

ECONOMICS AND FREEDOM OF EXPRESSION:  
ISSUES OF MEDIA STRUCTURE AND THE FIRST AMENDMENT

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Owen - Newspapers

P. 95 Wonder: was the mech & econ of printing & distn pamphlets the same as the newspapers in the 1783-1791 period?

P. 134a: what is hat & hit (partic of hats) on "natural monop"?

P. 134b: see

P. 369: see for ref on useful defn of freedom.

And though all the winds of doctrine were  
let loose to play upon the earth, so Truth  
be in the field, we do injuriously, by li-  
censing and prohibiting, to misdoubt her  
strength. Let her and falsehood grapple;  
who ever knew Truth put to the worse, in a  
free and open encounter?

Milton, Areopagitica

FOR

Josetta, Peter and Brad

## PREFACE

~~It is with considerable diffidence that I, as an economist, venture upon ground so long and firmly held by the legal profession.~~

Five years of working on various subjects in the economics of the mass media have however inevitably exposed me to the monuments of jurisprudence in the field, and since these monuments have often appeared misplaced or badly constructed, I have been compelled to put together some suggestions for improvement. This book is therefore addressed to lawyers, jurists, and policymakers, as well as to economists interested in the organization of the mass media industries. I would have been more comfortable addressing the latter group alone, except that it did not seem to me that one could usefully discuss the subject of media performance without reference to the first amendment and those government policies, presumably grounded on the amendment, which have shaped media structure.

<sup>l.c.</sup>  
~~To these lawyers and jurists who do me the honor of reading some of what I have written,~~ I apologize in advance for the layman's failure to give full sympathy to the weight of precedent and the limits of judicial legislation in my criticisms of major court decisions. I do recognize the difficulty which precedent puts in the path of judicial reform, but I have not been trained to take it very seriously. As a result, my comments on these decisions may seem unduly harsh. But just as it is often true that lawyers can see gaps and errors in economic reasoning, usually the result of inappropriate assumptions,

so I hope that it will be acknowledged that an economist can sometimes see the source of error in judicial reasoning.

As its title implies, the theme of this book is that an understanding of the economic structure of the mass media can aid in our search for greater freedom of expression. The key word is structure. The bias of lawyers, both as legislators and as jurists, is to remedy inequities by imposing behavioral sanctions and constraints on the process by which decisions are reached. The bias of an economist is to seek an organizational structure which will provide internal incentives to decentralized decision-makers which will lead to actions having some desirable attributes, such as efficiency and fairness. The latter bias is, I submit, often more conducive to freedom. From this point of view, much of the regulatory and legal structure of the media is very badly constructed indeed.

At this point in the history of mass communication Western societies seem to have developed a fairly robust set of public policies toward the printed media. Although there are minor discrepancies, such as the contrast between British and American treatment of official secrets and judicial proceedings, the prevailing policy is laissez faire. Within broad limits people can print and read what they want without prior restraint, although they may have to face the consequences of their expressions. It is noteworthy that this system of public attitudes toward the printed media has taken more than four centuries to evolve. But now these policies have been challenged by rapidly

changing technology in the form of electronic communication. Governments have been reluctant to extend the principle of laissez faire to the new media. Indeed, most governments in the West have simply nationalized these media. One of the things that I wish to argue in this book is that this is neither necessary nor desirable.

The electronic revolution was not the first in communications. Leaving Gutenberg aside, there was an analogous event in the nineteenth century, when the application of mechanical power to presses, rapidly falling transport prices, and increased literacy vastly increased the audience for printed media. The social implications of the nineteenth century revolution in communication were not, in their magnitude, and to some extent in their nature, very dissimilar to the present situation. That the response of governments to those earlier events was different may be largely attributable to a differing climate of opinion about the proper scope of government intervention. In any event, the current state of affairs is hardly unique, and the debate about mass media policy would be considerably enlightened if we stopped regarding the electronic revolution as sui generis.

A careful examination of the economic and technical assumptions upon which our present policies toward the electronic media are based reveals a most distressing failure of policy makers to understand the nature of the problems they are addressing. Many of these false assumptions have been pointed out before. Here, I will attempt to argue from what seem to be the correct assumptions towards a set of policies which

are consistent with economic and first amendment objectives. Some similar but perhaps less drastic statements can be made about the printed media.

To the extent that public policies and official attitudes are determined, not by logical analysis of the facts and legitimate policy objectives, but by emotional preconceptions and legal precedents, one despairs of making much progress in effective reform. I do not think that we need to be four centuries about the business of reconciling electronic technology with libertarian principles. Yet we are today sufficiently off the track that it could well take a very long time to set things right.

I am extremely grateful to the Hoover Institution on War, Revolution and Peace for supporting me as a National Fellow during the time this book was being written, and for supporting my able research assistant, Abbott Lipsky. Marianna Scherer provided efficient and patient typing services through endless revisions of the manuscript. I owe a considerable debt to those scholars and friends whose work I have drawn upon or who have sacrificed their own time to help me formulate these ideas. I must single out Paul David, Richard Epstein, Henry Geller, Henry Goldberg, David Lange, Frank McCabe, Charles Meyers, Thomas Moore, William Rivers, Marc Roberts, James Rosse, Mike Spence and Tom Whitehead for special thanks. Since I have not always been able to accept their advice, none of these persons is in any way responsible for my remaining errors.

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Chapter 1: Introduction

[F]reedom of speