvement in addressing public challenges.

E-democracy is a relatively new concept, which has surfaced out of the popularity of the Internet and the need to reinvigorate interest in the democratic process. Access is the key to creating interest in the democratic process. Citizens are more willing to use websites to support their candidates and their campaign drives. In the United States, just over half of the population vote, and, in the

United Kingdom, only 69% of English citizens do so. The research indicates the political process has been alienated from ordinary people, where laws are made by representatives far removed from ordinary people. The goal of e-democracy is to reverse the cynicism citizens have about their government institutions. However, there are increasing doubts concerning the real impact of electronic and digital tools on citizen participation and democratic governance and warning against the "rhetoric" of electronic democracy.

TOOLS/FORMS OF E-DEMOCRACY

There has been a significant growth in the last four years, and implementation rates have topped out in many of the categories. To see this data, go to NIC Resources website. Public-and private-sector platforms provide an avenue to citizen engagement while offering access to transparent information citizens have come to expect.

To develop these public-sector portals or platforms, governments have the choice to internally develop and manage, outsource or sign a self-funding contract. The self-funding model creates portals that pay for themselves through convenience fees for certain e-government transactions. Early players in this space include govONE Solutions, First Data Government Solutions and NIC, a company built on the self-funded model.

Social networking is an emerging area for e-democracy. The social networking entry point is within the citizens' environment, and the engagement is on the citizens' terms. Proponents of e-government perceive government use of social networks as a medium to help government act more like the public it serves. Examples of state usage can be found at The Official Commonwealth of Virginia Homepage, where citizens can find Google tools and open social forums.

Government and its agents also have the opportunity to follow citizens to monitor satisfaction with services they receive. Through ListServs, RSS feeds, mobile messaging, micro-blogging services and blogs, government and its agencies can share information to citizens who share common interests and concerns. Government is also beginning to use Twitter. In the state of Rhode Island, for instance, Treasurer Frank T. Caprio is offering daily tweets of the state's cash flow. Also, many state agencies "Tweett".

PRACTICAL ISSUES WITH E-DEMOCRACY

E-democracy has a number of practical issues surrounding it. In the media, on the Internet, and in popular consciousness, there is a strong and generally unchallenged view that the Internet is the new electronic cradle of democracy. The original source of this view is probably the relatively unfettered speech found in Internet newsgroups, mailing lists, blogs, wikis and chat rooms.

The Internet, as it currently exists, does have several attributes that encourage thinking about it as a democratic medium. Part of this can be traced to the design principles that were established early in its evolution. The lack of centralized control suggests to many people that censorship or other attempts at

control will be thwarted. Other attributes are a result of social design in the early days, the strongly libertarian support for free speech, the sharing culture that permeated nearly all aspects of Internet use, and the outright prohibition on commercial use by the National Science Foundation, for example. The Internet's most significant contribution was the idea of unmediated many-to-many communication on a large scale, through newsgroups, chat rooms, MUDs, and numerous other modes. This type of communication ignored the boundaries established with broadcast media, such as newspapers or radio, and with one-to-one media, such as letters or landline telephones. Finally, the reality of the Internet as a massive digital network with open standards suggested that universal and inexpensive access to a wide variety of communication media and models could actually be attained. Some practical issues involving e-democracy include: effective participation; voting equality at decision stage; enlightened understanding; control of the agenda; and inclusiveness.

CITIZENS' ROLES IN E-DEMOCRACY

The Internet provides a distinctive structure of opportunities that has the potential to renew interest in civic engagement and participation. Civic engagement can be understood to include three distinct dimensions: political knowledge (what people learn about public affairs), political trust (the public's orientation of support for the political system), and political participation (conventional activities designed to influence government and the decision-making process).

The information capacity available on the Internet allows citizens to become more knowledgeable about government and political issues, and the interactivity of the medium allows for new forms of communication with government and elected officials. The posting of contact information, legislation, agendas, and policies makes government more transparent, potentially enabling more informed participation both online and offline. For more information, visit transparent-gov.

INTERNET AS A CAMPAIGN TOOL

The Internet is viewed as a platform and delivery medium for tools that help to eliminate some of the distance constraints in representative democracy. Technical media for e-democracy can be expected to extend to mobile technologies, such as cellphones.

Most importantly, the Internet is a many-to-many communication medium, whereas radio and television, which broadcast few-to-many, and telephones, which broadcast few-to-few, are not. Also, the Internet has a much greater computational capacity, allowing strong encryption and database management, which is important in community information access and sharing, deliberative democracy and electoral fraud prevention. Further, people use the Internet to collaborate or meet in an asynchronous manner—that is, they do not have to be physically gathered at the same moment to get things accomplished.

Using the Internet as a political campaigning tool has become a cheaper and more convenient alternative for many politicians, in comparison to traditional door-to-door knocking or telephone campaigning. Candidates are also beginning to use social networking sites to reach younger audiences, creating potential supporters to campaigns. E-mail chains and political blogs also have had a major impact with online campaigning. Views are expressed by adding comments to political blogs or web pages. Point-and-click advertising (interactive advertising online) also has influenced traditional mail or television campaigning. The lower cost of information exchange on the Internet, as well as the high level of reach that the content potentially has, makes the Internet an attractive medium for political information, particularly amongst social interest groups and parties with lower budgets.

For example, environmental or social issue groups may find the Internet an easier mechanism to increase awareness of their issues, as compared to traditional media outlets, such as television or newspapers, which require heavy financial investment. Due to all these factors, the Internet has the potential to take over certain traditional media of political communication, such as the telephone, the television, newspapers and the radio. The civil society has gradually moved into the online world.

Another example is openforum.com.au, an Australian non-profit eDemocracy project that invites politicians, senior public servants, academics, business people and other key stakeholders to engage in high-level policy debate.

Novel tools are being developed that are aimed at empowering bloggers, webmasters and owners of other social media, with the effect of moving from a *strictly informational* use of the Internet to using the Internet *as a means of social organization* not requiring top-down action. Action triggers, for instance, are a novel concept designed to allow webmasters to mobilize their viewers into action without the need for leadership. These tools are also utilized worldwide: for example, India is developing an effective blogosphere that allows Internet users to state their thoughts and opinions.

ELECTRONIC SUPPORT FOR LOCAL DEMOCRATIC GROUPS

Citizens' associations play an important role in the democratic process, providing a place for individuals to learn about public affairs and a source of power outside that of the state, according to theorists like Alexis de Tocqueville. Public-policy researcher Hans Klein at the Georgia Institute of Technology notes that participation in such forums has a number of barriers, such as the need to meet in one place at one time. In a study of a civic association in the northeastern United States, Klein found that electronic communications greatly enhanced the ability of the organization to fulfil its mission. There are many forms of association in civic society. The term *interest group* conventionally refers to more formal organizations that either focus on particular social groups and economic sectors, such as trade unions and business and professional associations, or on more specific issues, such as abortion, gun control, or the

environment. Other traditional interest groups have well-established organizational structures and formal membership rules, and their primary orientation is towards influencing government and the policy process. Transnational advocacy networks bring together loose coalitions of these organizations under common umbrella organizations that cross national borders.

The Internet may serve multiple functions for all of these organizations, including lobbying elected representatives, public officials, and policy elites; networking with related associations and organizations; mobilizing organizers, activists, and members using action alerts, newsletters, and emails; raising funds and recruiting supporters; and communicating their message to the public via the traditional news media.

BENEFITS AND DISADVANTAGES

Information and communications technologies are neither democratic nor undemocratic; they are merely means to an end and not normative by their nature. They are tools that may be deployed to achieve certain goals (*e.g.*, contradictory goals, such as coercive control or participation can be fostered by digital technology). However, certain institutional framework conditions may either support or hamper the use of electronic means for the benefit of democratic processes. Risks and opportunities of the digitization of democratic processes depends therefore to a large extent upon the particular institutional framework conditions of the chosen democratic model (which is mainly set out in the Constitution, including the type of the underlying social contract, specific aspects of the rule of law, representative democracy or direct democracy, *etc.*)

BENEFITS

Contemporary technologies, such as electronic mailing lists, peer-to-peer networks, collaborative software, wikis, Internet forums and blogs, are clues to and early potential solutions for some aspects of e-democracy.

A number of non-governmental sites have developed cross-jurisdiction, customer-focused applications that extract information from thousands of governmental organizations into a system that brings consistency to data across many dissimilar providers. It is convenient and cost-effective for businesses, and the public benefits by getting easy access to the most current information available without having to expend tax dollars to get it. One example of this is transparent.gov, a free resource for citizens to quickly identify the various open government initiatives taking place in their community or in communities across the country.

Another valuable source is USA.gov—the official site of the United States government. The website is directly linked to every federal and state agency. The information provided by the website is valuable to all citizens, and non-citizens, of the current news and regulations of the U.S., government. These are just some examples of e-government's influence in the Internet.

E-democracy leads to a more simplified process and access to government information for public-sector agencies and citizens. For example, the Indiana

Bureau of Motor Vehicles simplified the process of certifying driver records to be admitted in county court proceedings. Indiana became the first state to allow government records to be digitally signed, legally certified and delivered electronically by using Electronic Postmark technology. In addition to its simplicity, e-democracy services can reduce costs. The Alabama Department of Conservation & Natural Resources, Wal-Mart and NIC developed an online hunting and fishing license service utilizing an existing computer to automate the licensing process. More than 140,000 licenses were purchased at Wal-Mart stores during the first hunting season, and the agency estimates it will save $200,000 annually from service.

Electronic democracy can also carry the benefit of reaching out to youth as a mechanism to increase youth voter turnout in elections and raising awareness amongst youth. With the consistent decline of voter turnout, e-democracy and electronic voting mechanisms can help revert that trend. Youth, in particular, have seen a significant drop in turnout in most industrialized nations, including Canada, the United States and the United Kingdom. The use of electronic political participation mechanisms may appear more familiar to youth and, as a result, garner more participation by youths who would otherwise find it inconvenient to vote using the more traditional methods. Electronic democracy can help improve democratic participation, reduce civic illiteracy and voter apathy and become a useful asset for political discussion, education, debate and participation.

DISADVANTAGES

Equally, these technologies are bellwethers of some of the issues associated with the territory, such as the inability to sustain new initiatives or protect against identity theft, information overload and vandalism. Some traditional objections to direct democracy are argued to apply to e-democracy, such as the potential for governance to tend towards populism and demagoguery. More practical objections exist, not least in terms of the digital divide between those with access to the media of e-democracy (mobile phones and Internet connections) and those without, as well as the opportunity cost of expenditure on e-democracy innovations.

Furthermore, there are still those who are skeptical to the amount of impact that they can make through online participation. Although the government projects supply information, IT illiteracy and the digital divide are grounds to discourage participation. The political advances on the Internet can potentially dishearten non-users to adapt the new technologies.

ELECTRONIC DIRECT DEMOCRACY

Electronic direct democracy is the strongest form of direct democracy, in which people are involved in the legislative function. The notion is utopian in the present capitalistic world, because, realistically, the Internet and other electronic communications technologies are used only to ameliorate the

bureaucracy involved with referendums. Many advocates think that also important to this notion are technological enhancements to the deliberative process. Electronic direct democracy is sometimes referred to as EDD (many other names are used for what is essentially the same concept). EDD requires electronic voting or some way to register votes on issues electronically. As in any direct democracy, in an EDD, citizens would have the right to vote on legislation, author new legislation, and recall representatives (if any representatives are preserved).

Technology for supporting EDD has been researched and developed at the Florida Institute of Technology. The technology is currently used with student organizations.

EDD as a system is not fully implemented anywhere in the world although several initiatives are currently forming. Ross Perot was a prominent advocate of EDD when he advocated "electronic town halls" during his 1992 and 1996 Presidential campaigns in the United States. Switzerland, already partially governed by direct democracy, is making progress towards such a system. Senator On-Line, an Australian political party running for the Senate in the 2007 federal elections, proposes to institute an EDD system so that Australians can decide which way the senators vote on each and every bill. A similar initiative were formed 2002 in Sweden where the party Aktivdemokrati, running for the Swedish parliament, is offering its members to decide the actions if the party over all or some areas for decisions, alternatively to use a proxy with immediate recall for one or several areas.

Liquid democracy, or direct democracy with delegable proxy, would allow citizens to choose a proxy to vote on their behalf while retaining the right to cast their own vote on legislation. The voting and the appointment of proxies could be done electronically. The proxies could even form proxy chains, in which if A appoints B and B appoints C, and neither A and B vote on a proposed bill but C does, C's vote will count for all three of them. Citizens could also rank their proxies in order of preference, so that if their first choice proxy fails to vote, their vote can be cast by their second-choice proxy. The topology of this system would mirror the structure of the Internet itself, in which routers may have a primary and alternate server from which to request information.

ICTS AND POLITICAL PARTICIPATION

Information and communication technologies (ICTs) play a major role in organizing and informing citizens in various forms of civic engagement. ICTs are used to enhance active participation of citizens and to support the collaboration between actors for policy-making purposes within the political processes of all stages of governance. ICTs offer citizens not only the means to organize themselves, but also to produce cultural codes to represent themselves. ICTs can be seen as an important enabler to the empowerment of citizens or e-mancipation of citizens..

INTERNET AND YOUTH CIVIC ENGAGEMENT

There has been much speculation about the Internet's potential to facilitate the engagement of younger citizens in politics. This group of young people, under the age of 35, frequently labelled Generations X and Y, have been noted for their lack of political interest and activity for the last two decades. The younger generation is less likely to have established long-standing habits of media use, and are willing to experiment with new technologies and formats. Young adults view the benefits of new technologies as a means of gaining advantage in education, employment, and in the political realm. Younger people have a facility with Internet technology and are more likely than older citizens to use web-based platforms to research and access political information. However, there is on clear consensus on the capacity of new media, including the Internet and social networking websites to engage young people in the democratic process.

CORPORATE SPEECH AND THE FIRST AMENDMENT

One of the major arguments asserted by the government in Bellotti as justification for regulation of corporate speech in referenda campaigns in Massachusetts was an interest in sustaining the active role of individual citizens in the electoral process and maintaining citizens' confidence in government. The government contended that the wealth and power of corporations could drown out other points of view and undermine democratic processes. The majority and minority on the Court split sharply over that issue in the 5-4 decision, with the majority emphasizing the listener's First Amendment right to receive information on the theory that it contributes to democratic decision making. Thus, the Court restricted government from limiting the marketplace's range of information and ideas-including corporate speech-to which the public is exposed.

The Court has maintained this restriction on government in most areas of corporate speech. In Central Hudson Gas and Electric Corp. v. Public Service Commission in 1980, the question involved the right of government to regulate corporate speech relating to the 1970s energy crisis? Although the case is more often discussed today in terms of the balancing test it established for the protection of commercial speech, Justice John Paul Stevens argued in his concurring opinion that the regulation in question suppressed corporate political speech beyond commercial speech because the banned speech could address questions under debate by political leaders.

The Supreme Court ruled 8-1 that the regulation was not justified-even though it advanced the government's substantial interest in conserving energy-because it was more extensive than necessary to further that interest. Another New York utility corporation successfully asserted First Amendment interests in Consolidated Edison Co. of New York v. Public Service Commission of New

York. The Court based its decision in part on the Bellotti holding that "the inherent worth of the speech in terms of its capacity for informing the public does not depend upon the identity of its source, whether corporation, association, union, or individual."

A corporate newsletter published by Pacific Gas and Electric Company was the focal point of the controversy that produced Pacific Gas and Electric Co. v. Public Utilities Commission. When a consumer group complained to the Public Utilities Commission of California that the newsletter sometimes included items that could be considered political comment, the commission ruled that such groups could have access to "extra space" in the billing envelope. PGandE contended the order violated its First Amendment rights, and the Supreme Court agreed, unanimously finding in 1986 that the regulation impermissibly burdened the utility's free-speech rights by requiring it to associate with speech with which it might not agree.

However, the Supreme Court has allowed government regulation that targets corporate speech in order to address corruption or the appearance of corruption. In Federal Election Commission v. National Right to Work Committee, decided in 1982, a challenge was brought against a federal campaign regulation that was designed to ensure that money used by corporations in political activity represented the speech interests of those whose money was involved. The Supreme Court upheld the regulation, unanimously ruling that the interests the government sought to protect were compelling enough to outweigh corporate First Amendment rights of association asserted by NRWC. The decision described the regulation as the culmination of a "careful legislative adjustment of the federal electoral laws... to prevent both actual and apparent corruption... reflecting a legislative judgement that the special characteristics of the corporate structure require particularly careful regulation." In Federal Election Commission v. Massachusetts Citizens for Life36 in 1986, the Court upheld the principle underlying the same regulation at issue in NRWCthat corporations amassing great wealth in the economic marketplace should not gain unfair advantage in the political marketplace. (However, the Court ruled that the regulation did not apply to Massachusetts Citizens for Life, a non-profit corporation devoted to ending abortion, because it was formed to disseminate political ideas rather than to amass capital.)

In 1990's Austin v, Michigan State Chamber of Commerce, the most recent corporate-speech case, the Court upheld a Michigan regulation addressing, in the words of the Court, "the corrosive and distorting effects of immense aggregations of wealth that are accumulated with the help of the corporate form and that have little or no correlation to the public's support for the corporation's political ideas.... It ensures that expenditures reflect actual public support for the political ideas espoused by corporations." Reasoning that "corporate wealth can unfairly influence elections when it is deployed in the form of independent expenditures, just as it can when it assumes the guise of political contributions," the Court held that state governments may regulate independent expenditures

by corporations. In summary, the constitutional right for corporate speech established in Bellotti was reinforced in Central Hudson, Consolidated Edison, and Pacific Gas and Electric. It was tightened or focused in NRWC, MCFL, and Austin, clarifying the degree to which corporate First Amendment rights are less than those of individuals.

The case law emphasizes that regulation of corporate speech should target prevention of corruption or the appearance of corruption, and that political speech by corporations should reflect public support, not just the economic power of the corporation. However, the Court has maintained a strong aversion to any content regulation of corporate speech. The government is required to establish compelling justification that a regulation of corporate speech addresses some form of real or apparent corruption in order to establish constitutionality. Parallels between Smithian theory and the Court's holdings and language in corporate-speech decisions will be detailed below, after discussions of the scholarly debate over corporate speech and of Smithian ethics in more depth.

The Debate over Corporate Speech: Critical themes that run through the literature on corporate speech highlight the debate over whether such speech undermines or advances democratic processes. The broad issues under contention have been characterized as an attempt to resolve a core philosophical conflict between liberal democratic ideology and organizational values, or between individual freedom of expression and social utility.

Rome and Roberts characterized the conflict as one between:

- The belief that corporate expression differs from individual expression to such an extent that it should receive lesser or no First Amendment protection,
- The belief that "protection of every species of expression... not only is protection of the right of the speaker but... is at least in part, for the benefit of listeners or recipients."

Both camps are well represented in the literature. Greenwood dismissed corporate speech as antithetical to the basic principles of democracy and deserving of no constitutional protection. Deetz asserted that in Bellotti, "the corporation is given rights like those of an individual, but the individual is not given the expression power of the corporation," and argued corporate influence is maintained through "a colonization of public decision making." Kuhn and Berg argued that "complex, little understood social systems... corporations alter the structure of society... through the governmental role they have assumed."' Weissman asserted recently that it is now the norm for corporations to engage in massive campaign spending on all initiatives and referenda that may affect corporate interests. Research has shown correlations suggesting that corporate spending influences the outcomes of elections, although the outcomes may be affected by other variables.

Many scholars writing in response to the Bellotti decision predicted correctly that it would greatly restrict state regulation of corporate spending to influence referenda voting. "It will be difficult to draft a state statute whose burden would

be held a reasonable one," Fox forecast. Hart and Shore foresaw corporations of all sorts becoming "even more involved in electoral politics." Baker predicted that Bellotti would seriously undermine citizens' influence on democracy because corporate speech is dictated by profit-maximizing mandates of the market, not the human values of individuals. Prentice anticipated, accurately, it has turned out, that Bellotti would allow government regulation of corporate electoral activity "when that activity is based upon solid evidence that the target activity would lead to corruption or the appearance of it."

Friedman and May strongly advocated such regulatory efforts: "If it weren't for our ultimate political sovereignty as individuals, then our political speech would not have the constitutional importance which it now has.... Corporations are not, as such, sovereign members of our civil society. They exist at the sufferance of law and judicial ruling." Gowri also argued against unregulated corporate speech, proposing a system whereby corporations would disclose all political spending and offer rebates to shareholders who did not approve of the causes supported: "If corporate speech could be brought into closer alignment with shareholder views, then the voice speaking to hearers in the marketplace would be closer to a human voice; and the loud competing views confronting other speakers would be closer to human views."

On the other side of the debate, proponents have maintained it is healthier to free the corporate voice than to stifle it. Foreshadowing Bellotti a decade before the Supreme Court decision, Epstein wrote that "the expanding importance of governmental involvement in the operations of the economy... has resulted in the necessity of increased corporate political involvement." He argued that corporations "should be placed on a legal parity with other social interests" because the corporation "contributes to the maintenance of pluralistic democracy in America rather than endangers it." Barry contended that corporations serve a vital political function in a democratic society, that of upholding the property and contractual rights of their stockholders through lawful expansion of profits. Redish and Wasserman asserted that constitutional protection for corporate political speech fulfills First Amendment values because "the corporate form performs an important democratic function in facilitating the personal self-realization of the individuals who have made the voluntary choice to make use of it," and because "corporate speech may serve a vital role in checking potential government excesses."

Some scholars have asserted that other forces are more effective than government at promoting responsible corporate speech. There is "a large social interest in hearing what corporations have to say about public issues," Sunstein argued, emphasizing that "no one is forced to believe what the corporations claim." To that end, individuals will be made aware by alternate sources if a corporation's actions are incongruent with its messages, Sethi contended. Butler and Ribstein made the case that "Corporate power may, in fact, better represent voter support than the groups that would gain from a reallocation of power," because "corporate speech must conform at least generally with the views of a

cross-section of the community" or risk alienating shareholders, consumers, employees, and other publics critical to the success of the organization. Ramler condemned the Austin decision, reasoning that restricting corporate freedom of speech would decrease "the amount of information upon which voters may rely to make intelligent decisions about the officials who will represent them in government."

Schofield predicted that Austin would make the First Amendment protection granted to corporate political speech by Bellotti "very easy to circumvent for a state that wishes to regulate 'free' political speech," contending that Austin "may have weakened other fundamental rights that are currently protected by the `compelling state interest' requirement." Geary criticized Austin's definition of corruption as too broad.

In summary, the ideological debate regarding First Amendment protection for corporate speech is highlighted by sharp disagreement as to whether regulation of such speech enhances or diminishes the greater interests of a democratic society. This study advances the discussion by asserting justification for regulation of corporate speech based on ethical principles.

Adam Smith's principles provide ethical direction by employing free-market theory to promote utilitarian ideals of the greater common good. In the next section, Smith's essential tenets on free markets are applied to the concept of the First Amendment marketplace of ideas. The argument is made that regulation efforts related to corporate speech can work to expand the marketplace of ideas and enable more ideas to flourish, thus enhancing democratic processes and the common good.

Considering Corporate Speech within the Ethics of Adam Smith: Given that Smith developed his ideas in a pre-capitalist, predemocratic world, his comprehensive eighteenth-century prescriptives cannot simply be transposed whole upon twenty-first-century corporate behaviour. However, Smith's enduring principles remain useful in considering ethical issues today, particularly the corporate-speech issues addressed in this study.

In fact, the frequent distortion of Smith's ideas reflects a failure to place them in their proper historical context and thus a crucial lack of awareness of the dominant economic realities under which he wrote. Smith's economic theories emphasized market forces and consumer autonomy as an alternative to the political economy of mercantilism.

His system, which later would be referred to as capitalism, was "as revolutionary a concept with respect to the dominant mercantilism of its day as Marx's communism was to the capitalism of the mid-nineteenth century." The greatest priority of the economic system of mercantilism was enriching the nation-state, basically by maximizing exports and minimizing imports.

Thus, "mercantilism benefited producers and entrenched interests at the expense of consumers and the growing middle classes, who were forced to pay inflated prices for domestically produced goods which were shielded from foreign competition by various protectionist mechanisms. " As Smith wrote:

"It cannot be very difficult to determine who have been the contrivers of this whole mercantile system; not the customers, we may believe, whose interest has been entirely neglected; but the producers whose interest has been so carefully attended to."

So Smith was reacting against mercantilism, not defending the modern-day, private-enterprise system. The driving force behind Smith's vigourous critique of the status quo was his desire to improve the harsh living conditions he saw in Scotland and England." Rather than blaming the poor for their misfortunes, as mercantilist theory did, Smith blamed the economic system. To that end he called for abandoning mercantilist policies of sanctioning monopolies, putting quotas on imports, regulating tradesmen, and restricting other aspects of economic behaviour. Smith opposed that sort of government regulation because it privileged the few at the expense of the many and prevented most from competing fairly in a free market. Thus we find "the thread that runs through all his works" is "how the market can be structured to make the pursuit of self-interest benefit consumers."

When we consider the marketplace of ideas in terms of Smith's free market, it is clear that openness for all competitors and consumers is the priority. However, the interests of the most powerful competitors may work against openness. As Smith observed, "The interest of the dealers... in any particular branch of trade or manufactures, is always in some respects different from, and even opposite to, that of the publick. To widen the market and to narrow the competition, is always the interest of the dealers. To widen the market may frequently be agreeable enough to the interest of the publick; but to narrow the competition must always be against it."

Smith's use of the term "invisible hand" in Wealth of Nations does not represent a blanket defence of untrammeled self-interest, as it is often characterized in arguments against the regulation of business. Smith's "invisible hand" represents instead a metaphor for the socially positive but unintended consequences that, as he theorized it, paradoxically can result from the pursuit of self-interest in market activity. Bishop explained that Smith found it desirable to allow individuals to base their economic choices on self-interest because the "constant drive of most people to improve their economic and social condition provided the incentive for individuals to direct their economic activities towards wealth production, and this ultimately would increase the overall wealth of society."

Thus Smith was a champion of individualism, but not to the extent that its excesses destroyed community. He did not, after all, title his most famous work The Wealth of Individuals. Smith's concept of limited government encouraging individual self-interest to flourish was based on what he saw as the relentless passion of humans for "bettering our condition, a desire which, though generally calm and dispassionate, comes with us from the womb, and never leaves us till we go in the grave.... In the whole interval which separates those two moments, there is scarce perhaps a single instant in which any man is so perfectly and

completely satisfied with his situation, as to be without any wish of alteration or improvement of any kind." Thomas Jefferson regarded The Wealth of Nations as the best book available on political economy, and he and others envisioned Smith's concept of self-interest being developed in terms of both economic and political involvement for all:

Self-interest could only be accounted socially benign if it could be demonstrated that all this incessant striving after private ends did not lead to chaos.... Smith theorized that the urge to improve oneself through profitable exchanges prompted each to commit her and his resources most advantageously, and when disciplined by competition, led inexorably to the greatest good for society.... Where Jeffersonian Republicans differed from Federalists was in the moral character they gave to economic development.... The more equal than in England social conditions that prevailed in America made it possible to think of the economists' description of the market as a template for... a society of economically progressive, socially equal, and politically competent citizens.

Smith's emphasis on equality of economic and political opportunity does not "imply that Smith favoured equality of outcomes. Clearly he did not, nor did he think that such equality would be a result of a freemarket economy. But the market is most efficient and most fair when there is competition among similarly matched parties." In that vein, this study asserts that the marketplace of ideas will operate more efficiently and fairly when competing parties have similar opportunities to communicate ideas, and that a free marketplace of ideas contributes to utilitarian ideals of the greater common good.

Smithian Ethical Balance and the Supreme Court: This essay does not suggest that any Supreme Court holdings in corporate-speech cases have been based expressly upon Smithian principles. In his dissenting opinion in the Central Hudson case, Justice William Rehnquist did make a brief reference to the concept of the marketplace of ideas being analogous to Smith's concept of a free economic market. However, none of the other justices has cited Smith or specifically articulated any of Smith's concepts in a corporate-speech decision.

That said, this study maintains that when we apply Smithian principles to corporate speech in the manner articulated in this essay, we find that such application is consistent with the holdings and language of the Supreme Court's corporate-speech decisions.

When characterized in terms of Smith's concepts, Supreme Court decisions on corporate speech represent an ongoing process aimed at preventing stronger competitors from diminishing freedom within the marketplace of ideas. In Bellotti and related decisions, the Court has maintained a difficult Smithian ethical balance regarding regulation of the corporate voice. The Court's corporate-speech decisions have emphasized preventing corruption and ensuring that corporate political speech represents public support. At the same time, those decisions stress a limiting of government, which promotes opportunity for the expression of the self-interest reflected in corporate speech. Such a balance advances ethical concerns, in Smithian theory, because it works in the long-

term interests of society at large by resisting the narrowing of the marketplace. Prominent throughout Smith's work is the community-oriented concept of the "impartial spectator," articulated at length in his Theory of Moral Sentiments: "It is the impartial spectator who, whenever we are about to act so as to affect the happiness of others, calls to us, with a voice capable of astonishing the most presumptuous of our passions, that we are but one of the multitude, in no respect better than any other in it.... It is he who shews us the propriety of generosity and the deformity of injustice; the propriety of resigning the greatest interests of our own for the yet greater interests of others." This concept is crucial to Smith's concept of justice advancing the common good, which is equally central to both Theory of Moral Sentiments and Wealth of Nations.

In the former, Smith wrote that a competitor "may run as hard as he can, and strain every nerve and every muscle, in order to outstrip all his competitors. But if he should jostle, or throw down any of them, the indulgence of the spectators is entirely at an end. It is a violation of fair play, which they cannot admit of." And in Wealth of Nations, he wrote that government is responsible for "protecting, as far as possible, every member of the society from the injustice or oppression of every other member of it." Smith asserted the essential duties of government as external defence, justice, and public works.

In this element of Smithian theory, "Laws of justice act as an impartial spectator... safeguarding both fair play in market exchanges and the public welfare.... The invisible hand is efficient only to the extent that it exists within the context of perfect liberty, coordination or economic harmony, equally advantageous competition, and fair play...The invisible hand, then, is a dependent, not an independent variable." Thus it distorts Smith's work to focus only on the self-interest concepts while ignoring the emphasis he placed on their context within a system of social justice. A system of justice, serving the function of the impartial spectator, must maintain a free market that protects "as far as possible, every member of the society from the injustice or oppression of every other member of it, emphasizing liberty, competition, fair play, and limited government.

The Supreme Court's corporate-speech decisions as a whole have served an "impartial spectator" function, seeking to ensure that some competitors in the marketplace of ideas do not "jostle, or throw down" any of the other competitors - as well as to prevent government from stifling expression of the self-interest reflected in corporate speech. Thus we see that Smith's theory of free markets and its application here to the marketplace of ideas are ethically consistent with justice related to corporate speech.

The language of the Court in its corporate-speech decisions offers parallels between Smith's concept of individuals competing equally in a free market towards the greatest good for society and the concept of ideas competing in a free market.

In the Bellotti decision, the Court made it clear that any regulation of corporate speech could not be based solely on the corporate identity of the speaker, finding

"no support in the First or Fourteenth Amendment, or in the decisions of this Court, for the proposition that speech that otherwise would be within the protection of the First Amendment loses that protection simply because its source is a corporation." The Court's decision struck down a Massachusetts statute prohibiting corporations from campaigning to influence the outcome of referenda that did not materially affect their business interests.

The majority held that speech concerning the issues in a referendum on a state constitutional amendment is the type of speech indispensable to decision making in a democracy, and that corporate speech does not represent potential for corruption in referendum campaigns that focus on issues rather than individuals, because the former cannot be corrupted by political debt as the latter may. Thus, in Smithian terms, the Court began in Bellotti to define when the corporate speaker is only running as hard as he can within the bounds of fair play in the marketplace of ideas-and thus is not subject to government interference.

Similarly, the Court held in the Central Hudson case that the New York Public Service Commission could not ban promotional advertising by electric-utility corporations in an effort to reduce energy consumption, because the government failed to show that a more limited regulation would not protect its interest in conservation. In the Consolidated Edison case, the Court ruled that the state's Public Service Commission could not prohibit public utility corporations from discussing controversial issues of public policy in monthly utility-bill inserts. Allowing the government to determine what material was useful to consumers and what was not clearly represented content regulation of political speech, the Court said, a practice unconstitutional even when the source of such speech is a corporation.as In the Pacific Gas and Electric decision, the Court held that a corporation could not be forced to associate with speech with which it might not agree by subjecting it to a regulation requiring the corporation to include competing political messages in mailings of a corporate newsletter, "speech that the First Amendment is designed to protect."

In all those cases, the Court deemed the expressions of corporate speech involved to be-as Smithian theory would characterize it-fair play in the marketplace of ideas. In particular, the cases firmly established First Amendment protection for corporate speech from content regulation by government. As Justice Powell wrote in Central Hudson: "If the marketplace of ideas is to remain free and open, governments must not be allowed to choose 'which issues are worth discussing or debating."

However, consistent with Smithian theory that the indulgence of the spectators may end if a violation of fair play should occur, the Court has delineated ways in which corporate speech may corrupt the marketplace of ideas. In Bellotti, the Court said: "According to the government, corporations are wealthy and powerful and their views may drown out other points of view. If [these] arguments were supported by record or legislative findings that corporate advocacy threatened imminently to undermine democratic processes, thereby denigrating

rather than serving First Amendment interests, these arguments would merit our consideration." In that decision, the Court held there was no showing of democratic processes being undermined. However, in later corporatespeech cases, the Court did in fact deem that undermining of democratic processes was addressed by the regulations at issue.

In the NR WC decision, for example, the Court noted: "The governmental interest in preventing both actual corruption and the appearance of corruption of elected representatives has long been recognized, and there is no reason why it may not in this case be accomplished by treating unions, corporations and similar organizations differently from individuals," In Buckley v. Valeo in 1976, the Court had defined corruption as "a subversion of the political process" in which "Selected officials are influenced to act contrary to their obligations of office." In NR WC, the Court accepted the government's assertion that the regulation of corporate speech under question in the case ensured "that substantial aggregations of wealth amassed by the special advantages which go with the corporate form of organization should not be converted into political 'war chests' which could be used to incur political debts from legislators." In Smithian theory, such corruption would work to narrow the political marketplace of ideas because democratic processes would then be influenced more by unfair corporate influence on elected officials than by ideas competing freely.

In language strikingly resonant of the Smithian emphasis on government maintaining fairness in the marketplace of ideas, the Court in the MCFL decision declared:

Resources amassed in the economic marketplace may be used to provide an unfair advantage in the political marketplace. Political "free trade" does not necessarily require that all who participate in the political marketplace do so with exactly equal resources.... Relative availability of funds is after all a rough barometer of public support. The resources in the treasury of a business corporation, however, are not an indication of popular support for the corporation's political ideas. They reflect instead the economically motivated decisions of investors and customers.... These resources may make a corporation a formidable political presence, even though the power of the corporation may be no reflection of the power of its ideas.

In this assertion, the Court sought to prevent competitors with advantages in the economic marketplace (such as the corporation's limited liability and perpetual life) from utilizing those advantages to unfairly diminish the freedom of the marketplace of ideas. "This concern over the corrosive influence of concentrated corporate wealth reflects the conviction that it is important to protect the integrity of the marketplace of political ideas.... By requiring that corporate independent expenditures be financed through a political committee expressly established to engage in campaign spending... the regulation in question seeks to prevent this threat to the political marketplace," wrote Justice William J. Brennan, Jr.

In the Austin decision, the Court concluded, "Michigan identified as a serious danger the significant possibility that corporate political expenditures will

undermine the integrity of the political process, and it has implemented a narrowly tailored solution to that problem." The Court held that the regulation requiring corporations to make campaign expenditures through separate funds that were solicited expressly for political purposes reduced the threat that "huge corporate treasuries amassed with the aid of favourable state laws will be used to influence unfairly the outcome of elections." These assertions are clearly consistent with Smithian theory. Allowing corporate power to undermine the integrity of democratic processes would unfairly distort the political marketplace of ideas and work against utilitarian ideals of the common good that are represented in maintaining the freedom of that marketplace.

That the Supreme Court has found potential in corporate speech for corruption of democratic processes would not surprise Smith. He "expected that concentrated economic resources could be readily translated into political influence, which he considered similar to other commodities for which there was a supply and demand." He believed that keeping markets free actually involved making sure powerful business interests did not use their influence to overwhelm the freedom of the market. "Smith thought... in particular, if business people pursued their self-interest in the political arena, they would only seek the overthrow of the free market system for their own benefit and everyone else's loss." Smith found merchants and manufacturers "an order of men whose interest is never exactly the same with that of the public." The arguments and evidence outlined above establish the usefulness of Smith's theories in providing an ethical basis justifying regulation of corporate speech-a basis that is consistent with the reasoning in Supreme Court cases upholding such regulation. Smith championed the concept of individuals competing with equal opportunities in a free market as a process that advanced utilitarian ideals of the greater good for society. The principles underlying that concept can be applied to the First Amendment concept of ideas competing in a free market, and doing so provides ethical justification for regulating corporate speech in an effort to protect democratic processes.

In such an application, the justice system is crucial in acting as an "impartial spectator" to ensure that some competitors in the marketplace of ideas do not dominate it and disadvantage other competitors - but also to prevent government from stifling expression of the self-interest reflected in corporate speech. In its corporate-speech decisions, the Supreme Court has particularly emphasized preventing corruption and ensuring that corporate speech represents public support.

The holdings and language of the Court in its corporate-speech decisions reflect Smith's "impartial spectator" function at work in the marketplace of ideas, seeking to protect "as far as possible, every member of the society from the injustice or oppression of every other member of it," and stressing fair play by competitors in that marketplace. Assessing regulation of corporate speech within these parameters provides ethical direction on Smith's terms, employing free-market theory in the manner he actually intended-as a means for advancing utilitarian ideals of the greater common good.

4

Limits on Freedom of the Press

The First Amendment of the United States Constitution states with majestic simplicity: "Congress shall make no law...abridging the freedom of speech, or of the press..." Supreme Court decisions over the years have interpreted this unadorned sentence to bar government generally, including state or local governments, from taking official action to abridge freedom of the press. But that same Supreme Court has been equally clear that the First Amendment is not an absolute, that in certain circumstances "freedom of the press" must yield to other constitutionally-protected values, such as national security and the right of a defendant to an unprejudiced fair trial. The history of the First Amendment's press clause has thus been one of shifting lines back and forth along the broad frontier of freedom.

There are four basic stages at which freedom of the press has been or can be limited: (1) access to information; (2) prior restraint on publishing information (censorship, injunctions); (3) liability for publishing (libel and invasion of privacy suits, fines and imprisonment); and (4) requiring reporters to testify or otherwise disclose sources or materials gathered in the course of their employment. While this fourth category technically does not abridge freedom of the press—it does not bar access or prevent or punish publications—the "chilling effect" it has upon the ability of reporters to function and to gain their sources' confidence certainly merits its inclusion.

ACCESS

Even after Richmond, infra, there is no constitutional guarantee of access to most places or information, though several justices have strongly suggested

that the First Amendment would be violated by a complete ban on access to a governmental facility like a prison. And the Supreme Court has held in a series of decisions that the press has no right of special access to places or information not shared by the public generally. Houchins v. KQED, 438 U.S.,1 (1978); Pell v. Procunier, 417 U.S., 817 (1974); Saxbe v. Washington Post Co., 417 U.S., 843 (1974).

This having been said, however, the courts have also emphasized that members of the press are protected by constitutional rights to evenhanded treatment. This has been required, for instance, in decisions as to which persons receive White House passes and which do not, Sherill v. Knight, 569 F.2d 124 (C.A.D.C.; 1978); and in which an "underground newspaper" had been denied access to police department records available to other media, Quad-City Community News Service, Inc. v. Jebens, 334 F. Supp. 8 (D. Iowa; 1971).

Legislation, of course, is one appropriate vehicle for securing access. The classic statute of this sort is the Freedom of Information Act, both state and federal, discussed elsewhere in this book. Dependence on legislation for any press right, however, is a chancy business at best. For what this year's legislature gives, next year's might take away; and the right based upon legislative pleasure is always a precarious one.

In one area, however, the courts have increasingly recognized a constitutional right of the press and public to access. That area is to the courts themselves. Since the 1980s, the law has been clear that the First Amendment guarantees a right of the public and the press to attend civil and criminal trials, Richmond Newspapers, Inc. v. Virginia, 448 U.S., 555 (1980) and pre-trial proceedings (such as probable cause hearings in criminal cases), Press-Enterprise Company v. Superior Court, 478 U.S., 1 (1986).

Before any such hearing may be closed, the court must hold a hearing on the closure motion—even if both parties to the case agree to closure—and the court must hear evidence showing why closure is necessary. The press must be given an opportunity to present contrary evidence. Closure is permissible only if, based upon evidence presented, the court makes specific findings on the record that closure is essential to preserve values higher than those underlying public access and that the closure is narrowly tailored to serve that higher interest. Press-Enterprise, supra; Globe Newspapers v. Superior Court, 457 U.S., 596 (1982).

If the "higher interest" sought to be served by closure is to ensure an accused person a fair trial, closure is permissible only if the court, based on evidence presented to it which the press has an opportunity to rebut, makes specific findings demonstrating (1) that there is a "substantial probability" (not just a "reasonable likelihood") that the accused's right to a fair trial will be prejudiced by publicity that closure would prevent (as opposed to situations where there has already been so much publicity that whatever prejudice might exist already exists); and (2) reasonable alternatives to closure—such as questioning of potential jurors, changing the jury panel, changing the date or site of the trial,

clear instructions from the trial judge—cannot adequately protect the accused's fair trial rights. Press-Enterprise, supra. It is not enough for a court to find that those alternatives would be expensive or cumbersome. If they are "not beyond the realm of the manageable," they must be considered before closure can be justified. Richmond, supra. And courts have held that while an accused is entitled to an impartial jury, he or she is not entitled to one that has never heard of the accused or the charges against the accused. Murphy v. Florida, 421 U.S., 794 (1975).

The Globe case, supra, held unconstitutional a law barring the public and press automatically in all cases involving minors as witnesses as to certain crimes. The Supreme Court emphasized that in each case closure must be decided on a record based on the facts of that particular case, after a hearing of the sort discussed above. Globe raises serious questions about the constitutionality of laws such as those that mandate closed hearings in "juvenile" cases. In addition, other courts have held that due process requires there to be some sort of notice given to the public and the press —even if it is just a written notice on the court's docket or bulletin board—alerting them whenever someone is going to try to close court proceedings. United States v. Criden, 675 F.2d 550 (3 Cir.; 1982); In re Application of the Herald Company, 734 F.2d 93 (2 Cir.; 1984).

The requirement that any closure that is ordered be "narrowly tailored" to meet the need inspiring closure means that the court must be careful to close only as much of the proceeding as the court finds access to it would harm the accused's right to a fair trial. If that means only one witness's testimony, or only a portion of that witness's testimony, that is the only portion that may be closed. Open courts are the rule; closure is the rare exception.

Connecticut has supplied the public with a unique tool to protect its right of access to court proceedings. Since 1980—even before Richmond, supra, was decided —Conn. Gen. Stat. § 51-164x has provided that the effectiveness of any court-order closing a court proceeding will be delayed for seventy-two hours; and if within that time anyone (a newspaper, a reporter, a member of the public) appeals to the appellate court, the order is further stayed until the appeal is decided. The law also provides for a speedy appeal process. Thus, in the highly unusual situation where a court has ordered closure, the factual and constitutional issues will have an opportunity to be fully analyzed by the highest courts before this extraordinary remedy is invoked.

While courts have not held that the electronic media (radio and television) have a constitutional right to record, tape or broadcast live courtroom proceedings, the Supreme Court has ruled that an accused's constitutional right to a fair trial is not violated by a court rule or statute that does allow such access. This has encouraged many if not most states to permit radio and television equipment to record and tape courtroom proceedings, usually under carefully crafted rules designed to minimize the intrusive effect of the equipment and its operation upon the proceedings. In Connecticut the "broadcasting, televising, recording or photographing" of most— but not all—civil and criminal court

proceedings is authorized and governed by Connecticut Practice Book § 1-10 and 1-11. Courts increasingly have also recognized that the public and the press have a First Amendment right of access to inspect and copy court files, including exhibits introduced into evidence; and that before access to such files can be denied, a court must hold the same kind of hearing and make the same kind of findings required for closure of courtrooms.

One reason the battleground has recently shifted to access is that it is so difficult to prevent publication. In a series of decisions the Supreme Court has held that the press is free to publish anything it sees or hears, even if there is a law designed to prevent it from seeing or hearing the information. Here again, however, there are no absolutes. Obscenity, difficult as it may be to define, can be restrained from publication. Also, national security has been recognized as a legitimate basis for banning publications, though what the standards of this basis are (only during wartime? The quantum of clear, certain and immediate danger required) remain murky at best. The Progressive, 467 F. Supp. 990 (W.D. Wisc.; 1979), dismissed, 610 F.2d 819 (7 Cir.; 1979); (the "hydrogen bomb case"). The situation of the electronic media with respect to prior restraints is inextricably intertwined with the fact that radio and television stations are licensed by the Federal Communications Commission ("FCC") and those licenses must from time to time be renewed. The underlying justification for licensure—that the broadcast spectrum is limited, that it is a public resource, that its scarcity requires allocation by government to licensees who operate to further the public interest—has been found to justify two types of prior restraint by government: prohibitions on broadcasting certain types of matter and a requirement that certain other kinds of matter be broadcast. Red Lion Broadcasting Co. v. FCC, 395 U.S., 367 (1978); FCC v. Pacifica Foundation, 438 U.S., 726 (1978); National Broadcasting Co. v. United States, 319 U.S., 190 (1943).

The nature and variety of FCC restraints would take far more space than is here afforded to discuss intelligently. That FCC right, however, is not without limitation. The First Amendment does serve to place certain broadly defined parameters around the right of government to dictate content to the electronic media. Columbia Broadcasting System, Inc. v. Democratic National Committee, 412 U.S., 94 (1973); FCC v. League of Women Voters of California, 468 U.S., 364 (1984).

Once data has been published, the publisher and reporter become potentially liable for what they wrote or said. For while the public has received the benefit of the dissemination of information—thus fulfilling a major purpose of the First Amendment—people may have been hurt as a result, and the law recognizes their right to be compensated.

Criminal sanctions are rare, of course. If, however, a court has issued a gag order barring publication, a reporter or publisher can have appropriate sanctions—fine, imprisonment for contempt of court—imposed upon him or her for violating that court order, even if a higher court later finds the order was

wrong. United States v. Dickinson, 465 F.2d 496 (5 Cir.; 1972); but see In re Providence Journal, 820 F.2d 1342 (1 Cir.; 1987), cert. dismissed, 485 U.S., 693 (1988) (discussing "transparently invalid" court orders).

The two primary legal remedies for illegally published material, however, are civil suits for invasion of privacy and libel. The former is treated elsewhere in this book. Suffice it here to be said that Connecticut's courts recognize all four of the separate types of invasion of privacy actions: (1) intrusion (whether by physically entering property without permission or by bugging or secretly recording, photographing or taping); (2) publication of embarrassing facts even though truthful if the matter would be highly offensive to a reasonable person and not of legitimate concern to the public; (3) false light, if highly offensive to a reasonable person and if the publisher knew of the falsity of the publication and the false light or acted in reckless disregard of truth or falsity; and (4) misappropriation of name of likeness (e.g, using someone's photograph without permission in an ad).

By far the best known remedy is a "libel suit". A "libel" in Connecticut has been defined as a false and malicious publication concerning a person which exposes him or herself to public ridicule, hatred or contempt, or hinders virtuous persons from associating with him or her. Burns v. Telegram Publishing Co., 89 Conn. 549 (1915). Ever since the Supreme Court decision in New York Times v. Sullivan, 376 U.S., 254 (1964), however, the law of libel has become "constitutionalized;" and while libel law continues to retain great vitality, it must always be judged by its effect upon First Amendment press rights.

Specifically, no person who is a public official or a "public figure" may succeed in a libel suit against a publisher about an article relating to his or her official conduct or public figure status unless he or she proves "actual malice"—that is, that the publication was false and that when printed, the publisher did so in reckless disregard of whether it was false or not. Mere negligence is not enough fault where a public official or "public figure" is concerned.

While this standard may seem clear, it has proven to be anything but in practice. For one thing, the phrase "actual malice" is a misnomer. It has nothing to do with the traditional "malice"—hatred, spite, ill will or improper motive. A reporter can hate the subject of his or her story and write it hoping to cause hurt; but if the story is true, or if the story is false but the reporter thought it was true or tried his or her best to make certain it was true, there is no "actual malice."

In order for a plaintiff to prove "actual malice," the plaintiff must prove by "clear and convincing evidence" (not just the usual "preponderance of evidence") that the defendant either knew that the statement was false or, in fact, entertained serious doubts about its truth, or that the source on which the reporter relied was inherently unreliable. This is a very difficult standard to meet.

There has been a continuing debate in the Supreme Court over who is a "public figure." Clearly Muhammad Ali is. But is Oliver Sipple, the ex-Marine who saved President Ford's life in San Francisco and then had his private life

exposed nationwide? Some people are public figures for all purposes; anything written about them is probably subject to the "actual malice" test if they sue for libel. Other "public figures" are only limited-pur-pose public figures; the mother who leads the fight to prevent a school from being closed may be a public figure only so far as the stories concern her fight for the school, but not her qualities as a wife, mother, daughter or registered nurse. Which status a person occupies becomes important because status determines how difficult it will be for him or her to win a libel suit. The more "public" a person is, the more he or she is assumed to have taken the risk of publicity, and the greater his or her burden in proving a libel case.

A decision by the United States Court of Appeals for the District of Columbia attempts to devise some tests for who is a public figure, and what kind of public figure he or she is. Waldbaum v. Fairchild Publications, 627 F.2d 1287 (D.C. Cir.; 1980), cert. den., 101 S.Ct. 266. Usually, one who is an "all purpose public figure" (like Muhammad Ali) also has access to the media if defamed. Thus, he or she has a means of responding to defamation other than merely a lawsuit: he or she can generate publicity him or herself. Also, usually, he or she is a person who voluntarily came to public prominence (Ali, as opposed to a vacationer who leaps into the ocean to save a drowning child.) Those who are not public figures for all purposes may be limited issue public figures—persons who "have thrust themselves to the forefront of particular public controversies in order to influence the resolution of the issues involved." Such a person is "an individual [who] voluntarily injects himself or is drawn into a particular public controversy and therefore becomes a public figure for a limited range of issues."

What qualifies as a "public controversy" is a ripe subject for debate. The court in Waldbaum says a "public controversy is not simply a matter of interest to the public; it must be a real dispute, the outcome of which affects the general public or some segment of it in an appreciable way."

"If the issue was being debated publicly and if it had foreseeable and substantial ramifications for non-participants, it was a public controversy." The fight to save a school from being closed would thus clearly qualify as a "public controversy." But what about debate on the best solution for the Arab-Israeli impasse? How about whether Shakespeare's works were written by Bacon, Marlowe or the Earl of Oxford? With so narrow and precise a definition as suggested by the Waldbaum court, the task becomes both more difficult and more artificial and, inevitably, subjective. One thing the Supreme Court has held in this regard, however, comes as somewhat of a surprise. It has held that publicity surrounding litigation does not by itself elevate the parties to the status of public figures even if they could anticipate the publicity, unless they are using the court as a forum for espousing their views in other controversies (*e.g.*, a crusading atheist who sues to have "In God We Trust" eliminated from U.S., currency).

Wolston v. Reader's Digest Ass'n, 443 U.S., 157 (1979); Time, Inc. v. Firestone, 424 U.S., 448 (1976), wherein a socially prominent wife of a Firestone

heir, who herself held press conferences and kept a clipping service, was held not to be a public figure for purposes for an item in Time about her divorce suit.

To be a public figure with respect to a public controversy, the plaintiff "either must have been purposely trying to influence the outcome or could realistically have been expected, because of his position in the controversy, to have an impact on its resolution," says the court in Waldbaum. Thus, presumably the leader of the protest march, but not necessarily every picket, would be a public figure (assuming that they were marching about something that was the subject of real public debate and controversy, whatever that might mean). The haziness of these definitions becomes abundantly apparent when one reviews the Waldbaum case itself. In a five-sentence item about Waldbaum's dismissal as president of the second largest consumer cooperative in the world, a trade publication stated that the co-op had been "losing money the last year and retrenching." After elaborately explaining the need and tests for "public controversy" and active participation, the court held Mr. Waldbaum to be a public figure because "he was the mover and shaper of many of the co-operative's controversial actions. He made it a leader in unit pricing and open dating. He supervised, or at least approved, the consumer-oriented views that appeared in Co-op Consumer...He became an activist, projecting his own image and that of the cooperative far beyond the dollars and cents aspects of marketing."

However much one may agree that Mr. Waldbaum ought to have been a public figure, it is difficult to draw the conclusion by applying the court's own tests. The article in question was a five-sentence item about Waldbaum's dismissal. So far as the court's opinion discloses, this dismissal generated no "public controversy" no "real dispute, the outcome of which affects the general public or some segment of it in an appreciable way." There was no "issue...being debated publicly" which "had foreseeable and substantial ramifications for non-participants."

Waldbaum displays in one case setting the extraordinary difficulty in determining who is or is not a public figures based on these Gertz tests. Far easier, and far more intelligent in the view of many, was the now rejected test set forth in Rosenbloom v. Metromedia, Inc., 403 U.S., 29 (1971), which focused on the nature of the event, rather than the status of the plaintiff. Rosenbloom held that any plaintiff had to show "actual malice" when suing for libel about a defamatory falsehood "relating to his involvement in an event of public or general concern." The Rosenbloom justices (a plurality, not a majority) reasoned as follows: If a matter is a subject of public or general interest, it cannot suddenly become less so merely because a private individual is involved, or because in some sense the individual did not "voluntarily" choose to become involved. The public's primary interest is in the event; the public focus is on the conduct of the participant and the content, effect and significance of the conduct, not the participant's prior anonymity or notoriety.

That view, as noted, was rejected by Gertz, which established the "all purpose" and "limited purpose" public figure categories, relegating all other non-public

officials to private figure status, (though the Supreme Court later revived it in setting standards of proof for presumed or punitive damages. Dun & Bradstreet, Inc. v. Greenmoss Builders, 472 U.S., 749 (1985)). The advantage of being a private figure is, of course, that his or her burden of proof is less in libel cases. A private figure must still prove that the statement was false and that it was defamatory, (a false but flattering statement would usually not be actionable). And he or she must still show some element of fault; the mere fact of having published a false and defamatory statement will not suffice for liability. But the degree of fault is significantly less than "actual malice." Precisely what it is up to each state, by court decision or statute, to decide. Some states have adopted "gross negligence" as a standard. Others have adopted simple negligence. Connecticut's Supreme Court has not yet had the occasion to deal with this issue, but one superior court decision has assumed that simple negligence would be what plaintiff must prove. And even damages for "actual injury" are available only where the substance of the defamatory statement warns a reasonably prudent editor of its defamatory potential.

In addition to constitutional defences such as "actual malice," a defendant in a libel case may have other defences that have developed in the common law. For example, an accurate report of the proceedings of executive, legislative, administrative and judicial bodies is absolutely privileged from liability, even if what is quoted from these proceedings is false and defamatory. In the absence of a state shield law, a reporter can be subpoenaed to come to court and to testify or supply materials gathered in the course of covering a story under certain circumstances. Branzburg v. Hayes, 408 U.S., 665 (1972) held that reporters have no constitutional right to disobey grand jury subpoenas and to answer questions relevant to an investigation into the commission of a crime. This general holding has been interpreted to include criminal trial juries as well. The inquiry must be conducted in good faith, however, and the questions must be relevant and material and not asked for purposes of harassment or disrupting the reporter's relationship to his or her news sources.

As Justice Powell stated in his concurring opinion: If the newsman is called upon to give information bearing only a remote and tenuous relationship to the subject of the investigation, or if he has some other reason to believe that his testimony implicates confidential source relationships without a legitimate need of law enforcement, he will have access to the court on a motion to quash and an appropriate protective order may be entered.

The law in this state is further amplified by Baker v. F & F Investment, 470 F.2d 778 (2 Cir.; 1972) which held that before a reporter (in a civil trial, at least) could be required to divulge the identity of his or her source, the person seeking the answer had to show he or she had exhausted other sources that could supply the same information and that the information the person sought to elicit went to the heart of the case. The reasoning of Baker was adopted by the superior court in Connecticut in Conn. Labour Relations Board v. Fagin, 33 Conn. Sup. 204 (1976).

What may be protected unless this test is met are not only the identity of a reporter's confidential sources, but his or her nonconfidential sources as well, and also a reporter's notes, tapes and other materials gathered or prepared as part of the reportorial or newsgathering work. von Bulow v. von Bulow, 811 F.2d 136 (2 Cir.; 1986), cert. den., 107 S.Ct. 1891 (1987). When a reporter is a witness in a libel action in which plaintiff is a public figure and must thus bear the heavy burden of proving "actual malice," the Supreme Court in Herbert v. Lando, 441 U.S., 153 (1979) has held that the reporter may be compelled to disclose the "editorial process"—discussions that occurred about what to include and leave out, which source was credible and which was not, and the reporter's thoughts and impressions.

THE PUBLIC AND THE MEDIA

Although the influence of the media agenda can be substantial, information and cues about object and attribute salience provided by the news media are far from the only determinants of the public agenda. People still, at some point, decide for themselves what really matters to them; there is a difference between the importance attached to events by the media (and therefore initially by people) and the relevance of those events to people.

The substantial influence of the news media has in no way overturned or nullified the basic assumption of democracy that the people at large have sufficient wisdom to determine the course of their nation, their state, and their local communities. In particular, the people are quite able to determine the basic relevance —to themselves and to the larger public arena—of the topics and attributes advanced by the news media. The media set the agenda only when their news stories are perceived as relevant by citizens.

In many instances, the desire by journalists to tell a good story overrides thoughtful judgments about what the public really needs to know and blinds journalists to the public's depth of interest. The intensive news coverage on the Clinton-Lewinsky scandal spectacularly failed to set the public agenda and sway public opinion about President Clinton's ability and right to serve.

Despite gargantuan play and persistent digging for the tiniest detail, "All Monica, all the time" wound up demonstrating only that the media voice has limitations. Overwhelmingly, the public rejected the relevance of that scandal as the basis of their opinion about the president's success or failure at governance. Surveys consistently showed that while people condemned Clinton the man, they continued to accept Clinton the president.

Clinton-Lewinsky was hardly the first time that journalists have misjudged the public's appetite and interest. Large portions of journalists' professional judgments about what should be on the news agenda are routinely ignored by the public, a pattern of behaviour vividly reflected in the declining readership for daily newspapers.

On a typical day in 1980, about two-thirds of the adult population read a daily newspaper. By the end of the century, this figure had slipped down to

57%. There is a similar decline in television news viewing, both for network television and local television. This decline in the size of the audiences of the news media as well as the presence—or, sometimes, absence—of specific agenda-setting effects by the news media can be explained by a basic psychological trait, the innate need within each individual to understand the environment around them. Whenever we as individuals find ourselves in a new situation, there is an uncomfortable psychological feeling until we explore and mentally grasp at least the outlines of that setting.

Recall your first semester in college when, most likely, you were in a geographically and intellectually unfamiliar environment, or your initial feeling on moving to a new community or visiting a foreign city. This innate need for orientation also exists in the civic arena. Voters in Austin, Texas, were asked to vote for or against the construction of a lightrail system by the local transit authority. In this situation, there was a very high need for orientation, at least among those citizens who intended to vote in the referendum.

Few Austin residents really understood what light rail was or how the benefits and costs of light rail—which was to be paid for by an existing sales tax—compared to other options such as more expressways for automobiles. The Austin *American-Statesman* attempted to satisfy this need for orientation with extensive coverage and discussion on numerous aspects of the city's transportation problems.

Because it is a psychological trait, the degree of need for orientation varies greatly from one individual to another. For most individuals in Austin, there was a high need for orientation regarding light rail. They were concerned about the city's traffic problems but had little understanding of what light rail might contribute to the solution of this problem.

For other individuals, there was little or no need for orientation at all. They just weren't interested and didn't intend to vote in the referendum. Recurring situations in which need for orientation is typically high are party primary elections and local nonpartisan elections for judges, situations in which voters often have little or no information about the candidates.

And every 4 years there is the high-water mark of national civic involvement and need for orientation as people briefly tune in to politics and make their decision about how to cast their vote for president. In all these situations, and many more, people experience a need for orientation, a need for some kind of mental map and understanding of where they are.

Need for orientation is defined by two components: relevance and uncertainty. Relevance is the initial defining condition that determines the level of need for orientation for each individual. If a topic is perceived as irrelevant—or very low in relevance—then the need for orientation is low. Individuals in this situation pay little or no attention to news media reports on this topic and, at most, demonstrate weak agenda-setting effects.

For individuals among whom the relevance of a topic is high, their degree of uncertainty about the topic determines the level of need for orientation. If this

uncertainty is low, that is, they feel that they basically understand the topic, then the need for orientation is moderate. These individuals for whom a situation has high relevance and low uncertainty will monitor the media for new developments and perhaps occasionally dip into a bit of additional background information. But they are not likely to be avid consumers of news reports about the topic. Agenda-setting effects among this group are moderate.

Finally, among individuals for whom both the relevance and their uncertainty about a situation is high, need for orientation is high. These individuals typically are avid consumers of news reports about the topic, and strong agenda-setting effects typically are found among these individuals.

To demonstrate the usefulness of need for orientation in explaining the public's behaviour, let's look at that high-water mark of American politics, the presidential election, and see how attention to the news media and their agenda-setting effects vary according to individuals' levels of need for orientation.

Both frequent use of the news media to follow the election and the agenda-setting effects of the news media on the perceived importance of the issues steadily increase with the level of need for orientation among members of the public. When the news media do provide information that citizens find relevant and useful in coming to a decision about how to cast their ballots, there is a substantial audience—and there is substantial media influence on the priorities that citizens assign to the issues of the day. In this situation, the public and the news media are partners in public life and a common search for understanding.

The vast range of differences among individuals in their need for orientation about public affairs identifies three major publics for news: Information-seekers, monitors and onlookers. There is, of course, also a nonpublic, that 10 per cent or so of the adult population who seldom follow news in any fashion: newspapers, television or online. Our focus here is on the three publics that are involved to varying degrees in public life and the use of news media.

Information seekers, who most closely resemble the idealized citizens of democratic theory, are persons to whom elections and a wide variety of public affairs are highly relevant. Typically, they make an effort to acquire a considerable quantity of information about public affairs because they have a high need for orientation. Some individuals are situation-specific information seekers because there is an immediate decision to be made—those high-need-for-orientation people in the election example presented or many of the voters who went to the polls in Austin, Texas, to say "Yes" or "No" about light rail.

Other information seekers have an abiding, long-term interest in some aspect of public affairs. In *"The American People and Foreign Policy,"* Gabriel Almond called this group the "attentive public." These are persons with high interest in an issue, considerable knowledge about the issue, and a pattern of regular acquisition of new or additional information about the issue. Similar attentive publics have been identified for a variety of other topics.

There also is evidence of a general attentive public, that is, information seekers who routinely cast their net widely in the daily news report. Among the members

of this public, there is a systematic and cumulative progression through three or four categories of information in the daily newspaper. From the broad array of national and international news typically found on the front page and in the first section of the newspaper, this general attentive public moves on to reading local governmental news, then to other political news. If we define this general attentive public as those persons who regularly read all three of these types of news, it is about one in four or five members of the community.

If we add reading the editorial and op-ed pages to our definition of the general attentive public—in other words, increase the requirement to regularly reading four types of news—then this public is about one in six or seven members of the community. Most individuals who immerse themselves this deeply in the daily newspaper also make extensive use of television news.

Another public consists of monitors, those individuals who monitor or scan the ongoing stream of news for information specifically relevant to them and their lives. These individuals generally are satisfied with knowledge *of* the issues of the day rather than detailed knowledge *about* the issues of the day. Monitors become an attentive public only when an issue with rather immediate consequences for them moves onto the community or national agenda, something they see as a threat or an opportunity. Schudson observed that this public based on a strategy of monitoring now has displaced the information-seeking public as the majority public.

Although there is a long-running debate about whether the information seeking public ever was the majority, there is considerable contemporary evidence that monitors, persons with only a moderate need for orientation about public affairs, now are the modal public.

For example, there is the pattern of declining levels of newspaper reading and television news viewing already noted in this chapter. For newspapers, this decline is largely the result of frequent readers, those who regularly read a daily newspaper on four or five weekdays, becoming occasional readers, those who read a daily newspaper only a few times each week.

Large numbers of persons formerly with a high need for orientation now have only a moderate need for orientation. When the entertainer Eddie Fisher, by divorcing Debbie Reynolds and marrying Elizabeth Taylor, revealed himself as someone likely to test the attentiveness of the public with a string of wives, *New York Times* columnist Russell Baker says he realized for the first time that "there might be a lot of things that were not worth keeping up with.

This, " he explains, " "was a moment of liberation. " … Will ignorance of the exact cause of death, of the subcommittee's vote, or of the names of Eddie Fisher's wives come to be seen as a sign of a disciplined resistance to the blandishments of the current noise?

Additional evidence that many persons are satisfied with no more than a moderate need for orientation is found in analyses of how people reach their voting decisions. A simple calculus based on a few orienting cues is sufficient for many: how a candidate stands on one or two issues that an individual finds particularly relevant or the images of the candidates based on a handful of attributes.

"Low-information rationality, or 'gut' rationality, best describes the kind of practical reasoning about government and politics in which people actually engage, " concluded Samuel Popkin in *"The Reasoning Voter."*

A third public, onlookers, is those persons for whom civic life has little personal relevance. These are the individuals with a low need for orientation, persons for whom the daily newspaper and television news may be more of a pleasant distraction and source of entertainment than a source of orientation to civic life.

Many of these persons are registered to vote, but they do not appear at the polls with any regularity. The fact that onlookers do make some use of the news media and do appear at the polls from time to time is cause for a degree of optimism. Onlookers are potentially reachable—and will become participants in public life—if the news agenda strikes a resonant chord.

Finding those resonant chords for all three of these publics means that journalists must be more than creators of interesting and compelling stories based on the traditional news values of journalism. Journalists must be communicators who are concerned about the effects—and especially, the lack of civic effects—of their messages on the public.

More specifically, journalists and news organizations need to work at tailoring their messages to reach all three publics.

One strategy used by many newspapers is to use summary boxes and graphics to highlight the key aspects of major news events, then present all the details in lengthy, more traditional stories.

The boxes and graphics service the monitors and might even entice the onlookers. Detailed stories serve the information seekers.

Online news sites can reach these disparate publics with attractive home pages and summaries complemented with hyperlinks that can take the audience deeper and deeper into the aspects of the topic about which they want more knowledge.

THE ETHICS OF SETTING AN AGENDA

Daily and hourly decisions about the media agenda—what to include and how to play it, as well as what to omit—are among the most important ethical questions in journalism. Is the media agenda a valid effort to provide what the public really needs to know? One way of proving that the media agenda does provide what the public needs is to explicitly identify the civic utility of a news story.

An exercise that has proved useful in undergraduate journalism courses is one illustration of this idea of civic utility. For the first part of the exercise, the students cover three or four meetings of the city council and write their stories. Typically, these rather lengthy reports are a condensed "rearranged minutes" version in which the items on the agenda of the council meeting are reordered to reflect their news value rather than the chronological order in which they were taken up by the city council. For the second part of the exercise, the students

select their best city council story—best in their own opinion, not necessarily the one that received the best grade. For each item covered in that story, written answers are required to each of these questions:

Who in particular among the general public is the primary audience for this item?

Why would they want to know/need to know about this?

On the basis of the answers to the first two questions, does the story contain sufficient relevant information? Too much marginal or irrelevant information?

Finally, the students rewrite their story on the basis of their answers to these questions. To put the matter in abstract terms, the students are asked to critique the civic utility of their reporting, and if they find it deficient, which they nearly always do, to produce an enhanced version. In some instances, the outcome of their critique is to shift substantially the prominence of an item on the media agenda. In other instances, the outcome is a change in the framing of the item or the addition of other aspects of the item to the news story. All these changes have important implications for what the public can do with information provided by the news media about their city council's actions.

This same kind of critique can be applied to other kinds of public affairs reporting and in an election year, particularly applied to how the interminable presidential campaign is covered. For decades, about one-third of the coverage has been devoted to the key issues of the campaign and the candidates' positions on these issues.

This leaves about two-thirds of the coverage devoted to spot news about the campaign and its hoopla, to speculations about who is leading the horserace at that moment and is likely to win, and to analyses of campaign strategy and similar information that Joan Didion described as "insider baseball."

During all these decades that issues have been relegated to a minority position in the news coverage, the issues also have been framed largely in negative terms as polarized and frozen opinions on which there is little common ground and little possibility of finding any.

Only rarely has this been a realistic account of the situation. In more recent decades, coverage of the candidates also has become increasingly negative. How much civic utility does all this information have? Vast amounts of money go into election-year coverage. What is the public dividend from that investment?

Of course, there are many other even more glaring examples in recent years of poor civic investments by the news media. A multitude of news organizations collectively spent tens of thousands of dollars camped out in front of Richard Jewell's apartment in Atlanta.

It is doubtful that the public gained an iota of information that it needed to know from this harassment of a man falsely implicated in the 1996 terrorist bombing at the Atlanta Olympic Park. Other names that are familiar from their appearance in the centre ring of a media circus are Elian Gonzalez, Monica Lewinsky, the Mendez brothers, O. J. Simpson, and U. S. Rep. Gary Condit. The list is long.

Journalism is a distinct form of mass communication precisely because it has a social responsibility for the nation's and the community's civic health. With the appearance of ever-larger media and communication companies, there has been considerable discussion about how the line between news and entertainment has become blurred and indistinct. Against this backdrop, Ed Fouhy warned one group of newspaper editors:

If we do not change, we stand a very good chance of becoming increasingly irrelevant, except as another form of entertainment where there are already many more attractive forms of entertainment. The "change" that Fouhy had in mind was in enhancing the relevance of the news to the audience and public life. The declining audiences for news in all its forms—newspapers, national television and local television—underscores the need for change called for by Fouhy. But even among members of the news audience with considerable interest in the news, interest coupled with a strong belief in a civic duty to keep up with the news, there has been a dramatic decline in their attention to daily newspapers, network television news and local television news.

Access to the Internet and its myriad sources of news and information has stemmed, at best, a small proportion of this declining attention to news. Audience members complain that much of the news has little relevance for them as individual members of the public, and critics complain that much of the news does little to facilitate the process of democratic government at either the local or national level.

Public journalism with its call for journalism to make public life go well has proved highly controversial. Why the controversy? Isn't this call an explicit statement of journalism's longstanding implicit beliefs about its responsibility to serve the needs of the public?

5

Balancing Community Interests and Individual Rights in Legal Systems

While the legal systems in Canada and the United States share a similar tradition in English Common Law, their judicial and political approaches are different in important ways. For example, while their founding documents have some similarities, they reflect important differences in values and priorities. The American Declaration of Independence and its commitment to "Life, Liberty and the pursuit of Happiness" is contrasted to the British North America Act with its emphasis on the "Peace, Order and Good Government" of Canada. The former reflects an individualistic, antigovernment theme, while the latter reflects a trust in government and ambivalence towards personal freedom.

Lipset and Pool explain that while both nations seek to protect the rights of the individual while promoting and protecting the general welfare of the community, they "strike different balances, with Canada tipping towards the interests of the community, and the United States towards the individual."

Similarly, the formal statement of the constitutional guarantees for freedom of expression in Canada differs from that found in the American Bill of Rights. In the United States, these guarantees are found in the speech-press clause of the First Amendment to the Constitution. The language is quite specific in stating that "Congress shall make no law... abridging freedom of speech, or of the press." U.S., court interpretations have largely held in favour of promoting individual rights, both of citizens and of the press, against directly promoting interests of community or the broader societal good. In Canada, on the other hand, Section 2(b) of the Charter of Rights and Freedoms provides that everyone

"has the fundamental freedoms of thought, belief, opinion and expression, including freedom of the press and other media of communication." This more positive affirmation is qualified in a manner that supports the broader community or societal interests through Section, which guarantees these freedoms but "subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society."

Despite these fundamental differences in the form and approach to press freedom and other basic rights in the two countries, an important emerging similarity is the expanding role the courts in Canada must play in defining and applying these protections. While this has long been the case in the United States, it is increasingly the case in Canada since enactment of the new Constitution in 1982 with its entrenched Charter of Rights and Freedoms. Even in light of the Charter's provisions for parliamentary or legislative exceptions to these guarantees, it is ultimately left to the courts to determine what are "reasonable limits prescribed by law" that can be "justified in a free and democratic society." Just as the Supreme Court in the United States long ago established that the determination of what constitutes appropriate government limitations on freedoms "is clearly a judicial responsibility, not a legislative one." The new Charter has given to judges, and ultimately the Supreme Court of Canada, "the responsibility for weighing the merits of the conduct of elected bodies and governmental officials, both legislative and administrative, against the constitutionally protected elements of liberty."

Balancing the Interests of Government and the Media

Several important provisions in the Canadian Charter of Rights and Freedoms give legislative bodies, both federal and provincial, authority to define the scope of these and other fundamental rights and freedoms specified in Sections 2-15. Section 2 provides for fundamental freedoms of religion, speech, press, assembly, and association while Sections 7-15 enumerate various legal and equality rights such as life, liberty, and security of person, search or seizure, and proceedings in criminal and penal matters. In particular, Sections 1 and 33(1) define the role of federal and provincial governments in balancing these fundamental rights against the broader needs and interests of society. The language of Section 1 requires that any legislative action limiting the basic rights and freedoms guaranteed in the Charter must satisfy three general requirements. First, it must be a reasonable limit on the right or freedom being affected. Second, it must be demonstrably justifiable. And third, it must reflect the values of a free and democratic society.

In 1986 the Supreme Court of Canada identified two central criteria that must be satisfied in order to establish that a limit is allowable under Section 1. First, the objective must be "of sufficient importance to warrant overriding a constitutionally protected right or freedom." Second, once such an objective is recognized, "the party invoking s. 1 must show that the means chosen are reasonable and demonstrably justified."

The Court elaborated on this second criterion in R. v Whyte by explaining that a "proportionality test" must be met to show that the measures are reasonable and demonstrably justified. The three parts of this test are: first, the measures must be carefully designed to achieve the objective of the legislation, with a rational connection to the objective; second, the measure should impair the right or freedom as little as possible; and, third, there must be proportionality between the effects of the impugned measures on the protected right and the attainment of the objective.

The Supreme Court of the United States has constitutionalized a major part of defamation law. Before 1964 and the Court's decision in New York Times v Sullivan, the Supreme Court had considered defamatory publication to be outside protection of the First Amendment. With that decision, however, the Court ruled that the principle of "strict liability" would not apply to elected public officials seeking to recover damages for civil libel. Instead, they would have to meet a new national, uniform standard of fault by having to prove "actual malice", which Justice Brennan, writing for the Court, defined as publication "with knowledge that it was false or with reckless disregard of whether it was false or not."

Canadian courts have not adopted this approach to the civil defamation. In a recent case, Hill v Church of Scientology, the Supreme Court of Canada was asked in arguments by the appellants to adopt the actual malice rule from the United States, but the Court declined. Justice Cory, writing for the majority, reviewed the development of this standard in the United States, including critiques of the actual malice rule, and explained how the courts in England and Australia had refused to adopt it. He concluded that "None of the factors which prompted the United States Supreme Court to rewrite the law of defamation in America are present in the case at bar." His conclusion was that "the common law of defamation complies with the underlying values of the Charter and there is no need to amend or alter it."

Earlier in his opinion, he refused to separate an individual's public and private rights to recover damage to reputation. "The fact that persons are employed by the government does not mean that their reputation is automatically divided into two parts, one related to their personal life and the other to their employment status.

To accept the appellants' position would mean that identical defamatory comments would be subject to two different laws, one applicable to government employees, the other to the rest of society. Government employment cannot be a basis for such a distinction. Reputation is an integral and fundamentally important aspect of every individual. It exists for everyone quite apart from employment."

In the end, by continuing intact the English common law tradition in civil defamation, the Canadian Supreme Court keeps Canada more in line with other Western democracies, which set themselves apart from the American tradition that grants considerable protection to the news media to comment on government

and criticize public officials and public figures with less fear of being successfully challenged under libel law. When the Canadian Court specifically rejected the American approach in its decision in Scientology, it did so out of respect for the tradition of common law, the proper role of the legislature in these matters, and the fundamental right to reputation over freedom of expression.

Neither Canadian nor American courts have been willing to grant journalists the same common law privilege from having to testify as is provided for doctor-patient, lawyer-client, and priest-penitent communications. In both countries, the general rule is that journalists will not be offered absolute protection from having to disclose the identity of a source or confidential information if it is considered relevant and necessary. The U.S., Supreme Court's 1972 decision in Branzburg v Hayes dealt specifically with the application of a First Amendment protection for journalists from having to testify when confidential sources or information is involved. Most significant was the dissenting opinion by Justice Stewart who offered a three-part test that is used in state and federal courts in applying federal or state common law protection or statutory protection under a state "shield" law. The test requires: first, there is probable cause to believe the journalist has relevant information; second, that the information sought cannot be obtained in another way less injurious of the First Amendment; and, third, that there is a compelling and overriding interest in the information.

In Canada, the issue of journalist's privilege had not been dealt with by the Supreme Court until 1989, when it decided a case similar in many ways to Branzburg v Hayes. In Moysa v Alberta (Labour Relations Board) a reporter for the Edmonton Journal refused to identify her sources of information, claiming confidential privilege protection under common law and the Canadian Charter. The Court affirmed the decision of the two lower courts that the reporter in this case had no special privilege to refuse to testify before the labour board. While the Court did not feel compelled by the facts of the case to address the "broad and important constitutional questions" before it, Justice Sopinka in his opinion for the majority did refer to an earlier pre-Charter decision when the Court acknowledged the four criteria cited by Wigmore for when a motion for confidential privilege should be granted. It is likely that the Wigmore test will play an important role when and if the Court is presented with the right case requiring a consideration of the constitutional questions not addressed in Moysa. However, from Justice Sopinka's opinion, news media appellants can expect to have to establish with evidence that a direct link exists "between testimonial compulsion and a `drying-up' of news sources."

THE NOTION OF MEDIA DIVERSITY

There has been a thorny division over basic media policy. This division reflects differences over whether market or governmental processes best achieve crucial communications policy objectives. The social or public school of thought assumes that government intervention is a necessary condition to expose people to the widest range of views and opinions, whereas the market model asserts

that supply and demand provide for this more efficiently. The latter even asserts that conditions of free competition outweigh the dangers of government control of information. Resolving these policy challenges is extremely difficult at a time when media technologies and distribution systems are multiplying and when there is little consensus about basic values across international borders.

Blumler has performed a heroic task in noting values at stake amidst the commercialization trend in European broadcasting.

He identified these "vulnerable values" as programme quality, diversity, cultural identity, independence of programme sources from commercial influences, integrity of civic communication, welfare of children and juveniles, and maintenance of standards. I will focus on one of the values identified by Blumler, diversity, for three reasons.

First, media diversity is a broad concept with many dimensions: plurality of content, access to different points of view, offering of a wide range of choice, geographical diversity, *etc*. It thus encompasses pluralism of many kinds: regional, linguistic, political, cultural, and in taste levels. A focus on diversity thus promotes an understanding of social benefits that need to be preserved if the media are to support democratic life.

Second, diversity is said to be the most vulnerable value at stake in the concentrated and deregulated European media industry. Many studies that have sought to evaluate whether diversity is threatened or strengthened by media concentration justify this assumption. Third, media diversity has not only been a longstanding goal of all democratic states, but the belief in it has united many schools of thought.

Indeed, where the social and market schools of thought come together is in their shared assumption that diversity should be a primary goal of communications policy. Although they disagree on what diversity should be and on how to achieve that desirable goal, they both argue initially that societies must allow citizens to have access to a wide range of information, which is seen as a precondition for free expression of alternative opinions on any public controversy.

Diversity of Ideas. Examining the media performance in democratic societies, McQuail argued that the notion of media diversity extends beyond political theory: "It is a broad principle to which appeal can be made on behalf both of neglected minorities and of consumer choice, or against monopoly and other restrictions." He pointed out, though, that national media systems place different emphasis on these policy aims.

Indeed, as Brennan's work revealed, the Federal Communications Commission (FCC) policy in the United States attempted to encourage diversity both by increasing consumer choice and by ensuring, through the Fairness Doctrine, that a wide range of views has access to the media.

Referring to the traditional European public service broadcasting model, Hoffmann-Riem argued that "the public service philosophy of broadcasting... is oriented towards the accessibility of pluralistic information for citizens and

society rather than the freedom of expression of communicators. Diversity of programme content, accessible to all segments of the audience, must be established and safeguarded." This definition makes it clear that media diversity is not simply a matter of the number of information channels, but also of who controls these channels, of media content, and of accessibility of the media. Diversity of Products. In recent years in Europe, the notion of diversity has come to refer not only to political and socio-cultural differences but it has been extended to include the marketplace concept of diversity of products available to viewers/listeners. The causes of such shift of emphasis is the relative channel abundance together with the trends towards deregulation and commercialization. There are, among others, two distinct definitions of diversity, that of idea diversity and that of product diversity. The former, as already indicated, suggests that a variety of thoughts, analyses, and criticisms on issues of social and political importance improve society. The latter is defined as the "range of variation in product attributes that are available (or potentially available) in a particular product or service." Most economic analyses of diversity focus on firms' competitive strategies, as reflected in the variety of products they offer, and on the implications of those offerings for economic efficiency.

Product diversity is believed by market-oriented analysts to accomplish idea diversity and create the climate for alternative viewpoints in the media. However, analysts who press the social value case argue that effective competition, which leads to economic efficiency, does not necessarily perform well with respect to social objectives, and therefore product diversity does not always produce sufficient idea diversity.

Issue, Content, Person, and Geographical Diversity. A broader definition of media diversity has been provided by Hoffmann-Riem who, referring to the broadcasting scene, has distinguished four dimensions of diversity. He argued that there must be diversity of formats and issues, meaning that all the various fields and topics (*e.g.*, entertainment, information, education, and culture) have to be taken into account. Second, this should be complemented by a diversity or plurality of contents.

This means that programmes, taken as a whole, should provide comprehensive and factual coverage of the different opinions expressed in a society. Third, person and group diversity must exist. Programmes have to cater for the interests of all parts of the community by providing access and representation. Finally, HoffmannRiem pointed out that broadcasters should include local, regional, national, and international content. Therefore, a programme has to ensure that issue, content, person, and geographical diversity is provided.

External and Internal Diversity. In order to assess diversity in relation to media concentrations, one also needs to distinguish between external and internal diversity. The former, according to Dennis McQuail, refers to media structure because it is related to the idea of access. It relates to the degree of variation between separate media sources in a given sector, according to dimensions such as politics, religion, social class, *etc.* In most societies, there are many

separate and autonomous media channels, each having a high degree of homogeneity of content, expressing a particular point of view, and catering only to its own "followers."The latter, McQuail adds, refers to media content and connects with the idea of representation or reflection mentioned above.

It relates to the condition where a wide range of social, political, and cultural values, opinions, information, and interests find expression within one media organization, which usually aims at reaching a large and heterogeneous audience. A particular channel might be assessed according to the degree of attention given to alternative positions on topics such as politics, ethnicity, and language.

In short, there are many conceptual distinctions of the term "media diversity, "including diversity of access, diversity of choice, balance in the presentation of news, linguistic and geographical diversity, internal and external diversity. However, two subconcepts of diversity, that of access and choice for the audience, are the two notions that have been placed high on the agenda of regulators and policymakers when considering media concentrations.

Regarding diversity of access, the key question is whether the possibility of establishing new media companies leads to the situation where all legitimate interests in a given society have an equal (or proportional) share of access to media channels. Regarding diversity as choice, the key question is whether an increase in channels actually leads to greater choice for the audience.

MEDIA DIVERSITY, CONCENTRATION, AND THE FREE MARKET

Having conceptualized the term "media diversity," I now turn to the question of which kind of media structure encourages this desirable goal. Two polar models claim to best promote the diversity principle: that of public policy and that of market. The former views state regulation as essential to ensure equality of information access and expression, while the proponents of the latter assume that an unregulated market in communication goods and services can provide for this. A combination of technological and political change gave the market theorists a degree of currency.

On the political side, a continuing debate has questioned established ways that broadcasting systems are organized and run. On the technological side, the availability of satellite TV and local and interactive cable television systems have created alternative structures and processes of communication. These combined forces created a desire and an opportunity for change and experimentation.

Undoubtedly, the technologies of VCRs (video-cassette recorders), cable, and satellite TV (now boosted by signal compression) have widened the viewer's choice of programme and time. New distribution systems have also encouraged professional communicators to seek profitability by identifying market niches and serving audiences neglected by other media. The proliferation of thematic, narrow-cast, specialized channels has been said to promote the birth of "personal media," allowing viewers to select content precisely attuned to their needs.

The new advertising-financed media systems are able, in theory at least, to increase consumer choice and to target audiences on the basis of tastes. However, the growing number of new delivery systems and the competition with each other resulted in a fall in each channel's advertising revenue. The search for other funding has led to the development of subscription and pay-per-view television. Subscription television (that is, TV programmes sold directly to viewers for a monthly payment to the broadcaster) is said to create a direct contractual link between the viewers and the broadcasters, allowing viewers to express their preferences for the type of programmes they want in such a way that broadcasters will notice and react.

Increasingly, the consumer now has a direct link with the supplier of media services either through the price system or through the computing power of interactive systems. However, since not everyone would be able or willing to subscribe to pay-TV services, the increase in the number of pay-TV channels will in no way reduce the need for traditional off-the-air commercial or public channels. European public broadcasters, in particular, with their internal pluralistic structure and their availability to the entire public, are a key factor for ensuring diversity of opinions and accessibility.

Concentration Trends. On the contrary, the model described above is basically the model of external diversity in which diversity of content is provided by separate media. For this reason, this model is exceptionally good at providing numerical diversity (*i.e.*, a large number of newspapers, radio and TV stations, satellite and cable channels, *etc.*), provided that the market can sustain them.

However, this situation naturally favours concentration of media capital and ownership. Indeed, merger and acquisition activity increased significantly after the deregulatory wave of the 1980s. For example, these mergers and acquisitions in the communications industries around the world occurred in the late eighties: the acquisition by Sony (the Japanese firm) of CBS's record division; General Electric's takeover of the U.S., TV network NBC; the purchase by Bertlesman (the German firm) of the Doubleday book company and RCA records; Maxwell's takeover of the New York publisher Macmillan; Murdoch's acquisition of the Twentieth Century Fox film interests, to name but a few.

These trends continued in the 1990s. in August 1995, the U.S., TV networks ABC and CBS were acquired by Walt Disney Company and the industrial group Westinghouse Electric Corporation respectively.

In September 1995, Time Warner Inc. and Turner Broadcasting System Inc. (owner of CNN) were merged with the resulting company being the largest in the world media sector with revenues of more than $20 billion at the end of 1995. The January 1997 merger between Luxembourg-based CLT and Ufa (Bertelsmann's audiovisual arm) has created Europe's largest TV operator, with annual sales of $3.1 billion, and with broadcasting outlets stretching from Germany to Benelux and from France to the United Kingdom. Similar practices are observed in the telecommunications sector (consider, for example, the proposed merger of equals between Deutsche Telekom and Telecom Italia to

form a new company, leading to the creation of Europe's premier global telecommunications entity, with a combined market capitalization of $173 billion in April 1999). But even in the press industry, which has been subjected to mergers for two decades in Europe and almost for a century in the United States, merger activity has intensified.

Consider, for example, the blockbusting $14 billion merger between Reed Elsevier and Wolters Kluwer, which has created the largest professional and scientific information group in the world. The most striking point, though, is the tendency of enterprises from different sectors for forming alliances.

For instance, the two biggest U.S., long-distance phone companies, AT&T and MCI, have struck deals to get into the new world of digital satellite broadcasting. The $9 billion purchase by Walt Disney of Capital Cities/ABC-which also owed much to deregulation-showed the barriers crumbling between Hollywood and the television networks.

Concentration as a Safeguard to Diversity. Concentration of control of media ownership is not necessarily a threat to the diversity of information. At a time of free trade and free movement of capital (as within the European community, for example) and globalization of media operations, it is argued that media concentration may be needed to ensure the emergence of financially strong companies able to take part in international competition and prevent the domestic market from being taken over by foreign media.

The development of European groups operating on an international level, for instance, both can be beneficial for the dissemination of ideas and can enable European undertakings to face competition from big non-European units which benefit from economies of scale due to their market and size. In certain circumstances, concentration enables economies of scale to be achieved and production costs to be amortized through access to a wider audience and expertise; such concentration places undertakings in a better position to face competition from other media. Big, highly concentrated units normally have the capital, management, and research and development capabilities allowing them to overcome high barriers to market entry and establish new media outlets. Big media groups may promote diversity simply as a business strategy, for example, by diversifying their media outlets and establishing new titles, and radio and TV channels.

By doing so, they may facilitate the introduction of new technologies and new services. They may also support diversity by launching newspapers targeted to diverse publics with the goal of increasing profits. This creates a possibility for the publication of newspapers or new projects intended for minorities, or even projects which are not directly profitable but which contribute to political/cultural diversity. Large groups may also encourage diversity by cross-subsidizing low-profit media. By saving certain newspapers in danger of closing down, they both maintain a diversified supply and safeguard employment. A last positive aspect of media concentration might be that it can guarantee the autonomy of editorial groups visa-vis advertisers and political power.

Concentration as a Threat to Diversity. All these are appealing theoretical arguments, but the simple fact is that so far concentration of media has not resulted in a more critical media serving the public interest. Concentration, internationalization, and commercialization have resulted in more emphasis on profitability than on cultural quality. This is not surprising, nor is it an unnatural response from market-driven institutions.

As a result of the increasing demand for profits, advertising-financed media are increasingly aimed at a mass audience. Media receiving direct consumer payments are more sensitive to intensities of consumer preference. However, the consumer usually is not allowed to choose, but must purchase delivery in "package" form.

Rupert Murdoch used such a strategy in BskyB. In addition, with the multiplication of pay-TV channels, the accessibility and control over encryption and conditional access systems becomes crucial. New channels will not normally be able to introduce a new system, but they will have to utilize the existing one which has the greatest market penetration. Potential monopoly control of conditional access systems and other "gateways" such as electronic programme guides represents one of the newest threats to diversity.

The Free Market Model Stifles Diversity. The question that has been long with us is whether the new media structures actually translate into more choice for people, disseminate more cultural and political ideas, and therefore strengthen democracy. It is often argued that multi-media empires tend to minimize debates over political and cultural ideas and neglect the creative application of media technology to explore multiple representations of social reality.

Indeed, in a purely market-driven system, more media outlets do not necessarily ensure increased public argumentation and rational discourse. On the contrary, multiple outlets create additional ways to address people as consumers.

As Nicholas Garnham has put the matter convincingly, “the economy and the polity have different values. Within the economic realm, the individual is defined as producer and consumer exercising private rights through purchasing power on the market in the pursuit of private interests. Within the political realm, the individual is defined as a citizen exercising public rights of debate within a communally agreed structure of rules and towards communally defined ends. But political communication that is forced to channel itself via commercial media becomes a politics of consumerism. “

In this respect, there is some reason to believe that media commercialization and more media outlets may not upgrade or strengthen the space for political and social discussion. Empirical evidence from the United States, which was the first country that reduced public control over mass media, may justify this assumption. Lessons from the United States show that commercial media firms may not bring new creative options to the public; instead, they may be oriented towards “mass appeal” programming. One cannot, of course, argue that the current plethora of talk shows, initially introduced in the United States and now

part of almost every European commercial channel's programming schedule, actually provide a broad spectrum of critical political debate. Media analyst Ben Bagdikian used the trend to "infotainment"-the presentation of news as bland light entertainment designed to sensationalize-as evidence to show that there is little room for artistic expression and risk-taking when cost saving and commercial viability are the prime considerations.

Market incentives may not be adequate to provide the optimal level of cultural and political diversity. They may not lead to the provision of a wide range of products to satisfy heterogeneous consumer tastes. This is partly because of the high cost levels of domestic audio-visual production, which has led broadcasters especially in small countries to the solution of importing cheap and often low-quality programmes. The high costs of producing original programming have also led to the situation where products are constantly reproduced, in the sense that a broadcast programme can be seen as a story or feature in a newspaper, magazine, or evenbook.

Cultural industries are very much dependent on product innovation and therefore spend huge amounts of money for research and development. But because the launching on the market of a new product for which demand is uncertain involves high risks, a strategy that has been adopted to realise value is economies of scope, that is, the controlling of a range of products for a range of market segments or audiences. This, however, does not really increase choice since the product offered is the same but in a different format.

Finally, due to the near-absence of price competition throughout the cultural industries, companies tend to locate themselves as close as possible to one another; they tend to locate "where demand is," and therefore to offer similar products.

If, say, there are only two firms competing on price in a given market, they will have an incentive to locate themselves as far as possible from each other on the product line, and thus to offer as diverse a product as possible, both in terms of product variety and quality. Proximity of location would mean that prices are gradually eroded as the firms compete for each other's business. But in situations of nonprice competition, where there is no interdependence of the two firms' pricing decisions, the firms are bound to locate "in the centre of the market," because there is no incentive for product differentiation.

There is an undue tendency then for competitors to imitate each other and to converge on tried-and-tested formulae." This poses a potential danger to welfare in terms of the variety of products offered by a given market because some segments of tastes and preferences will not be catered for. One could argue that as barriers to entry in broadcasting gradually decline due to digitalization and compression of the signal, new players enter the market, and price competition in broadcasting intensifies due to the expansion of pay-TV, there will be less of an incentive for firms to locate themselves in the "centre of the market."

There will be instead an incentive to locate further away from each other as such location becomes "saturated," and satisfy "niche" markets, which means

that a range of differentiated products will be supplied. Nevertheless, the technology of pay-TV has not yet created effective price discrimination between programmes. As for digitalization, which greatly expands the bandwidth, it remains to be seen whether it will lead to the situation where a wider range of individual preferences are satisfied.

However, a pessimistic view may be justified if one considers cable, once described as the "technology of abundance." Cable's capacity to carry huge amounts of information and potential of two-way broadcast communication were cited as "revolutionary" because both neglected voices could find expression through that new medium and interactive communication could alter the nature of broadcast communication itself. However, there are severe limitations on the current cable industry's ability to provide diversity of sources and viewpoints on issues of public concern.

Those limitations lie in the conditions of commercial TV programming and in the current structure of the cable industry. The logic of commercial production has shaped most cable operators, and ownership has increasingly centralized in fewer hands. It could not be otherwise since, for local cable channels to survive in an extremely competitive environment, they had to make alliances.

Nowadays, local and even national cable systems are part of international systems of communication in an increasingly international setting. But cable's current industry structure discourages diversity of sources and perspectives and leaves almost no opening for use of the system as a public space. Yet only on the local communication system, be it cable or radio, can participatory forms of communication exist.

The more national, international, and concentrated the technology of communication, the less the potential for local, participatory, or access communication; similarly, the more commercial and concentrated the organization of the medium, the less the likelihood that forms of local, participatory, or access TV will play an important part in increasing diversity of opinions.

This chapter started by offering a definition of the loosely constructed term "diversity" in communication and by providing a discussion of media-particularly broadcasting-regulation on"media diversity" grounds. The central question is whether regulatory intervention in a "free market" can be justified on "media diversity" grounds. What might have become evident is that the market system, which is based on the free operation of supply and demand, has not provided either better access for all "voices" or content that satisfies all interests.

Since the market model encourages the proliferation of channels and new audience markets, it can lead to increased numerical diversity, that is, more channels and theoretically more consumer choice.

The quantitative diversity of variety of channels, however, does not necessarily provide qualitative diversity of media content. In other words, "there is a big difference between media pluralism and message pluralism and we must be careful not to confuse media abundance with media diversity."

The most significant disadvantage of the market system, however, is that it encourages concentration of ownership, partly due to high basic costs of access to the media, partly due to the ability of powerful enterprises to penetrate any market and achieve "synergies," and partly due to high costs of research and development. A process of global vertical integration leads to large software media industries being taken over by large electronic hardware companies or sometimes by trading companies which have no prior media history at all. These media software firms have already grown by horizontal integration, absorbing other firms as they grow, crossing the boundaries of existing media.

Often the most vulnerable to takeover are successful local or thematic media which attempt to be innovative and responsive to their followers. In the United States, where a small number of companies control the national broadcasting market and where press monopolies are the norm rather than the exception, we find the fiercest critics of media concentration.

These critics stress that the oligopoly control and "depoliticization" of content we witness within private broadcasting institutions are far from the liberal ideal of a free marketplace for ideas. Such results simply show that the proponents of deregulation are mostly concerned with deregulating ownership, and not in increasing the diversity of content.

It is essential for scholars to form communities in order to share their perspectives on the phenomena they study, develop conventions about how to study them, and share the insights they generate.

Periodically, it is important for scholars in a community to take stock of what they do so they can observe patterns in the direction a community is headed and assess the pattern of findings that forms the context for their thinking. This study profiles the mass media effects literature by examining published articles in terms of media studied, type of content, use of theory, method, and type of effect.

RATIONALE

According to So, "self reflection is a mark of maturity," and a field's maturity requires periodic examinations of its scholarly activity. It is important to trace the movement of ideas through the "invisible college" to see where ideas come from and which scholars and fields are being influenced by them. Self-examination is also important from a practical perspective, so we can track patterns in our literature and make better decisions about what research needs to be designed next. Kamhawi and Weaver argue that when viewing a literature "from a distance, one can discern larger patterns and trends in mass communication research. Knowing them can help researchers and students identify areas of strength and weakness, and of abundance and scarcity, in the research."

In 1979, Lowry observed that "for the most part, communication researchers have neglected to conduct systematic studies of their own output," a serious shortcoming because such studies can draw attention to what is emphasized in

a field and what is ignored. In the intervening years, researchers have addressed this shortcoming, with studies generally falling into two groups: bibliometric studies and content analysis studies of the characteristics of the published research. Bibliometric studies examine citation patterns to determine which authors, studies, and journals rely on the ideas of other authors, studies, and journals. For example, Reeves and Borgman studied citations in nine core communication journals and found communication scholars dependent on journals outside of communication.

Communication journal articles exhibited five citations of other journals for each citation they received. Rice, Borgman, and Reeves found three clusters of journals and citations: interpersonal, mass media, and residual isolated journals. Rice *et al.* supported the conclusion of So in their bibliometric analysis of forty years of the Journal of Broadcasting and Electronic Media, finding a greater percentage of citations from core communication journals after 1985 compared to citations in articles before 1985.

This body of bibliometric research suggests that there is a "field identity" growing over time, with the balance shifting slowly to self-citation from out-of-field citation, and communication journal studies increasingly being cited in other social science journals. Also, authors of mass media studies published in core mass media journals are likely to cite the core journals and other social science journals, but not other communication journals. Not all bibliometric studies conclude that the field of communication is developing its own identity. So found that "communication currently still depends heavily on psychology for its intellectual input.

This situation does not differ much from that in the first half of this century, when communication research was basically a spin-off from psychology." He observed that there "are indications of gradual development in the field," but that "in comparison with other social science fields, communication is still less developed and occupies only a peripheral position in the ecology of knowledge."

Content analyses studies, on the other hand, examine characteristics of published research to determine practices common among researchers. Some analyse research in only a single journal. Others focus on only one medium. Each of these studies has contributed a valuable insight to the building of a complete picture of the nature of mass media research.

This study content analyses mass media effects studies published in scholarly journals in order to construct a profile of the recent mass media effects literature so we can compare the more recent pattern to older patterns. Also, we will contextualize the patterns we find in terms of how those salient characteristics of the mass media effects literature are likely affecting the development of the research field.

MEDIUM

Research activity seems to have followed development of the different media. In an early analysis of published content, Schramm analysed articles in Public

Opinion Quarterly from 1937 to 1956 and found print media dominated, with 486 articles. Perloff analysed 1,490 articles in Journalism Quarterly from 1955 to 1974, finding that among those articles concerned with a specific medium, 67 per cent involved print media, compared to 6 per cent about electronic media, and 26 per cent related to both. Weaver and Gray found 56 per cent of articles in Quarterly between 1955 and 1974 dealt with print.

Electronic media grew in research importance beginning in the early 1970s. In their analysis of research in Quarterly from 1971 to 1995, Riffe and Freitag found that newspaper content accounted for 46.7 per cent of all content analyses, followed by television (24.3 per cent), magazines (13.6 per cent), and other (15.4 per cent). They do not provide trend analyses but it is likely that the percentage of articles dealing with newspaper content decreased while the number of articles dealing with television increased over that twenty-five-year period.

Such a trend was indeed reported by Kamhawi and Weaver, who found that broadcast media grew in importance to researchers through the 1980s and 1990s, accounting for 42.2 per cent of all media studies at the expense of print, which accounted for 28.7 per cent. They concluded that traditional broadcast and print continued to dominate mass media research, but asked, "Will these media continue to dominate research as we enter further into the 'Internet Age?'" In an analysis of the 961 articles published in five leading communication journals from 1994 to 1999, Tomasello found that only 4 per cent of those articles dealt with the Internet.

TYPE OF CONTENT

While published analyses focus on studied medium, few summarize type of content areas typically studied. One exception is the study by Riffe and Freitag, which found that in published content analyses, 71.0 per cent focused on news/editorial, compared to 10.1 per cent advertising, 7.2 per cent entertainment, and 11.7 per cent visual/graphics/other.

THEORY

Scholars who examine our literatures frequently observe that the use of theory is at a low level and that there needs to be a more explicit use of theory both in the generation of empirical research studies and in the interpretation of results. In an analysis of eight journals from 1965 to 1989, Potter, Cooper, and Dupagne found that only 8.1 per cent of 1,326 articles were guided by a theory and provided a test of that theory; another 19.5 per cent were tests of hypotheses but these hypotheses were not derived from a theory. Kamhawi and Weaver reported that only 30.5 per cent of articles in ten communication journals from 1980 to 1999 specifically mentioned a theory, which led them to argue that "theoretical development is probably the main consideration in evaluating the disciplinary status of the field. As our field grows in scope and complexity the pressure for theoretical integration increases. It seems that scholars in the field should be

developing and testing theories to explain the process and effects of mass communication. However, that was not widely evident in our sample."

METHOD

Exploration of which methods are used most has been a popular topic. A few content analyses of the published literature have focused on whether a study employed a qualitative or quantitative method. For example, Schramm's 1937-1956 Public Opinion Quarterly study found the percentage of articles using quantitative methods growing.

Some examinations of the literature simply count frequency of a method, such as content analysis. Riffe and Freitag focused on methods in twenty-five years of Journalism and Mass Communication Quarterly, reporting that of the 1,977 articles appearing during that period, 486 (24.6 per cent of the total) used content analysis.

Other studies compared method used. Lowry analysed empirical articles published from 1970 through 1976 in seven journals and found 30 per cent used survey, 19 per cent used experiments, and 13 per cent used content analysis.

Also, 42 per cent used subjective reports from respondents, while 21 per cent used observations of behaviour, and 12 per cent used archival records.

Kamhawi and Weaver examined articles published from 1980 to 1999 in ten communication journals, finding that 33.3 per cent used survey method; 30.0 per cent used content analysis; 13.3 per cent were experiments; 4.7 per cent used historical method; 10.3 per cent used other qualitative methods; and the remaining 8.4 per cent used a combination of methods.

TYPE OF EFFECT

Despite the popularity of books and university courses on media effects, it seems only one content analysis of the media literature has looked for the prevalence of different kinds of effects. Cooper, Potter, and Dupagne analysed 1,326 articles published in eight U.S.,-based internationally distributed peer-reviewed journals from 1965 to 1989. About one quarter of them were effects studies-22.4 per cent of them dealt with effects on individuals and 2.5 per cent dealt with effects on society.

Providing a picture of the patterns in mass media effects thinking and research is a very large task. To be conducted in full, it would of course require examination of published journal articles, books, government reports, industry reports, instructional materials from consumer activist groups, theses, and dissertations. Among periodicals, there are likely hundreds carrying mass media effects articles. Nonetheless, we hope to provide a reasonable start based on a counting of published studies in mainstream or "core" scholarly journals, because research journals have been called the "nerves of the discipline" and "the barometer of the substantive focus of scholarship and research methods most important to the discipline." We began by selecting the five journals that have generally been considered the core journals of mass media research by scholars

who have conducted content analyses of the research literature and scholars who have looked at bibliographic citation patterns: Journalism and Mass Communication Quarterly, Journal of Broadcasting and Electronic Media, Journal of Communication, Communication Research, and Public Opinion Quarterly.

To these five core journals we add three more that publish mass media effects research but were too new to be included in many previous analyses: Critical Studies in Mass Media, Communication Theory, and Media Psychology. We added five other communication journals (Human Communication Research, Communication Monographs, Communication Education, Quarterly Journal of Speech, and Mass Comm Review).

Finally we added one journal from advertising (Journal of Advertising), education (Audio-Visual Communication Review, now renamed Educational Technology Research and Development), and political science (American Political Science Review). We examined all issues of sixteen journals published in the odd years between 1993 and 2005. This included 109 journal/years (Media Psychology has been publishing only since 1999). Within each issue, all articles were coded if they involved mass media effects as defined below. We did not code editorials, book reviews, introductions to symposia, or editors' reports, but we did include articles labeled as "Research in Brief" or given similar designations.

In order to be coded for this study, an article first had to deal with a mass media effect. Mass media are defined as the channels of transmitting messages to particular audiences in a way to attract and condition their attention for repeat exposures. Thus, traditional mass media were included-television, radio, film, newspapers, magazines, mass market books, recordings, and the Internet-while telephone conversations, use of computers for e-mail, and the like were excluded.

Second, the authors needed to make some claim or provide some evidence that the mass medium in question exerted some influence or a recognizable effect, whether at a macro (such as an institution, the public, society, the economy) or individual level. Each article was coded for identifying information: journal, year, issue, beginning page, and authors' names. In addition, we coded for five key variables: medium, type of content, theory prominent, method, and type of effect. For each of these variables we began with a list of coding values but during the coding procedure, the coders added values to the list when they felt the beginning lists did not include codes to capture the essence of an article.

MEDIUM

Initial codes included all media, television, radio, newspapers, magazines, books, recordings, film, Internet, new media, and other. If an article seemed to deal with all media without specifying any one in particular, it was coded as "all." If an article mentioned more than one medium specifically, those mentioned media were all coded. For example, a study might be an experiment that compares learning from television vs. newspaper; in this case the study would be coded for both television and newspaper.

TYPE OF CONTENT

We began with three categories of content: news/information, advertising, and entertainment. As coding progressed, several sub-categories were added. During the analysis, however, the sub-categories were too scattered to report frequencies beyond the three categories.

THEORY PROMINENT

This variable essentially had two values: yes and no. In order to be coded yes, the article needed to feature a theory prominently; *i.e.*, if the name of the theory appeared in the article's title, the abstract, or in a heading or sub-heading of the article. The coder also recorded the name of the theory.

METHOD

Values included experiment, survey, focus group, ethnography, history, secondary analysis, meta-analysis, review, and theory piece. During the coding we added values for critical analysis, discourse analysis, textual analysis, and several other qualitative methods. If a study used more than one method, all were recorded.

We also added a code for content analysis. Although content analysis is not a method to generate data for effects directly, there are times when authors use data generated through a content analysis to develop a substantial argument for effects. For example, tests of the cultivation hypothesis require content analyses of patterns in the television world. Some studies conducted content analyses that focused attention more on the presumed effects of content patterns than on the content patterns themselves; however, these studies were atypical.

Another example is a study using a content analysis of newspapers that coded for story topic, use of sources, story tone, and gender of reporter. This at first appeared to be a content study, but the authors' focus was on looking for patterns in the news across gender of reporter in order to make attributions about differential socialization of reporters-thus making it an effects study; that is, how reporters were affected by their news organizations.

EFFECTS

We began with the consideration of whether the unit of analysis for the effect was at the individual or macro level. Individual level codes included attitude, belief, affect, cognition, physiology, and behaviour. Attitudes were defined as evaluations where research participants were asked for evaluations of something, such as political candidates, advertised products, elements in media content, *etc.* Beliefs were perceptions about the reality of something, such as how many people worked in law enforcement, *etc.*

An affective effect is one that shows up as an emotional reaction in the participants; mood states were also included. Cognitive effects are those that focus on changes to a person's factual knowledge or the processing of information.

Physiological effects are those automatic changes stimulated in the body, such as heart rate, galvanic skin response, *etc.* Behavioural effects focus on observable actions of the participants. Macro level codes included effects on the public, effects on an institution, and effects on the media themselves. During the coding, sub-categories were developed to capture the essence of the effects in more detail.

TESTING RELIABILITY

Approximately 10 per cent of the sample was coded by both coders (the two authors of this study) to create an overlap that could be used to test reliability. First the unitizing was tested and it was found that there was agreement 92 per cent of the time with the yes-no decision of whether to include the article (this was essentially a decision about whether the article dealt with a media effect). second, we tested for the percentage of agreement on the codes assigned to the variables for the part of the sample selected by both coders. We used the initial values in the design and not the elaborations to the codebook during the coding process. Percentages of agreement were as follows: medium, 92 per cent; type of content, 91 per cent; method, 91 per cent; type of effect, 88 per cent; and use of theory, 78 per cent.

We identified 962 articles published in the sixteen journals in the seven years examined from the twelve-year period of 1993 to 2005. The journal presenting the greatest number of media effects articles was the Journal of Broadcasting and Electronic Media, which published an average of 18.4 effects articles per year. Eight other journals publish an average of more than 8 effects articles a year. This set of nine journals can be considered core to mass media effects scholarship-accounting for 87.9 per cent of all mass media effects studies we found in our analysis.

While the other seven journals published a substantial number of mass media effects studies (n = 116) and should not be ignored, the primary focus of those journals lies outside of mass media effects research. While Public Opinion Quarterly had been included in samples of many studies of communication literature in the past, it presented only 21 articles dealing with mass media effects over the seven years examined. Media effects researchers are now more likely to publish their research in newer journals (such as Media Psychology or Critical Studies in Media Communication) where mass media effects research is central to the editorial focus.

MEDIUM

Television is the most prevalent single medium examined, accounting for almost 41 per cent of all coded articles. Also, electronic media appear to be more than twice as likely to show up in the mass media effects literature compared to print media. The Internet is becoming more popular as a medium for mass media scholars to examine (12.5 per cent). Tomasello had reported that only 4 per cent of articles published in five leading communication journals from 1994 to 1999 dealt with the Internet.

TYPE OF CONTENT

We grouped content into three types: news and information, advertising, and entertainment. The most common type of content in the recent media effects literature was news and information, representing 33 per cent of studies coded. Studies exploring the effects of advertising content represented 17.8 per cent of the articles coded, and studies exploring the effects of general entertainment content represented 16.4 per cent of all articles. Some studies (n = 100,10.4 per cent) did not focus on a specific type of content. Another subset of studies (n = 208,21.7 per cent) that largely ignored content included studies where researchers asked respondents about reactions to the media in general or their usage patterns by medium instead of content.

METHODS

Quantitative methods dominated in this sample with survey, experiment, secondary analysis, and content analysis accounting for 71.4 per cent of all articles. The single most-used method was the laboratory experiment followed by the in-class survey.

THEORY

Thirty-five per cent of coded articles featured a theory prominently. This figure is higher than found previously. Potter, Cooper, and Dupagne found only 8.1 per cent of their articles were guided by theory, and Riffe and Freitag reported only 27.6 per cent of JMCQ content analysis studies used a theory. Kamhawi and Weaver found theory in only 30.5 per cent of articles they analysed from 1980 to 1999.

We found a total of 144 different theories named in the 336 articles that featured a theory prominently. The theories cited most often were cultivation (representing 8 per cent of the 336 articles that featured a theory prominently), the third-person effect (7.4 per cent), agenda setting (7.1 per cent), and uses and gratifications (5.7 per cent). Only twelve of the theories were mentioned in more than 5 articles; the remaining 132 theories were spread out over the remaining 168 articles that featured a theory prominently.

This indicates a pattern of rather thin theory development. Kamhawi and Weaver found that only three theories (information processing, uses and gratifications, and media construction of social reality) were mentioned in as many as 10 per cent of their analysed articles. Of these, only uses and gratifications showed up as a frequent theory in our study.

TYPE OF EFFECT

Published articles were found in all seven categories of effects. Cognitive effects were the most prevalent, followed closely by behavioural, attitudinal, and macro categories. The cognitive category was dominated by studies that examined the acquisition of factual material during a study, while the attitudinal

category was dominated by studies that looked at what attitudes were formed during a study. Both of these two sub-categories of studies are characterized by experiments where the designs focused on the conditions (by medium or by content type) under which people are affected more by the media.

The behavioural category was dominated by studies that focused on patterns of media use. This literature was less likely to include studies that observed behaviour triggered during the study compared to studies that asked participants to indicate their intentions for later behaviour.

The macro effects category was composed primarily of studies that either looked at how the public (public opinion, public knowledge, or public behaviour) or the mass media themselves were affected. The belief category was composed mainly of studies that measured the beliefs participants had prior to the beginning of their study. Studies that triggered emotions dominated the affect category. Finally, there were very few studies in the physiological category.

Some early content analyses as well as bibliometric studies provided a picture of mass media research, as well as communications research, as often importing ideas and methods from other fields of study. There are indications, however, that mass media research is "breaking away" from those "parent" fields. Bibliometric studies reviewed above, for example, show a trend towards more citation of communication research compared to research from other scholarly fields. These studies identify a core set of journals for communication and especially mass media research. This was evident in the present study as well. Nine of ten mass media effects articles were concentrated in half of the sixteen journals analysed. It also appears that mass media research is breaking away from the traditional methods used in psychology, a departure from So's conclusion, based on analysis of the communication field from its early days until the 1980s, that psychology remained a strong influence over communication research. In psychology, researchers typically start with a mid-level theory, operationalize a test using a mass media message as a treatment, then run an experiment to test the hypothesized influence.

Our findings show that this is seldom the pattern with mass media effects research published in the core communication journals. Almost two-thirds of our sample mentioned no theory, and fewer than three in ten used an experimental method.

The bibliometric literature argues that it is good for communication researchers to establish a unique identity and a community of scholars who can more powerfully and efficiently focus on communication phenomena. However, it appears from our results that any move away from theories and methods that structure parent fields has not been followed by mass media researchers constructing a unique identity.

Instead, it appears that the focus of researchers has become more specialized or even fragmented. Media scholars are producing an amorphous mass of individual studies rather than constructing a field with unifying theories and methods that focus scholars' attention.

There is no dominant method used by mass media effects researchers; instead there is a wide range of methods that cover just about every social science method as well as most humanistic research methods. Also, there is a wide range of effects being explored. Taken together, these two findings could be viewed positively, as an indication of a dynamic field, one with a willingness and ability to use many different tools to address a wide range of effects.

However, it could arguably be an indication the field is stretched thin; a wide range of effects being studied and a wide range of methods among a small number of researchers may mean fragmentation of effort, little overlap in research work, and limited programmatic study. This could make it difficult for scholars to share definitions of key terms and a "big picture" understanding of the overall field.

Perhaps most indicative of the fragmentary nature of the mass media effects scholarship is the low level of theory use. Theories guide research by directing attention to certain systems of explanation that need testing; they provide consistent definitions for key ideas; they gather research findings relevant to their explanations and interpret those findings in an integrated manner.

Thus theories provide an important evaluative function of calibrating which findings are valid and important, and provide an important synthesis function by integrating findings into systems of explanation. To the extent that researchers cluster around a few theories, a field shares a common focus and the results of the empirical work can be more easily integrated into larger knowledge structures and more easily shared.

To the extent that theories are ignored, researchers lose considerable efficiencies in the design of studies, incorporation of their findings into a body of knowledge, and achievement of conceptual leverage for their work. The low level of theory use also makes it considerably more difficult to educate new generations of scholars. New students who expend the significant effort needed to learn the top dozen theories we found in our study would find that this learning would prepare them for less than 18 per cent of the recently published mass media effects literature.

This study extends existing bibliometric and content analysis studies. Some of the findings of the present study give reason to celebrate, for example, the finding of a core set of common journals to publish media effects research. At the same time, some of the findings of the present study give cause for concern. The low level of theory use and the fragmentation of methods and focus, for instance, suggest a lack of cohesion and integration among effects scholars.

Communication scholars must make a better effort to consistently employ and test theories in their research. However, we stop short of arguing that media effects scholars as a group need to be less diffuse in their methods of study and exploration of specific effects. After all, one appeal of studying mass media is the number of interesting content areas (such as politics, sports, news, violence, or sex) and possible effects (attitudes, behaviour, emotions, and so on). Furthermore, the use of multiple methods may be the best way to provide the

richest understanding of mass media phenomena. Therefore, scholars should continue their exploration of a variety of effects under a variety of mass media content scenarios, employing the multitude of research methods that are at their disposal.

DEFINING MEDIA CREDIBILITY

For conceptual clarity, media credibility can be defined as perceptions of a news channel's believability, as distinct from individual sources, media organizations, or the content of the news itself. Media credibility differs from source credibility, which focuses on characteristics of message senders or individual speakers, such as trustworthiness and expertise. Each tradition has its own history of research, with the former stemming from studies on newspaper reporting accuracy and the latter emerging from the attitude change studies of Carl Hovland and associates.

Since the introduction of the Roper questions about relative media credibility in the late 1950s, the measurement of media credibility has been vigourously debated. Subsequent research has shown that the way the concept is operationalized and measured influences credibility ratings among respondents. When measured as a single perceptual dimension, media credibility is most consistently operationalized as believability. Other dimensions used to measure the concept include accuracy, bias, fairness, and completeness of information, among others. A multiple dimension approach to measuring credibility is now the norm in academic research.

Given the ongoing traffic-building efforts by broadcasters to promote "enhanced television" and coax viewers into visiting their Web sites to avail themselves of online information, the question arises as to whether cross-platform media use is in fact influential in cultivating perceptions of broadcast news credibility and, by extension, in maintaining positive audience evaluations of network news. While survey results vary, studies by the Pew Research Centre and Online News Association are finding that many online users judge the Internet as a news medium to be as or more credible than traditional media, including both print and broadcast. To assess whether there are enhanced benefits from cross-platform media use, this study compares perceptions of TV and Net news credibility after exposure to online news, broadcast news, and a combined, or telewebbing, condition.

INVESTIGATING SYNERGY EFFECTS

Synergy, a marketing term, refers to the benefits derived from selling two or more compatible products simultaneously (*e.g.*, a blockbuster movie, the book on which the movie is based, the movie soundtrack, and action figures derived from the story), as well as the harnessing of relations between two or more elements of a media production and distribution process, including the repurposing of content created for one medium for distribution by another. In the context of this study, synergy refers to the possibility of two contiguous

media behaviours-on air and online news consumption-having a greater impact on perceptions of media credibility than exposure to either medium by itself. Although telewebbing emerged as a mass phenomenon in the late 1990s, the effects of cross-platform media use remain underexamined and little understood.

In addition to examining synergy effects in a real-time setting, this study adds to a small but growing body of research that has applied the experimental method to questions of television news credibility. The preponderance of studies on media credibility has been survey based, and most channel comparison studies have examined the credibility of television news in relation to newspapers. The survey approach to studying credibility allows researchers to track broad trends in public opinion about the media but the results of such surveys are limited in their ability to explain cause-and-effect relationships.

Survey research has established that use of a particular media channel correlates with high credibility ratings for that channel. But does media use lead to enhanced perceptions of credibility, or do people tend to use media they already consider credible? Survey studies, because they lack control and generally do not address the issue of temporal sequence, cannot effectively answer this question.

Surveys, moreover, are hampered in a data-gathering sense because they rely on reflections of past media use, an estimation process prone to distortion and social desirability biasing. Placing participants directly in different media settings (*e.g.*, telewebbing, television only, or Net news only) offers the opportunity to assess perceptions of credibility as they occur rather than relying on reflections of past media behaviour. The experimental situation also enables the researcher to control the sequence of presumed effects.

The documentation of synergy effects on perceptions of credibility could have important implications for the broadcast news industry, and network news organizations in particular, as audiences tend to pay more attention to and become more reliant on media they consider credible.

Perceptions of credibility have also been found to influence the processing of issue importance. When media are perceived as credible, acceptance of information veracity increases and agenda-setting effects-accepting issues given prominent media coverage as valid and important-are likely to occur. In an era of convergent media and twenty-four-hour news channels, when the future of the nightly newscast itself is being called into question, the networks are challenged with maximizing their believability, accuracy, fairness, and informational completeness across delivery platforms.

Media Credibility and Age Cohort. Studies of media credibility have consistently found an association between age and education with credibility assessments. In general, older, more educated audiences tend to be the most critical of media, while younger, less educated news consumers are more likely to be accepting of news coverage and to evaluate the media as credible. The youngest adults, 18-24 years old, are the most likely to rate news media highly believable. And it is network news, more than most other forms of media, that

has been likely to elicit these demographic response patterns. Sophistication, life experience, and knowledge of the press-a type of news literacy-combine to make more seasoned audiences skeptical of the nightly news. Although displacement theory would suggest that a traditional medium such as television, besieged by new challengers and new communication technologies, would directly lose its audience to popular forms of new media, some studies conclude that the Internet supplements rather than replaces television viewing.

These findings are consistent with the idea that online sources provide what industry players like ABC-TV refer to as an "enhanced television" experience. Robinson and colleagues even found a positive relationship between computer use and television viewing.

Other researchers have argued, however, that television viewing is negatively affected by computer or Internet use. None of the aforementioned studies, however, explicitly considers telewebbing as a media behaviour that might influence the interpretation of these findings. In a time of rapid technological change and format experimentation, credibility remains central to understanding public perceptions of network news as well as encouraging acceptance of the Internet as a trusted source of news and information.

Documenting the potential contributions of online news operations to perceptions of network news credibility through experimental investigation may enhance industry and scholarly awareness of the nonmonetary value of the networks' online news operations beyond bottom-line issues of profitability and audience share.

If such effects are found, this will suggest to the industry that investments in online news operations may be justified not on the basis of economic considerations alone but on the grounds of enhancing public perceptions of network news through multiple media channels.

Research Questions

To assess whether cross-platform media use of online and on-air news has a greater impact on audience perceptions of media credibility than exposure to either medium in isolation, this study of synergy effects is guided by the following research questions:

- *RQ*1: Do different audiences for news, specifically younger and older age groups, rate the credibility of on-air and online news differently?
- *RQ*2: What influence does media channel have on audience evaluations of media credibility?
- *RQ*3: Is there a combined, or synergy, effect between on-air and online news sources that enhances perceptions of credibility over use of either medium in isolation?
- *RQ*4: Is there an interaction between media channel and age group resulting in different synergy effects for younger and older news audiences?

Method

Operationally, this study took the form of a 4 (media channel) × 2 (age group) between subjects, factorial experiment. The first factor, media channel, had four levels: television news, Net news, both TV and Net news, and no exposure (control group). The second factor, age group, had two levels: undergraduate students and older adults.

Student subjects consisted of 84 undergraduates enrolled in communications courses at a large Midwestern university and ranged in age from 18 to 25 (M = 20). Adult subjects consisted of 83 members of a local community group and ranged in age from 26 to 80 (M = 49).

A total of 167 subjects participated in the study, populating each cell of the design with a minimum of 20 subjects. Student subjects received extra credit for their participation, while adults received a small monetary incentive. Slightly more than half of the study participants (52.1 per cent, n = 87) were female, while just under half (47.9 per cent, n = 80) were male.

Procedure. The study was conducted in the weeks immediately following the September 11 terrorist attacks. The news focus on terrorism remained prominent for the duration of the study, although the early emphasis on domestic security issues gradually gave way to a focus on the war in Afghanistan. Within each age group, subjects were randomly assigned to one of the four media channel conditions. To guard against primacy and recency effects, each condition had four randomized orders. At the beginning of the experiment, subjects completed a questionnaire asking about their media use, political attitudes and knowledge, and demographic information. Subjects assigned to the television condition were shown four, randomly ordered network news stories (from ABC, NBC, CBS, or MSNBC) about the World Trade Centre attacks and were asked to rate their responses. The stories were recorded off-air from network news coverage beginning on the day of the attacks and for several days thereafter. Each story consisted of an anchor lead-in, followed by a news report about the attacks or Bush administration response to the crisis and a direct presidential sound bite in reaction to the unfolding events. Altogether, there were eight unique stories in the stimulus material, two from each network. The average length of each story was just over 2 minutes (M = 125.75 seconds). After viewing each story, subjects completed a series of evaluative measures and open-ended questions designed to elicit any specific impressions prompted by the stories.

Subjects assigned to the Net news condition were instructed to visit two unaltered network news sites (among ABC, CBS, NBC with Tom Brokaw, or MSNBC with Brian Williams) and perform either an interactive or reading task for approximately 5 minutes. The specific pages visited featured news stories, photos, graphics, and interactive features about the terrorist attacks, making the online content comparable with the broadcast news stories. The decision to not replicate the exact verbal content of the broadcast news stories and leave the Net news sites unaltered was made with the intention to maximize ecological validity and to deliberately test the effect of medium as opposed to modality.

Consistent with previous channel studies, "news items were selected so that the same substantive information was included in each medium's version of the story, but the journalistic presentation varied as it actually does by medium."

After visiting each site, subjects completed a series of evaluative measures designed to elicit credibility assessments of the individual sites.

Subjects assigned to the cross-platform (synergy) condition, in randomly alternating order, first viewed four of the broadcast news stories and then visited two Net news sites. To guard against order effects, some subjects first viewed the broadcast news stories and then went online, while others went online first then viewed the stories. Again, after viewing each story and visiting each site, subjects completed a series of evaluative measures and open-ended questions.

At the end of each media condition, subjects completed a series of overall credibility measures separately for television and Net news. Media credibility, the focal concept of this study, was operationalized as the degree to which news consumers judge network newscasts and Web sites to be believable, fair, accurate, informative, and in-depth. Each item comprising the credibility construct was measured using a 7-point scale (1 = not at all; 7 = very). To determine the suitability of using the five items together in combined credibility indexes, a reliability analysis was performed for both TV news and Net news credibility. For both indexes the Cronbach's alpha coefficient was.89.

Subjects assigned to the control condition were not exposed to any media, but simply completed the experimental questionnaire and overall media credibility measures.

A between-subjects analysis of variance (ANOVA) was performed for the media channel and age group factors on the combined credibility indexes. For the age group factor, there were significant main effects for both the TV news index, eta-squared =.26, as well as the Net news index, eta-squared =.06. To reveal the contribution of individual items, a series of t-tests were run for each index separately.

Across all items, the younger age group rated TV news credibility significantly higher than the older age group, reserving its highest ratings for informativeness and believability. Interestingly, both age groups rated TV news lowest on its depth. On the bottom row of the table the combined index scores show that younger audience members evaluated TV news to be significantly more credible overall than older audience members.

Students were much more inclined to rate online news as informative and in-depth than adult subjects. As with TV news, adults also considered Net news significantly less fair than students. Again on the bottom row of the table the combined index scores show that younger audience members evaluated Net news to be significantly more credible overall than older audience members.

Although students' credibility ratings are higher overall than adults, within age groups adults rate Net news to be significantly more credible than TV news. Within the younger age group, the reverse occurs: students rate TV news more credible overall than Net news. Another difference between the TV and Net

news credibility ratings is revealed by the fewer degrees of freedom in the t-tests for the older age group when compared to the younger group (76 versus 83). Several of the older adult participants said they had no online experience and declined to even rate Net news credibility for this reason.

In response to the first research question, then, different audiences do seem to rate the credibility of on-air and online news differently. Younger audience members are much more inclined to assign both news channels higher credibility ratings than older audience members. But within groups, adults consider Net news to be more fair, informative, and in-depth, and therefore more credible overall, than TV news. Students, on the other hand, give TV news higher marks than Net news on every item except in-depth and regard television as the more credible news source. Care should be taken not to read too much into these results, since these age-group differences do not take into account the unique effect of channel exposure, which is analysed next.

The second research question asked what influence media channel had on audience evaluations of credibility. Analysis of variance produced a significant main effect for media channel on the TV news credibility index. Across all subjects, exposure to television news resulted in the highest TV news index scores of any media channel. These scores were significantly higher than the control group, which was exposed to no media, and the Net news-only group, as determined by Tukey post-hoc comparisons. Media exposure did not have a significant effect on ratings of Net news credibility, which varied comparatively little regardless of channel used.

The columns representing exposure to TV news suggest an effect of channel congruence on credibility evaluations, where perceptions of credibility are enhanced when the channel used is consistent with the news source being evaluated. Simply put, television news viewing results in the highest evaluations of TV news credibility of any condition. Going online has the same effect on evaluations of Net news credibility for students, at a level significantly higher than the control group ratings, but not for adults. In three out of four cases, then, channel congruence enhances credibility evaluations. In response to the second research question, direct media exposure mostly enhances credibility evaluations when the channel is consistent with the news source being evaluated, resulting in what might be called a congruence effect. When the channel is inconsistent, direct exposure still results in higher evaluations than no exposure for students but lower evaluations for adults.

The third research question asked whether there is a synergy effect between on air and online news sources that enhances perceptions of credibility over use of either medium in isolation. Subjects exposed to both broadcast and online news in the same experimental session (telewebbing) rated TV and Net news credibility higher overall than any other condition except for the TV congruency case (TV exposure producing the highest TV credibility evaluations). For both students and adults, telewebbing has a small positive impact on TV news credibility beyond Net news use and no exposure, but these individual

comparisons were not significant in Tukey post-hoc comparisons. The fourth research question asked whether there is an interaction between media channel and age group resulting in different synergy effects for younger and older news audiences. When exposed to either TV or Net news, however, students and adults reacted quite differently (as indicated by the divergent upward and downward lines in the centre of the graph). For adults, exposure had a negative effect and evaluations of Net news credibility fell from the control group level.

For students, exposure had a positive effect and evaluations rose. When adults were placed in the telewebbing condition (shown on the right side of the graph), with exposure to both TV and Net news, evaluations of Net news jumped to their highest levels.

For students, telewebbing caused perceptions of Net news to dip slightly. The interaction for media channel and age group for evaluations of TV news credibility was not significant.

To summarize these findings, when adults were placed in the telewebbing condition, with exposure to both TV and Net news, evaluations of Net news credibility jumped to their highest levels. Evaluations of TV news credibility also benefited from telewebbing, compared to the control group and to Web use alone. For students, telewebbing caused perceptions of TV and Net news credibility to increase in relation to the control group, but dip slightly or show no difference compared to other forms of media exposure. In answer to RQ4, then, telewebbing potentially results in greater synergy effects of Net news credibility for adults than students, but these results only approached significance.

Discussion

This study of synergy effects, which adds to the experimental literature of media credibility, found significant main effects for media channel on evaluations of TV news credibility and for age group on evaluations of both TV and Net news credibility.

The ANOVA model also produced a near-significant interaction for the two factors on evaluations of Net news credibility, which may have achieved significance had the group sizes been larger. Consistent with survey studies of media credibility, younger audience members evaluated both TV and Net news to be significantly more credible overall than older audience members.

In particular, students regarded both forms of network news as more informative than adults, while adults considered both forms of news to be significantly less fair than students. Both age groups rated TV news lowest for its depth. Within age groups, adults rated Net news to be significantly more credible than TV news, while students rated TV news more credible. These results are somewhat surprising, given that the audience for broadcast news tends to be older, while the online audience tends to be younger. Each age group evaluated the less familiar medium more generously. Media channel also influenced credibility evaluations. The ratings for television news suggested a channel congruence effect, where perceptions of credibility are enhanced when

the channel used is consistent with the source being evaluated. This was the case for both students and adults. The finding of a congruence effect in an experimental setting differs from the common survey finding that media audiences regard the medium on which they are most reliant as the most credible because the evaluations here were generated in response to direct exposure to a particular medium and not based on reflections of past media use. Nevertheless, similar to the association of media reliance with high credibility evaluations revealed by surveys, audiences seem to regard media they have just used more favourably than media to which they are not exposed.

Going online had the same congruence effect on evaluations of Net news credibility for students, but not adults. When the channel used is inconsistent, adults tend to evaluate the source less favourably compared to the control group. Adults were noticeably less inclined to view TV news as credible after exposure to the Web. For students, any media exposure had a positive impact and evaluations rose relative to the control group.

As for cross-platform media use, the results provided some initial evidence for the existence of a synergy effect. The magnitude of these effects, though relatively small, was greater for adults than for students, perhaps reflecting students' propensity to multitask.

A recent study of the gratifications obtained from new media found that students spend on average a total of 10.5 hours per day with a range of different media technologies. The telewebbing condition was arguably more novel for adults, and thus had a greater impact on their credibility evaluations. Overall, subjects exposed to the telewebbing condition rated TV and Net news credibility higher than the control group or subjects exposed only to Net news. The only exception was that TV exposure by itself elicited the highest evaluations of TV credibility.

The fact that several of the mean credibility ratings for telewebbing pointed to synergy effects but were not significantly different at the $p < .05$ level suggests that a larger number of subjects in this between-subjects experiment would have produced more significant results. Between-subjects experiments with 20 or fewer subjects per group, as was the case with this study, are notoriously underpowered. To overcome this classic problem without having to involve hundreds of subjects in a costly and time-consuming data collection process, future experimental research should take advantage of within-subjects, repeated measures designs, which provide greater statistical power with fewer subjects since each subject responds multiple times and serves as his or her own control.

When studying network news, the demographics of the audience are an essential consideration. Young adults who are wired, and therefore on a trajectory for the higher socioeconomic status that characterizes network news viewers, represent the future of the on-air news audience. Whether members of this audience will ever completely migrate online for their news and information seems doubtful, at least at this stage of the Web's development. Students in this study reported almost two nights of network news viewing per week-even as

members of a residential campus environment that provides “cost free,” high-bandwidth online access. What seems almost certain, however, is a continued tendency by younger audiences to teleweb and, beyond that, multitask with a variety of information and communication technologies simultaneously.

The results of this study suggest that media exposure has differential effects on student and adult perceptions of news credibility. Future research should keep this finding in mind and not attempt to generalize about the news audience from a convenience sample of undergraduates. The experimental nature of this study, while desirable for the control it offered over the news channels subjects were exposed to, was limited in its ability to simulate actual viewing conditions.

Subjects in the telewebbing condition, for instance, either saw a series of newscasts first and then went online, or spent some time online first and then watched a series of broadcasts. At home (or in the office), news consumers who teleweb may use both media at the same time.

Follow-up studies should attempt to recreate a real-time telewebbing or "enhanced television"experience in as naturalistic a way as possible. In addition, other genres of media content associated with telewebbing, such as live sports coverage or news specials, should be studied. Satisfying these two conditions may lead to more pronounced findings for synergy effects.

With the growth of telewebbing and multitasking as routine audience activities, it will become increasingly important to understand and measure perceptions of news credibility under conditions of simultaneous media use.

Considering the potential contribution of synergy effects resulting from cross-platform media use could help recast the debate about media credibility so that the realities, rather than the hyperbole, of online developments are adequately taken into account. The networks have adapted to the online environment and are making gainful use of both delivery platforms. Moreover, most audience members do not stop using a source as heavily relied on as television just because a new medium arrives on the scene; instead, their media repertoire may become wider and more varied.

The rise of telewebbing and two-screen households presents media research with the challenge of understanding the impact of this new consumer behaviour on evaluations of news content. With technological convergence, the independence of different delivery platforms is eroding.

Even so, the stylistic differences between on-air and online news may persist, withbroadcast news retaining its trademark chronological narrative and online (text-based) news embracing the inverted pyramid style of print reporting. Although both forms of news are similar in that they are delivered through electronic telecommunications terminals, they may be processed and evaluated with vastly different criteria, as is the case for assessments of newspaper and television news credibility.

From the perspective of the news audience, the ways in which television and the Web complement-and contravene-each other are only beginning to be understood. Research should investigate the different processing styles required

for on-air and online news, with the aim of revealing the psychological mechanisms underlying credibility judgements. Access to news making, that is, the chance to have our voices and experiences included in an influential public communication forum, is a critical political resource. Such access, especially the kind of serious voice routinely achieved by political elites, offers sources wide distribution for their ideas and the opportunity to significantly affect public debate.

Research suggests, for example, that news selections help set the public's issue agenda; that news constructions "prime" the audience in ways that affect evaluations of candidates and policies; and that journalists' framing choices can affect the audience's attribution of casuality and blame for social problems, and their tolerance for civil liberties. Consequently, the question of how news stories are created, and in particular whose voices are included in these constructions, has become a critical democratic question.

Access to the news is an especially important resource for social movement groups. For these groups, such as the women's or the environmental movement, communication is a central goal. They seek to change public attitudes and understandings on key social and cultural issues through the creation and communication of new information and new interpretive frameworks. To do so, however, they must reach mass audiences. Access to news media thus becomes an important mobilizing resource for such groups. In addition, as voices of political dissent and social change, social movements'ability to access news media provides a critical test of the media's ability to serve as a legitimate source of information in a democracy. But how open are news media to social movement communications? Can social change groups strategically access newsmaking processes? Can they achieve routine access to news? How have they done so and at what costs? This chapter investigates the media access strategies of the National Organization for Women (NOW), a central organization of the second wave of the U.S., women's movement. Using historical data gathered from NOW's archive and from a content analysis of New York Times coverage of NOW, it traces NOW's resource mobilization, strategy development, and media access during a fifteen year period, from its founding in 1966 to its institutionalization as a voice for women's issues by the 1980s.

NOW's ability to access news media in this period was the result of two key factors. First, NOW was able to mobilize the material resources-money, skills, technology, labour, organizational structure, and especially information-necessary to serve as a reliable and routine source for journalists. Second, the group was able to develop effective and reflexive media strategies by mobilizing its knowledge of the routines and discursive structures of news and using them in its own media communications. These two factors contributed significantly to NOW's public visibility over time and to the group's role in helping to create a public agenda for "women's issues"in the United States.

A single case study approach to these questions has its limitations, of course. NOW is not typical of all social movement organizations. It is a mass-based organization with a national office and local chapters, not a local grassroots

organization. Its longevity-more than thirty years-is also unusual for an advocacy organization. However, NOW is also an important organization in its own right. Though it has been seen as too "liberal"by some groups and too "radical"by others, there is widespread agreement in the women's movement that NOW played a central role as the public voice of feminism for many years. A recent history of the movement notes, "The fact is that if the National Organization for Women were to collapse and disappear, it would be taken as a signal of the end of this era of feminism."

Perhaps most critically for this analysis, though, NOW can be seen as something of a social movement "success story"in terms of media access. NOW has always been able to achieve at least some basic news access, and although early coverage was marginalizing, later news presented NOW as an important civil rights organization for women. In particular, around the Equal Rights Amendment (ERA) struggle of the late 1970s and early 1980s, NOW became a key source and definer of events for news media. Analyzing the resources and strategies that structured NOW's access, then, may help us understand the chances of other groups to access news media.

ACCESSING THE NEWS: SOCIAL MOVEMENT ORGANIZATIONS AS SOURCES

The idea that news access, and becoming a "routine" source, is an important political resource has been recognized across a variety of news research contexts. For example, in a political economic analysis of relationships between journalists and corporate sources on issues of education and defence, Gandy elaborated the concept of "information subsidies" to explain the power of wealthy and well-placed sources to affect news construction. In the context of crime and war news, Hall and others argued that routine access of powerful state sources to news media enables them to become "primary definers" of public events and issues. More recently, in case studies of source and journalist activities on the issues of child abuse and false memory syndrome, Kitzinger and Skidmore showed how the (clearly gendered) sourcing practices of journalists and the strategic activities of source organizations contributed to a problematic public construction of these issues.

Besides offering the chance to distribute information, routine and serious news access also offers sources membership in a group of “knowers.” Ericson, Baranek, and Chan call this a form of “cultural capital” in which news visibility itself contributes to a group’s public legitimacy. In fact, as Schlesinger has argued, the study of news sources is critical to understanding the flow of meanings and information-and of political power-in mediated societies. It is the study of news sources that situates the study of news within the larger political context of state and power. As Cottle has put it simply: “Whose voices and viewpoints structure and inform news discourse goes to the heart of the democratic view of, and radical concerns about, the news media.” For the most part, though, research has focused on already powerful sources: state institutions and powerful

corporations that routinely interact with news media. But how is media access or voice produced by less institutionalized source organizations? What difference does it make when sources are challenging or critical, or when they are under-resourced? Can social change sources gain access in the same way that institutional sources do?

Gitlin argued that news media will never adequately carry social movement discourses because of economic, organizational, and ideological links that media have to dominant power groups in society. Analyzing news coverage of Students for a Democratic Society, he argued that news media will always marginalize serious challengers to the status quo. However, more recent studies of social movement— media interactions have taken a more nuanced and contingent approach. Ryan, for example, argued that social movement groups can strategically affect their own representation.

She described how a labour union in Boston repositioned itself in news media by reframing its issues from "special interest" to "justice" issues. Similarly, Andersen's study indicated that Greenpeace was able to produce successful media access, largely through use of attractive video "subsidies" for news organizations. Hackett also showed that access could be produced by peace groups in some circumstances; the Vancouver Peace Walk, for example, was an event that was treated sympathetically by journalists and became an annual event. Stone, too, found that feminist groups could, in some circumstances, produce news access.

In this case, an egregiously sexist judgement had been handed down in a Toronto rape case just after a published report on sexism in the courts. In this admittedly rare conjunction of events, feminists not only found themselves with news access, but functioned as "primary definers" of the situation.

Generally, these more recent studies have suggested that the media-movement relationship is more complex and contextually determined than previously suggested. In particular, they have focused on the strategic possibilities of the interaction from the social movement organization's point of view. This chapter also takes that perspective.

It offers a case study of resource mobilization and media access strategies of NOW, a key women's movement group in the United States. Central contributions of this case study include its analysis of a women's movement group's interaction with news media, of which there are few, and its focus on access over time.

RESEARCH QUESTIONS AND METHODS

This case study investigated the resource mobilization and strategy development of NOW as it tried to produce routine news access. The goal of the investigation was to understand how a feminist social movement organization managed its strategic relationship with news media. What were the day-to-day practices involved in NOW's media work? What resources and skills were required? How did NOW leaders understand their media work? And how successful were

they in accessing media over time? In short, what factors in NOW's media strategies accounted for its ability to access news media and use it as a mobilizing resource? Materials were analysed from NOW's archives (stored at the Schlesinger Library for the History of Women at Radcliffe College, Cambridge, Mass.), and materials from the papers of Kathy Bonk, NOW's media strategist for many years (archived at the Ellis Library, University of Missouri-Columbia).

The study also draws data from a content analysis of 377 stories about NOW in the New York Times (1966-1980), a census of all stories indexed or cross-referenced under NOW in the New York Times Index, over that period. While the complete results of the content analysis are reported elsewhere, the data used here are basic measures of access. First, the amount of coverage of NOW in the Times over time, operationalized as the number of stories or paragraphs devoted to the group, is used as an external measures of basic access.

Second, a measure of the origins of NOW stories was used to assess the relative success of NOW in generating its own visibility.

CASE STUDY FINDINGS: RESOURCES, STRATEGIES, AND ACCESS

NOW's interaction with news media was structured by two key factors about the organization. First, NOW's ability to mobilize significant material resources-membership income, skilled labour, organization, and especially information-was essential to making the interaction with media possible. Second, NOW leaders were able to develop an effective strategic approach to the media as a political resource. Specific strategies developed and shifted over time as organizational goals changed, but were generally characterized by a reflexive and strategic use of journalistic routines and discourses and the building of strong allegiances with sympathetic women reporters.

THE STRUCTURING ROLE OF RESOURCES

The first and fundamental resource that structured NOW's media access over time was its income base. As a predominantly membership— funded organization, NOW had income derived primarily from membership dues, so as the organization expanded exponentially in its first few years, so did its income and its ability to invest in the outreach, research, media strategies, and organizational development of a major organization.

From a start-up budget of $140 and 28 members in 1966, NOW grew to approximately 200,000 members and a budget of millions by the mid-1980s. This increase in income and membership for NOW was reflected in the group's media visibility.

In fact, NOW's membership income and media visibility were related. There is a clear relationship over time between NOW's basic media access (as measured by paragraphs devoted to NOW in the Times) and the group's income and membership.

This relationship could have been the result of several possible factors. For example, it may be that NOW's increasing size made it more newsworthy; membership growth would have caused increased media visibility through changes in journalists' attitudes towards the organization. Moreover, NOW's membership also increased as a result of its media visibility as hundreds joined after seeing NOW mentioned in the news.

However, what is missing from these explanations is the role of NOW leaders themselves in increasing NOW's visibility through strategic mobilization of organizational resources-their investment in media work. In fact, the archival evidence suggests that NOW's increased visibility over time was as much the result of increased investments in media work as it was due to changes in journalists' attitudes. In short, money-transformed into staff, research time, and information-was a key resource in increasing media access. This is especially clear in the 1973-1975 years, when NOW created its Public Information Office (PIO) in New York separate from its central organization. It was during this period that NOW media visibility increased most.

This interpretation of NOW's visibility in the Times as largely selfgenerated is confirmed in the news coverage.

Most of the stories resulted from NOW communication or political activities. One of the largest proportions of news stories came from NOW's public activities, such as demonstrations, protests, and marches (19.9 per cent). NOW's overt news subsidies-where the organization held a press conference, announced publication of a study, or actually wrote the piece themselves-generated the second largest number of stories (17.8 per cent). Coverage of routine NOW meetings such as annual conferences yielded the next largest category (15.9 per cent) and NOW-generated interactions with the courts, commissions, or legislatures together accounted for another 23 per cent. Journalists' enterprise stories, based on interviews or special features on the movement, accounted for only 18 per cent, and these may, of course, have also been generated by NOW information efforts or instigated as responses to NOW public activities.

Altogether, NOW activities accounted for 77 per cent of news coverage. Of course, this includes coverage of NOW activities that were not specifically media focused. In the 1973-1975 period, for example, when NOW visibility was highest and the PIO working the hardest, NOW was also most active politically. It was organizing a national campaign for the implementation of Title IX, petitioning the FCC for media reform, and filing class action anti-discrimination suits against AT&T, the steel industry, and the banks. It was also organizing the ERA ratification process across the country and heading a national campaign to reform rape laws, among many other activities. Also during this period, the more radical women's liberation movement declined and many young radical feminists joined NOW, so that for a time NOW was, in fact, the women's movement in the United States.

NOW's visibility, then, was the result of its political as well as its media strategies. These can be difficult to separate. The making of social change and

the making of news were deeply intertwined for NOW, and even activities not specifically designed for publicity included media components. In any case, whether through media-related activities such as press conferences, or its less direct publicity-oriented activities, such as filing a class action suit (with a press release explaining the action), NOW was arguably responsible for instigating most of its own coverage.

Focusing on such a role for NOW in creating visibility does not negate other historical factors. Most probably the relationship between NOW resources and media visibility was interactive.

NOW resources were used to produce news access, which attracted more members, which in turn produced more funds, and so on. However, by mobilizing membership resources and making media work a strategic priority, NOW leaders clearly began and maintained this process.

A second, and related, resource in understanding NOW's access to media is information. Information is the "currency" of exchange in source-journalist relationships. Sources provide journalists with information-expert opinions, research, surveys, backgrounders, policy analysis, and so on-in order to secure access to public debate for their interpretations of events. NOW was no exception.

The organization used information as a resource in producing media access. Researching and processing information, especially policy analyses and legal research, was a central organizational activity. Some of this effort involved education efforts within the organization.

For example, NOW information staff produced kits; newsletters; and the organization's newspaper, Do It NOW (later National NOW Times), for its membership. But much of this knowledge production effort was focused on journalists.

NOW's information subsidy work was especially visible during the 1973-1975 years, when it maintained its separate PIO in New York. For example, in the first quarter of 1974, the PIO office placed information about NOW, or facilitated a journalist's use of a NOW leader as a source, in two network news stories, five stories in the Wall Street Journal, six in the Christian Science Monitor, three distributed by AP, two in the New York Times, two in Business Week, two in Time, two in Parade magazine, and one each in the National Observer, the New York Daily News, UPI, the Jersey Journal, Reuters, the New York Sunday News, the Washington Star syndicate, the Chicago Daily News, the Los Angeles Times syndicate, New Human Resources Newsletter, Broadcast Magazine, U.S., News and World Report, and the Chronicle of Higher Education. The PIO organized numerous appearances for NOW leaders on radio and TV talk shows and built extensive contacts in news, talk shows, magazines, and special interest newsletters.

The PIO was also responsible for one of NOW's first ongoing information subsidies, the NOW News Service. The NOW News Service contained news on women's issues, often in the form of easy-to-use question and answer columns

or ready-to-print editorial pieces on the ERA or other women's policy concerns. It was aimed at suburban news services. The first News Service packet in 1973, for example, contained an ERA feature story, a press release on NOW's 26 August strike, a feature on NOW's accomplishments, a brief history of the feminist movement, and an ERA question and answer column. It went to about 500 news outlets. These packets were used and appreciated by regional women's page editors. A Sparks, Nevada, editor wrote: "I'd like to use some of this material and would like to see more of it. I was happy to have it... keep the news coming."

The News Service was curtailed for lack of resources in the mid-1970s, but by 1980 this kind of information subsidy had become an integral part of NOW's overall political planning. During the last months of the ERA ratification campaign, for example, NOW threw enormous resources into a last-minute "countdown" information campaign in which providing background information and expert opinion for reporters became a central organization activity.

NOW leaders believed the ERA could only be won in the public media arena and devoted resources to informing the press during the struggle. Press strategies became as important as legislative and legal strategies.

Information subsidies were also central to NOW's 1981 "gender gap "campaign. The "gender gap"was the term NOW leaders coined for a significant and persistent difference in men's and women's voting patterns in the 1980 presidential election. The "gap" showed women less inclined to vote for Ronald Reagan than men. NOW leaders set out to make "gender gap" a household term. The campaign's aim was to persuade journalists and, through them, legislators, that women were a significant and distinct voting bloc, and that support of the ERA would affect that bloc's support in the next election.

During a period of months, NOW leaders wrote op-ed pieces, distributed gender gap stories from one outlet to another, and responded critically to reporters' questions about the gender gap.

NOW hired political scientists to cross-tabulate poll results by gender and sent these "gender gap updates" to thousand of reporters. The result was a months-long national surge of coverage of the gender gap and women's voting and attitude patterns.

This brought attention to women as voters, and as voters with different agendas. Beginning with a New York Times article based on NOW's information, newspapers and TV stations around the country picked up the gender gap idea.

After NOW stopped sending updates, however, coverage stopped. As a result of the campaign, a few reporters and columnists had become more informed about women's issues. But as Kathy Bonk, NOW's media strategist noted, "When women's groups stopped 'selling' the gender gap, reporters went on to the next fashionable issue."

NOW leaders emerged from the ERA and gender gap campaigns more convinced than ever of the importance of information campaigns as part of a social movement group's work. However, they also emerged aware of how resource-intensive such campaigns could be.

The NOW News Service had successfully distributed information about women's issues throughout the country. The ERA countdown materials had been widely used by journalists, and the gender gap information campaign may have significantly changed political discourse by creating a new way to see polling data. However, it was simply not possible to continue these subsidies over long periods of time.

6

Journalism Ethics and Standards

Journalism ethics and standards comprise principles of ethics and of good practice as applicable to the specific challenges faced by professional journalists. Historically and currently, this subset of media ethics is widely known to journalists as their professional "code of ethics" or the "canons of journalism".

The basic codes and canons commonly appear in statements drafted by both professional journalism associations and individual print, broadcast, and online news organizations.

While various existing codes have some differences, most share common elements including the principles of — truthfulness, accuracy, objectivity, impartiality, fairness and public accountability — as these apply to the acquisition of newsworthy information and its subsequent dissemination to the public.

Like many broader ethical systems, journalism ethics include the principle of "limitation of harm."

This often involves the withholding of certain details from reports such as the names of minor children, crime victims' names or information not materially related to particular news reports release of which might, for example, harm someone's reputation.

Some journalistic Codes of Ethics, notably the European ones, also include a concern with discriminatory references in news based on race, religion, sexual orientation, and physical or mental disabilities. The European Council approved in 1993 Resolution 1003 on the Ethics of Journalism which recommends journalists to respect yet the presumption of innocence, in particular in cases that are still *sub judice*.

EVOLUTION AND PURPOSE OF CODES OF JOURNALISM

The principles of Journalistic codes of ethics are designed as guides through numerous difficulties, such as conflicts of interest, to assist journalists in dealing with ethical dilemmas. The codes and canons provide journalists a framework for self-monitoring and self-correction as

CODES OF PRACTICE

While journalists in the United States and European countries have led in formulation and adoption of these standards, such codes can be found in news reporting organizations in most countries with freedom of the press.

The written codes and practical standards vary somewhat from country to country and organization to organization, but there is a substantial overlap among mainstream publications and societies. The International Federation of Journalists launched a global Ethical Journalism Inititiative in 2008 aimed at strengthening awareness of these issues within professional bodies.

One of the leading voices in the U.S., on the subject of Journalistic Standards and Ethics is the Society of Professional Journalists. The Preamble to its Code of Ethics states:

> *...public enlightenment is the forerunner of justice and the foundation of democracy. The duty of the journalist is to further those ends by seeking truth and providing a fair and comprehensive account of events and issues. Conscientious journalists from all media and specialties strive to serve the public with thoroughness and honesty. Professional integrity is the cornerstone of a journalist's credibility.*

The Radio-Television News Directors Association, an organization exclusively centred on electronic journalism, maintains a code of ethics centring on—public trust, truthfulness, fairness, integrity, independence and accountability. RTDNA publishes a pocket guide to these standards.

COMMON ELEMENTS

The primary themes common to most codes of journalistic standards and ethics are the following.

ACCURACY AND STANDARDS FOR FACTUAL REPORTING

- Reporters are expected to be as accurate as possible given the time allotted to story preparation and the space available, and to seek reliable sources.
- Events with a single eyewitness are reported with attribution. Events with two or more independent eyewitnesses may be reported as fact. Controversial facts are reported with bnfkof the publisher is desirable
- Corrections are published when errors are discovered

- Defendants at trial are treated only as having "allegedly" committed crimes, until conviction, when their crimes are generally reported as fact (unless, that is, there is serious controversy about wrongful conviction).
- Opinion surveys and statistical information deserve special treatment to communicate in precise terms any conclusions, to contextualize the results, and to specify accuracy, including estimated error and methodological criticism or flaws.

SLANDER AND LIBEL CONSIDERATIONS

- Reporting the truth is never libel, which makes accuracy very important.
- Private persons have privacy rights that must be balanced against the public interest in reporting information about them. In Canada, there is no such immunity; reports on public figures must be backed by facts.
- Publishers vigorously defend libel lawsuits filed against their reporters, usually covered by libel insurance.

HARM LIMITATION PRINCIPLE

During the normal course of an assignment a reporter might go about—gathering facts and details, conducting interviews, doing research, background checks, taking photos, video taping, recording sound — harm limitation deals with the questions of whether everything learned should be reported and, if so, how.

This principle of limitation means that some weight needs to be given to the negative consequences of full disclosure, creating a practical and ethical dilemma. The Society of Professional Journalists' code of ethics offers the following advice, which is representative of the practical ideals of most professional journalists. Quoting directly:

- *Show compassion for those who may be affected adversely by news coverage. Use special sensitivity when dealing with children and inexperienced sources or subjects.*
- *Be sensitive when seeking or using interviews or photographs of those affected by tragedy or grief.*
- *Recognize that gathering and reporting information may cause harm or discomfort. Pursuit of the news is not a license for arrogance.*
- *Recognize that private people have a greater right to control information about themselves than do public officials and others who seek power, influence or attention. Only an overriding public need can justify intrusion into anyone's privacy.*
- *Show good taste. Avoid pandering to lurid curiosity.*
- *Be cautious about identifying juvenile suspects or victims of sex crimes.*
- *Be judicious about naming criminal suspects before the formal filing of charges.*
- *Balance a criminal suspect's fair trial rights with the public's right to be informed.*

PRESENTATION

NEWS WRITING

Journalism: Ethical standards should not be confused with common standards of quality of presentation, including:

- Correctly spoken or written language (often in a widely spoken and formal dialect, such as Standard English)
- Clarity
- Brevity (or depth, depending on the niche of the publisher).

SELF-REGULATION

In addition to codes of ethics, many news organizations maintain an in-house Ombudsman whose role is, in part, to keep news organizations honest and accountable to the public. The ombudsman is intended to mediate in conflicts stemming from internal and or external pressures, to maintain accountability to the public for news reported, and to foster self-criticism and to encourage adherence to both codified and uncodified ethics and standards. This position may be the same or similar to the public editor, though public editors also act as a liaison with readers and do not generally become members of the Organisation of News Ombudsmen.

An alternative is a news council, an industry-wide self-regulation body, such as the Press Complaints Commission, set up by UK newspapers and magazines. Such a body is capable perhaps of applying fairly consistent standards, and of dealing with a higher volume of complaints, but may not escape criticisms of being toothless.

ETHICS AND STANDARDS IN PRACTICE

JOURNALISM SCANDALS

Journalism scandals are high-profile incidents or acts, whether intentional or accidental, that run contrary to the generally accepted ethics and standards of journalism, or otherwise violate the 'ideal' mission of journalism: to report news events and issues accurately and fairly.

EXPERIMENTER BIAS

A major problem in studies is experimenter bias. Research into studies of media bias in the United States shows that Liberal experimenters tend to get results that say the media has a conservative bias, while conservatives experimenters tend to get results that say the media has a liberal bias, and those who do not identify themselves as either liberal or conservative get results indicating little bias, or mixed bias. This same problem with experimenter bias extends to the studies of experimenter bias, of course. Whether bias is towards the left or the right depends on where you stand.

The study "A Measure of Media Bias" by political scientist Timothy J. Groseclose of UCLA and economist Jeffrey D. Milyo of the University of Missouri-Columbia, purports to rank news organisations in terms of identifying with liberal or conservative values relative to each other. They used the Americans for Democratic Action (ADA) scores as a quantitative proxy for political leanings of the referential organizations. Thus their definition of "liberal" includes the RAND Corporation, a nonprofit research organization with strong ties to the Defence Department. According to Media Matters for America (a non-profit liberal research and information center), "the study employed a measure of "bias" so problematic that its findings are next to useless". (Media Matters for America-Former fellows at conservative think tanks issued flawed UCLA-led study on media's "liberal bias 21/12/05) What is "liberal" in the United States may not be "liberal" by world standards. FAIR suggests that a benchmark for each country be set by scientific polling of a cross-section of the citizens.

Another source of bias is the fact that some studies are reported by the media, and other stories are not. The case study "A Measure of Media Bias" discussed above was widely reported in the United States. George Orwell pointed out that in the UK during the last century businesses did not undermine their own interests by reporting leftist (anti business or pro-labour) information. In the United States Ben Bagdikian documents a long history of advertisers pulling out support when media content becomes too controversial.

TOOLS FOR MEASURING AND EVALUATING MEDIA BIAS

Richard Alan Nelson's (2004) study cited above on Tracking Propaganda to the Source: Tools for Analyzing Media Bias reports there are at least 12 methods used to analyse the existence of and quantify bias:

1. Surveys of the political/cultural attitudes of journalists, particularly members of the media elite, and of journalism students.
2. Studies of journalists' previous professional connections.
3. Collections of quotations in which prominent journalists reveal their beliefs about politics and/or the proper role of their profession.
4. Computer word-use and topic analysis searches to determine content and labelling.
5. Studies of policies recommended in news stories.
6. Comparisons of the agenda of the news and entertainment media with agendas of political candidates or other activists.
7. Positive/negative coverage analysis.
8. Reviews of the personal demographics of media decision makers.
9. Comparisons of advertising sources/content which influence information/ entertainment content.
10. Analyses of the extent of government propaganda and public relations (PR) industry impact on media.
11. Studies of the use of experts and spokespersons, *etc.* by media vs. those not selected to determine the interest groups and ideologies represented vs. those excluded.

12. Research into payments of journalists by corporations and trade associations to speak before their groups and the impact that may have on coverage.

EFFORTS TO CORRECT BIAS

A technique used to avoid bias is the "point/counterpoint" or "round table," an adversarial format in which representatives of opposing views comment on an issue. This approach theoretically allows diverse views to appear in the media. However, the person organizing the report still has the responsibility to choose people who really represent the breadth of opinion, to ask them non-prejudicial questions, and to edit or arbitrate their comments fairly. When done carelessly, a point/counterpoint can be as unfair as a simple biased report, by suggesting that the "losing" side lost on its merits.

The Skeptics Society has accused reporters of misusing the point/counterpoint format by giving more time to superstitions than to their scientific rebuttals.

Using this format can also lead to accusations that the reporter has created a misleading appearance that viewpoints have equal validity (sometimes called "false balance"). This may happen when a taboo exists around one of the viewpoints, or when one of the representatives habitually makes claims that are easily shown to be inaccurate.

One such allegation of misleading balance came from Mark Halperin, political director of ABC News. He stated in an internal e-mail message that reporters should not "artificially hold George W. Bush and John Kerry 'equally' accountable" to the public interest, and that complaints from Bush supporters were an attempt to "get away with... renewed efforts to win the election by destroying Senator Kerry." When the Drudge Report published this message, many Bush supporters viewed it as "smoking gun" evidence that Halperin was using ABC to propagandize against Bush to Kerry's benefit, by interfering with reporters' attempts to avoid bias. An academic content analysis of election news later found that coverage at ABC, CBS, and NBC was more favourable towards Kerry than Bush, while coverage at Fox News Channel was more favourable towards Bush.

Scott Norvell, the London bureau chief for Fox News, stated in a May 20, 2005 interview with the Wall Street Journal that "Even we at Fox News manage to get some lefties on the air occasionally, and often let them finish their sentences before we club them to death and feed the scraps to Karl Rove and Bill O'Reilly. And those who hate us can take solace in the fact that they aren't subsidizing Bill's bombast; we payers of the BBC license fee don't enjoy that peace of mind. Fox News is, after all, a private channel and our presenters are quite open about where they stand on particular stories. That's our appeal. People watch us because they know what they are getting. The Beeb's (British Broadcasting Corporation) (BBC) institutionalized leftism would be easier to tolerate if the corporation was a little more honest about it".

With the release of the 2008 book *What Happened: Inside the Bush White House and Washington's Culture of Deception* by George W. Bush's press

secretary Scott McClellan, there are some who contend that this is evidence of Mark Halperin being correct instead of biased. In his book, McClellan admits to lying to the media, and describes the contempt he felt for reporters who so easily believed his lies, and were cowed by the fear that if they exposed the lies, they would be accused of "liberal bias".

Another technique used to avoid bias is disclosure of affiliations that may be considered a possible conflict of interest. This is especially apparent when a news organization is reporting a story with some relevancy to the news organization itself or to its ownership individuals or conglomerate. Often this disclosure is mandated by the laws or regulations pertaining to stocks and securities. Commentators on news stories involving stocks are often required to disclose any ownership interest in those corporations or in its competitors.

In rare cases, a news organization may dismiss or reassign staff members who appear biased. This approach was used in the Killian documents affair and after Peter Arnett's interview with the Iraqi press. This approach is presumed to have been employed in the case of Dan Rather over a story that he ran on 60 Minutes in the month prior to the 2004 election that attempted to impugn the military record of George W. Bush by relying on allegedly fake documents that were provided by Bill Burkett, a retired Lieutenant Colonel in the Texas Army National Guard.

Finally, some countries have laws enforcing balance in state-owned media. Since 1991, the CBC and Radio Canada, its Francophone counterpart, are governed by the Broadcasting Act. This act states, amongst other things:

the programming provided by the Canadian broadcasting system should (i) be varied and comprehensive, providing a balance of information, enlightenment and entertainment for men, women and children of all ages, interests and tastes, (...) (iv) provide a reasonable opportunity for the public to be exposed to the expression of differing views on matters of public concern

HISTORY OF BIAS IN THE MASS MEDIA

Political bias has been a feature of the mass media since its birth with the invention of the printing press. The expense of early printing equipment restricted media production to a limited number of people. Historians have found that publishers often served the interests of powerful social groups.

John Milton's pamphlet *Areopagitica, a Speech for the Liberty of Unlicensed Printing*, published in 1644, was one of the first publications advocating freedom of the press. In the nineteenth century, journalists began to recognize the concept of unbiased reporting as an integral part of journalistic ethics. This coincided with the rise of journalism as a powerful social force. Even today, though, the most conscientiously objective journalists cannot avoid accusations of bias.

Like newspapers, the broadcast media (radio and television) have been used as a mechanism for propaganda from their earliest days, a tendency made more pronounced by the initial ownership of broadcast spectrum by national governments.

Although a process of media deregulation has placed the majority of the western broadcast media in private hands, there still exists a strong government presence, or even monopoly, in the broadcast media of many countries across the globe. At the same time, the concentration of media in private hands, and frequently amongst a comparatively small number of individuals, has also lead to accusations of media bias.

There are many examples of accusations of bias being used as a political tool, sometimes resulting in government censorship. In the United States, in 1798, Congress passed the Alien and Sedition Acts, which prohibited newspapers from publishing "false, scandalous, or malicious writing" against the government, including any public opposition to any law or presidential act. This act was in effect until 1801.

During the American Civil War, President Abraham Lincoln accused newspapers in the border states of bias in favour of the Southern cause, and ordered many newspapers closed. Chancellor Adolf Hitler of Germany, in the years leading up to World War II, accused newspapers of Marxist bias, an accusation echoed by pro-German media in England and the United States.

Politicians who favoured the United States entering World War II on the German side asserted that the international media were controlled by Jews, and that reports of German mistreatment of Jews were biased and without foundation. Hollywood was said to be a hotbed of Jewish bias, and films such as Charlie Chaplin's The Great Dictator were offered as proof.

In the 1980s, the South African government accused newspapers of liberal bias and instituted government censorship. In 1989, the newspaper *New Nation* was closed by the government for three months for publishing anti-apartheid propaganda. Other newspapers were not closed, but were extensively censored. Some published the censored sections blacked out, to demonstrate the extent of government censorship. In the USA during the labour union movement and the civil rights movement, newspapers supporting liberal social reform were accused by conservative newspapers of communist bias. Film and television media were accused of bias in favour of mixing of the races, and many television programmes with racially mixed casts, such as *I Spy* and *Star Trek*, were not aired on Southern stations.

During the war between the United States and North Vietnam, Vice President Spiro Agnew accused newspapers of anti-American bias, and in a famous speech delivered in San Diego in 1970, called anti-war protesters "The nattering nabobs of negativism."

Not all accusations of bias are political. Science writer Martin Gardner has accused the entertainment media of anti-science bias. He claims that television programmes such as *The X-Files* promote superstition. In contrast, the Competitive Enterprise Institute accuses the media of being biased in favour of science and against business interests, and of credulously reporting science that purports to show that greenhouse gasses cause global warming.

ROLE OF LANGUAGE

Mass media, despite its ability to project worldwide, is limited in its cross-ethnic compatibility by one simple attribute-language. Ethnicity, being largely developed by a divergence in geography, language, culture, genes and similarly, point of view, has the potential to be countered by a common source of information. Therefore, language, in the absence of translation, comprises a barrier to a worldwide community of debate and opinion, although it is also true that media within any given society may be split along class, political or regional lines. Furthermore, if the language is translated, the translator has room to shift a bias by choosing weighed words for translation.

Language may also be seen as a political factor in mass media, particularly in instances where a society is characterized by a large number of languages spoken by its populace. The choice of language of mass media may represent a bias towards the group most likely to speak that language, and can limit the public participation by those who do not speak the language. On the other hand, there have also been attempts to use a common-language mass media to reach out to a large, geographically dispersed population, such as in the use of Arabic language by news channel Al Jazeera. Many media theorists concerned with language and media bias point towards the media of the United States, a large country where English is spoken by the vast majority of the population. Some theorists argue that the common language is not homogenizing; and that there still remain strong differences expressed within the mass media. This viewpoint asserts that moderate views are bolstered by drawing influences from the extremes of the political spectrum. In the United States, the national news therefore contributes to a sense of cohesion within the society, proceeding from a similarly informed population. According to this model, most views within society are freely expressed, and the mass media are accountable to the people and tends to reflect the spectrum of opinion.

Language may also be a more subtle form of bias. Use of a word with positive or negative connotations rather than a more neutral synonym can form a biased picture in the audience's mind. It makes a difference whether the media calls a group "terrorist" or "freedom fighters" or "insurgents". For example, a 2005 memo to the staff of the CBC states:

Rather than calling assailants "terrorists," we can refer to them as bombers, hijackers, gunmen (if we're sure no women were in the group), militants, extremists, attackers or some other appropriate noun. In a widely criticized episode, initial online BBC reports of the 7 July 2005 London bombings identified the perpetrators as terrorists, in contradiction to the BBC's internal policy. But by the next day, Tom Gross and many others noted that the online articles had been edited, replacing "terrorists" by "bombers". In another case, March 28, 2007, the broadcaster paid almost $400,000 in legal fees in a London court to keep an internal memo dealing with alleged anti-Israeli bias from becoming public. BBC was accused of pro-Palestinian bias over a documentary about Israel developing a nuclear weapon during the second Palestinian intifada in 2000.

NATIONAL AND ETHNIC VIEWPOINT

Many news organizations reflect or are perceived to reflect in some way the viewpoint of the geographic, ethnic, and national population that they primarily serve. Media within countries is sometimes seen as being sycophantic or unquestioning about the country's government.

Western media are often criticized in the rest of the world (including eastern Europe, Asia, Africa, and the Middle East) as being pro-Western with regard to a variety of political, cultural and economic issues. Al Jazeera has been frequently criticized in the West about its coverage of Arab world issues. The Israeli-Palestinian conflict and wider Arab-Israeli issues are a particularly controversial area, and nearly all coverage of any kind generates accusation of bias from one or both sides.

ANGLOPHONE BIAS IN THE WORLD MEDIA

It has been observed that the world's principal suppliers of news, the news agencies, and the main buyers of news are Anglophone corporations and this gives an Anglophone bias to the selection and depiction of events. Anglophone definitions of what constitutes news are paramount; the news provided originates in Anglophone capitals and responds first to their own rich domestic markets.

Despite the plethora of news services, most news printed and broadcast throughout the world each day comes from only a few major agencies, the three largest of which are the Associated Press, Reuters and Agence France-Presse.

Although these agencies are 'global' in the sense of their activities, they each retain significant associations with particular nations, namely France (AFP), the United States (AP) and the United Kingdom (Reuters). Chambers and Tinckell suggest that the so-called global media are agents of Anglophone values which privilege norms of 'competitive individualism, laissez faire capitalism, parliamentary democracy and consumerism.' They see the presentation of the English language as international as a further feature of Anglophone dominance.

VIS-A-VIS RELIGIOUS ISSUES

Media bias towards religion is most obvious in countries where the media are controlled by the state, which is in turn dominated by a particular religion. In these instances, bias against other faiths can be explicit and virulent.

But even in countries with freedom of religion and a free press, the dominant religion exerts some amount of influence on the media. In nations where Christianity is the majority faith, reporters tend to focus on the activities of the Christian community, to the exclusion of other faiths. But the opposite may also occur, with media self-consciously avoiding reporting on any religious matters at all in order to avoid the appearance of favouring one faith over another, or presenting religious faith and phenomenon in a negative light.

This type of bias is often seen with reporting on new religious movements. It is often the case that the only view the public gets of a new religious movement,

controversial group or purported cult is a negative and sensationalized report by the media. For example, most new or minority religious movements only receive media coverage when something sensational occurs, *e.g.*, the mass suicide of a cult or illegal activities of a leader in the religious movement.

According to the Encyclopedia of Social Work (19th edition), the news media play an influential role in the general public's perception of cults. As reported in several studies, the media have depicted cults as problematic, controversial, and threatening from the beginning, tending to favour sensationalistic stories over balanced public debates.

It furthers the analysis that media reports on cults rely heavily on police officials and cult "experts" who portray cult activity as dangerous and destructive, and when divergent views are presented, they are often overshadowed by horrific stories of ritualistic torture, sexual abuse, mind control, *etc.* Furthermore, unfounded allegations, when proved untrue, receive little or no media attention.

OTHER INFLUENCES

The apparent bias of media is not always specifically political in nature. The news media tend to appeal to a specific audience, which means that stories that affect a large number of people on a global scale often receive less coverage in some markets than local stories, such as a public school shooting, a celebrity wedding, a plane crash, or similarly glamorous or shocking stories. For example, the deaths of millions of people in an ethnic conflict in Africa might be afforded scant mention in American media, while the shooting of five people in a high school is analyzed in depth. The reason for this type of bias is a function of what the public wants to watch and/or what producers and publishers believe the public wants to watch.

Bias has also been claimed in instances referred to as conflict of interest, whereby the owners of media outlets have vested interests in other commercial enterprises or political parties. In such cases in the United States, the media outlet is required to disclose the conflict of interest.

However, the decisions of the editorial department of a newspaper and the corporate parent frequently are not connected, as the editorial staff retains freedom to decide what is covered as well as what isn't. Biases, real or implied, frequently arise when it comes to deciding what stories will be covered and who will be called for those stories.

Accusations that a source is biased, if accepted, may cause media consumers to distrust certain kinds of statements, and place added confidence on others. For example, if readers believe that a particular newspaper is conservatively biased, they may feel that a pro-liberal article in that paper *must* be true. Conversely, they may assume that a pro-conservative article in that paper is suspect.

Because of the possibility of influencing the public in this way, accusations about which media outlets are biased, and how, have become a very common occurrence.

7

Media Law and Ethical Considerations

MEDIA BIAS

Media bias refers to the bias of journalists and news producers within the mass media, in the selection of which events and stories are reported and how they are covered. The term "media bias" usually implies a pervasive or widespread bias contravening the standards of journalism, rather than the perspective of an individual journalist or article. The direction and degree of media bias in various countries is widely disputed, although its causes are both practical and theoretical.

Practical limitations to media neutrality include the inability of journalists to report all available stories and facts, and the requirement that selected facts be linked into a coherent narrative (Newton 1989). Since it is impossible to report everything, some selectivity is inevitable. Government influence, including overt and covert censorship, biases the media in some countries. Market forces that can result in a biased presentation include the ownership of the news source, concentration of media ownership, the selection of staff, the preferences of an intended audience, pressure from advertisers, or reduced funding due to lower ratings or governmental funding cuts. Political affiliations arise from ideological positions of media owners and journalists. The space or air time available for reports, as well as deadlines needing to be met, can lead to incomplete and apparently biased stories.

- Political bias, including bias in favour of or against a particular political party, candidate, or policy.
- Advertising bias, corporate media depends on advertising revenue for funding. This relationship promotes a bias to please the advertisers.

- Corporate bias, coverage of political campaigns in such a way as to favour or oppose corporate interests, and the reporting of issues to favour the interests of the owners of the news media or its advertisers. Some critics view the financing of news outlets through advertising as an inherent cause of bias.
- Mainstream bias, a tendency to report what everyone else is reporting, and to gather news from a relatively small number of easily available sources.
- Religious bias, including bias in which one religious or nonreligious viewpoint is given preference over others.
- Bias for or against a group based because of their race, gender, age, class, sexual orientation, or ethnicity.
- Sensationalism, bias in favour of the exceptional over the ordinary, giving the impression that rare events, such as airplane crashes, are more common than common events, such as automobile crashes.

SOURCES OF MEDIA BIAS

Valid questions remain about media performance and the role of public communications practitioners in coercing perception and judgement. There are some researchers who use a "social construction of reality" framework to analyse media and the ways in which information is filtered.

According to scholar Richard Alan Nelson's (2003) study *Tracking Propaganda to the Source: Tools for Analyzing Media Bias*, media effects findings suggest that when bias occurs it stems from a combination of ten factors:

1. The media are neither objective nor completely honest in their portrayal of important issues.
2. Framing devices are employed in stories by featuring some angles and downplaying others.
3. The news is a product not only of deliberate manipulation, but of the ideological and economic conditions under which the media operate.
4. While appearing independent, the news media are institutions that are controlled or heavily influenced by government and business interests experienced with manufacturing of consent/consensus.
5. Reporters' sources frequently dominate the flow of information as a way of furthering their own overt and hidden agendas. In particular, the heavy reliance on political officials and other-government related experts occurs through a preferential sourcing selection process which excludes dissident voices.
6. Journalists widely accept the faulty premise that the government's collective intentions are benevolent, despite occasional mistakes.
7. The regular use of the word "we" by journalists in referring to their government's actions implies nationalistic complicity with those policies.

8. There is an absence of historical context and contemporary comparisons in reportage which would make news more meaningful.
9. The failure to provide follow up assessment is further evidence of a pack journalism mentality that at the conclusion of a "feeding frenzy" wants to move on to other stories.
10. Citizens must avoid self-censorship by reading divergent sources and maintaining a critical perspective on the media in order to make informed choices and participate effectively in the public policy process.

DIFFERENCES BETWEEN MEDIA ETHICS AND OTHER FIELDS OF APPLIED ETHICS

The issues of freedom of speech and aesthetic values (taste) are primarily at home in media ethics. However a number of further issues distinguish media ethics as a field in its own right. A theoretical issue peculiar to media ethics is the identity of *observer* and *observed*. The press is one of the primary guardians in a democratic society of many of the freedoms, rights and duties discussed by other fields of applied ethics. In media ethics the ethical obligations of the guardians themselves comes more strongly into the foreground. Who guards the guardians? This question also arises in the field of legal ethics.

A further self-referentiality or circular characteristic in media ethics is the questioning of its own values. Meta-issues can become identical with the subject matter of media ethics. This is most strongly seen when artistic elements are considered. Benetton advertisements and Turner prize candidates are both examples of ethically questionable media uses which question their own questioner.

Another characteristic of media ethics is the disparate nature of its goals. Ethical dilemmas emerge when goals conflict. The goals of media usage diverge sharply. Expressed in a consequentialist manner, media usage may be subject to pressures to maximize: economic profits, entertainment value, information provision, the upholding of democratic freedoms, the development of art and culture, fame and vanity.

SCHOLARLY TREATMENT OF MEDIA BIAS IN THE UNITED STATES AND UNITED KINGDOM

Media bias is studied at schools of journalism, university departments (including Media studies, Cultural studies and Peace studies) and by many independent watchdog groups from various parts of the political spectrum. In the United States, many of these studies focus on issues of a conservative/liberal balance in the media. Other focuses include international differences in reporting, as well as bias in reporting of particular issues such as economic class or environmental interests.

An academic study cited frequently showing a liberal media bias in American journalism is *The Media Elite,** a 1986 book co-authored by political scientists

Robert Lichter, Stanley Rothman, and Linda Lichter. They surveyed journalists at national media outlets such as the New York Times, Washington Post, and the broadcast networks.

The survey found that most of these journalists were Democratic voters whose attitudes were well to the left of the general public on a variety of topics, including such hot-button social issues such as abortion, affirmative action, and gay rights. Then they compared journalists' attitudes to their coverage of controversial issues such as the safety of nuclear power, school busing to promote racial integration, and the energy crisis of the 1970s.

The authors concluded that journalists' coverage of controversial issues reflected their own attitudes, and the predominance of political liberals in newsrooms therefore pushed news coverage in a liberal direction. They presented this tilt as a mostly unconscious process of like-minded individuals projecting their shared assumptions onto their interpretations of reality.

A widely-cited public opinion study documents a correlation between news source and certain misconceptions about the Iraq war. Conducted by the Programme on International Policy Attitudes in October 2003, the poll asked Americans whether they believed statements about the Iraq war that were known to be false. Respondents were also asked which was their primary news source: Fox News, CBS, NBC, ABC, CNN, "Print sources," or NPR. By cross referencing the responses according to primary news source, the study showed that higher numbers of Fox News watchers held certain misconceptions about the Iraq war. The director of Programme on International Policy (PIPA), Stephen Kull said, "While we cannot assert that these misconceptions created the support for going to war with Iraq, it does appear likely that support for the war would be substantially lower if fewer members of the public had these misperceptions."

The Glasgow Media Group carried out the Bad News Studies, a series of detailed analyses of television broadcasts (and later newspaper coverage) in the United Kingdom. (Eldridge, 2000). Published between 1976 and 1985, the Bad News Studies used content analysis, interviews and covert participant observation to conclude that news was biased against trade unions, blaming them for breaking wage negotiating guidelines and causing high inflation.

Martin Harrison's *TV News: Whose Bias?* (1985) criticized the methodology of the Glasgow Media Group, arguing that the GMG identified bias selectively, via their own preconceptions about what phrases qualify as biased descriptions. For example, the GMG sees the word "idle" to describe striking workers as pejorative, despite the word being used by strikers themselves.

Herman and Chomsky (1988) proposed a propaganda model hypothesizing systematic biases of U.S., media from structural economic causes. They hypothesize media ownership by corporations, funding from advertising, the use of official sources, efforts to discredit independent media ("flak"), and "anti-communist" ideology as the filters that bias news in favour of U.S., corporate interests.

Their propaganda model first and foremost disuses self censorship through the corporate system; that reporters and especially editors share and/or acquire

values with corporate elites in order to further their careers. Those that don't are usually weeded out or marginalized. Such examples have been dramatized in fact based movie dramas as "Good Night, and Good Luck" and "The Insider" or demonstrated in the documentary "The Corporation". George Orwell originally wrote a preface for his book "Animal Farm", which focuses on British self censorship. "The sinister fact about literary censorship in England is that it is largely voluntary.... [Things are] kept right out of the British press, not because the Government intervened but because of a general tacit agreement that 'it wouldn't do' to mention that particular fact." As if to prove the point, the preface itself was censored and is not published with most copies of the book.

The propaganda model posits that advertising dollars are essential for funding most media sources and clearly have an effect on the content of the media. For example, according to Fair, 'When Al Gore proposed launching a progressive TV network, a Fox News executive told Advertising Age (10/13/03): "The problem with being associated as liberal is that they wouldn't be going in a direction that advertisers are really interested in.... If you go out and say that you are a liberal network, you are cutting your potential audience, and certainly your potential advertising pool, right off the bat." Furthermore "an internal memo from ABC Radio Networks to its affiliates reveals scores of powerful sponsors have a standing order that their commercials never be placed on syndicated Air America programming that airs on ABC affiliates…. The list, totaling 90 advertisers, includes some of largest and most well-known corporations advertising in the U.S.,: Wal-Mart, GE, Exxon Mobil, Microsoft, Bank of America, Fed-Ex, Visa, Allstate, McDonald's, Sony and Johnson & Johnson. The U.S., Postal Service and the U.S., Navy are also listed as advertisers who don't want their commercials to air on Air America."

Many of the positions in the preceding study are supported by a 2002 study by Jim A. Kuypers: Press Bias and Politics: How the Media Frame Controversial Issues. In this study of 116 mainstream US papers (including The New York Times, the Washington Post, Los Angeles Times, and the San Francisco Chronicle), Kuypers found that the mainstream print press in America operate within a narrow range of liberal beliefs. Those who expressed points of view further to the left were generally ignored, whereas those who expressed moderate or conservative points of view were often actively denigrated or labelled as holding a minority point of view. In short, if a political leader, regardless of party, spoke within the press-supported range of acceptable discourse, he or she would receive positive press coverage. If a politician, again regardless of party, were to speak outside of this range, he or she would receive negative press or be ignored. Kuypers also found that the liberal points of view expressed in editorial and opinion pages were found in hard news coverage of the same issues. Although focusing primarily on the issues of race and homosexuality, Kuypers found that the press injected opinion into its news coverage of other issues such as welfare reform, environmental protection, and gun control; in all cases favouring a liberal point of view.

Studies reporting perceptions of liberal bias in the media are not limited to studies of print media. A joint study by the Joan Shorenstein Center on Press, Politics and Public Policy at Harvard University and the Project for Excellence in Journalism found that people see liberal media bias in television news media such as CNN.. Although both CNN and Fox were perceived in the study as being left of center, CNN was perceived as being more liberal than Fox. Moreover, the study's findings concerning CNN's perceived liberal bias are echoed in other studies. There is also a growing economics literature on mass media bias, both on the theoretical and the empirical side. On the theoretical side the focus is on understanding to what extent the political positioning of mass media outlets is mainly driven by demand or supply factors.

According to Dan Sutter of the University of Oklahoma, a systematic liberal bias in the U.S., media could depend on the fact that owners and/or journalists typically lean to the left.

Along the same lines, David Baron of Stanford GSB presents a game-theoretic model of mass media behaviour in which, given that the pool of journalists systematically leans towards the left or the right, mass media outlets maximise their profits by providing content that is biased in the same direction. They can do so, because it is cheaper to hire journalists that write stories which are consistent with their political position. A concurrent theory would be that supply and demand would cause media to attain a neutral balance because consumers would of course gravitate towards the media they agreed with. This argument fails in considering the imbalance in self-reported political allegiances by journalists themselves, that distort any market analogy as regards offer: (...) *Indeed, in 1982, 85 percent of Columbia Graduate School of Journalism students identified themselves as liberal, versus 11 percent conservative"* (Lichter, Rothman, and Lichter 1986), quoted in Sutter, 2001.

This same argument would have news outlets in equal numbers increasing profits of a more balanced media far more than the slight increase in costs to hire unbiased journalists, notwithstanding the extreme rarity of self-reported conservative journalists (Sutton, 2001).

As mentioned above, Tim Groseclose of UCLA and Jeff Milyo of the University of Missouri at Columbia use think tank quotes, in order to estimate the relative position of mass media outlets in the political spectrum. The idea is to trace out which think tanks are quoted by various mass media outlets within news stories, and to match these think tanks with the political position of members of the U.S., Congress who quote them in a non-negative way. Using this procedure, Groseclose and Milyo obtain the stark result that all sampled news providers-except Fox News' Special Report and the Washington Times-are located to the left of the average Congress member, *i.e.*, there are signs of a liberal bias in the US news media. However, the news media also show a remarkable degree of centrism, just because all outlets but one are located – from an ideological point of view-between the average Democrat and average Republican in Congress.

The methods Groseclose and Milyo used to calculate this bias have been criticized by Mark Liberman, a professor of Computer Science at the University of Pennsylvania. Liberman concludes by saying he thinks "that many if not most of the complaints directed against G&M are motivated in part by ideological disagreement — just as much of the praise for their work is motivated by ideological agreement. It would be nice if there were a less politically fraught body of data on which such modeling exercises could be explored."

Sendhil Mullainathan and Andrei Shleifer of Harvard University construct a behavioural model, which is built around the assumption that readers and viewers hold beliefs that they would like to see confirmed by news providers. When news customers share common beliefs, profit-maximizing media outlets find it optimal to select and/or frame stories in order to pander to those beliefs. On the other hand, when beliefs are heterogeneous, news providers differentiate their offer and segment the market, by providing news stories that are slanted towards the two extreme positions in the spectrum of beliefs.

Matthew Gentzkow and Jesse Shapiro of Chicago GSB present another demand-driven theory of mass media bias. If readers and viewers have a priori views on the current state of affairs and are uncertain about the quality of the information about it being provided by media outlets, then the latter have an incentive to slant stories towards their customers' prior beliefs, in order to build and keep a reputation for high-quality journalism. The reason for this is that rational agents would tend to believe that pieces of information that go against their prior beliefs in fact originate from low-quality news providers.

The economics empirical literature on mass media bias mainly focuses on the United States.

Steve Ansolabehere, Rebecca Lessem and Jim Snyder of the Massachusetts Institute of Technology analyse the political orientation of endorsements by U.S., newspapers. They find an upward trend in the average propensity to endorse a candidate, and in particular an incumbent one. There are also some changes in the average ideological slant of endorsements: while in the 40s and in the 50s there was a clear advantage to Republican candidates, this advantage continuously eroded in subsequent decades, to the extent that in the 90s the authors find a slight Democratic lead in the average endorsement choice.

John Lott and Kevin Hassett of the American Enterprise Institute study the coverage of economic news by looking at a panel of 389 U.S., newspapers from 1991 to 2004, and from 1985 to 2004 for a subsample comprising the top 10 newspapers and the Associated Press. For each release of official data about a set of economic indicators, the authors analyse how newspapers decide to report on them, as reflected by the tone of the related headlines. The idea is to check whether newspapers display some kind of partisan bias, by giving more positive or negative coverage to the same economic figure, as a function of the political affiliation of the incumbent President. Controlling for the economic data being released, the authors find that there are between 9.6 and 14.7 percent fewer positive stories when the incumbent President is a Republican.

Riccardo Puglisi of the Massachusetts Institute of Technology looks at the editorial choices of the *New York Times* from 1946 to 1997. He finds that the *Times* displays Democratic partisanship, with some watchdog aspects. This is the case, because during presidential campaigns the Times systematically gives more coverage to Democratic topics of civil rights, health care, labour and social welfare, but only when the incumbent president is a Republican. These topics are classified as Democratic ones, because Gallup polls show that on average U.S., citizens think that Democratic candidates would be better at handling problems related to them. According to Puglisi, in the post-1960 period the Times displays a more symmetric type of watchdog behaviour, just because during presidential campaigns it also gives more coverage to the typically Republican issue of Defence when the incumbent President is a Democrat, and less so when the incumbent is a Republican.

Alan Gerber and Dean Karlan of Yale University use an experimental approach to examine not whether the media are biased, but whether the media influence political decisions and attitudes. They conduct a randomized control trial just prior to the November 2005 gubernatorial election in Virginia and randomly assign individuals in Northern Virginia to (a) a treatment group that receives a free subscription to the Washington Post, (b) a treatment group that receives a free subscription to the Washington Times, or (c) a control group. They find that those who are assigned to the Washington Post treatment group are eight percentage points more likely to vote for the Democrat in the elections. The report also found that "exposure to either newspaper was weakly linked to a movement away from the Bush administration and Republicans."

Another unaffiliated group, Media Study Group, established seven categories of poor journalistic practice: for example, the journalist stating personal opinion in a report, asserting incorrect facts, applying unequal space or treatment to two sides of a controversial issue; then analyzed The Age Newspaper (Melbourne Australia) for the frequency of infraction of this code of practice. The resultant instances were then analyzed statistically with respect to the frequency they supported one or other side of the two-sided controversial issue under consideration. The goal of this group was to establish a quantitative methodology for the study of bias.

A self-described liberal media watchdog group, Fairness and Accuracy in Reporting, in consultation with the Survey and Evaluation Research Laboratory at Virginia Commonwealth University, sponsored a biased academic study in which journalists were asked a range of questions about how they did their work and about how they viewed the quality of media coverage in the broad area of politics and economic policy. "They were asked for their opinions and views about a range of recent policy issues and debates. Finally, they were asked for demographic and identifying information, including their political orientation". They then compared to the same or similar questions posed with "the public" based on Gallup, and Pew Trust polls. Their study concluded that a majority of journalists, although relatively liberal on social policies, were significantly to the right of the public on economic, labour, health care and foreign policy issues.

This study continues: "We learn much more about the political orientation of news content by looking at sourcing patterns rather than journalists' personal views. As this survey shows, it is government officials and business representatives to whom journalists "nearly always" turn when covering economic policy. Labour representatives and consumer advocates were at the bottom of the list. This is consistent with earlier research on sources. For example, analysts from the centrist Brookings Institution and conservative think tanks such as the Heritage Foundation and the American Enterprise Institute are those most quoted in mainstream news accounts; liberal think tanks are often invisible. When it comes to sources, 'liberal bias' is nowhere to be found."

META-ISSUES IN MEDIA ETHICS

One theoretical question for media ethics is the extent to which media ethics is just another topical subdivision of applied ethics, differing only in terms of case applications and raising no theoretical issues peculiar to itself. The oldest subdivisions of applied ethics are medical ethics and business ethics. Does media ethics have anything new to add other than interesting cases?

SIMILARITIES BETWEEN MEDIA ETHICS AND OTHER FIELDS OF APPLIED ETHICS

Privacy and honesty are issues extensively covered in medical ethical literature, as is the principle of harm-avoidance. The trade-offs between economic goals and social values has been covered extensively in business ethics (as well as medical and environmental ethics).

JOURNALISTIC SCANDAL

As the investigative and reporting face of the media, journalists are usually required to follow various journalistic standards. These may be written and codified, or customary expectations. Typical standards include references to honesty, avoiding journalistic bias, demonstrating responsibility, striking an appropriate balance between privacy and public interest, shunning financial conflict of interest, and choosing ethical means to obtain information.

Journalistic scandals are public scandals arising from incidents where in the eyes of some party, these standards were significantly breached. In most journalistic scandals, deliberate or accidental acts take place that run contrary to the generally accepted ethics and standards of journalism, or otherwise violate the 'ideal' mission of journalism: to report news events and issues accurately and fairly.

COMMON CHARACTERISTICS

Journalistic scandals include: plagiarism, fabrication, and omission of information; activities that violate the law, or violate ethical rules; the altering or staging of an event being documented; or making substantial reporting or researching errors with the results leading to libelous or defamatory statements.

All journalistic scandals have the common factor that they call into question the integrity and truthfulness of journalism. These scandals shift public focus and scrutiny onto the media itself. Because credibility is journalism's main currency, many news agencies and mass media outlets have strict codes of conduct and enforce them, and use several layers of editorial oversight to catch problems before stories are distributed.

However, in many of the cases listed below, investigations later found that long-established journalistic checks and balances in the newsrooms failed. In some cases, senior editors fail to catch bias, libel, or fabrication inserted into a story by a reporter. In other cases, the checks and balances were omitted in the rush to get an important, 'breaking' news story to press (or on air). Furthermore, in many libel and defamation cases, the publication would have had full support of editorial oversight in case of yellow journalism.

MEDIA LAWS AND ETHICS

Media laws and ethics constitute the regulatory and moral frameworks governing the conduct of media professionals and organizations. These laws and ethical standards play a vital role in ensuring accountability, fairness, and integrity in journalism and media practices. Media laws encompass a wide range of legal principles and regulations governing freedom of speech, defamation, privacy, intellectual property, access to information, and media ownership. They vary from country to country but generally aim to balance the rights of individuals and the public interest. Ethical considerations in media encompass principles such as truthfulness, accuracy, objectivity, fairness, and transparency. Journalists and media practitioners are expected to adhere to professional codes of conduct and ethical guidelines that uphold these principles. Ethical decision-making in media involves weighing the public's right to know against the potential harm caused by the dissemination of certain information. The relationship between media laws and ethics is complex and often intertwined. While laws provide a legal framework for media operations and set boundaries for permissible behavior, ethics guide journalists' day-to-day decisions and actions in pursuit of truth and public interest. Media organizations often have internal mechanisms, such as ethics committees or ombudsmen, to address ethical dilemmas and ensure compliance with ethical standards. "Exploring the Intersection of Media Laws and Ethical Standards in Contemporary Journalism."

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ACADEMIC UNIVERSITY PRESS

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ISBN-978-93-6284-628-0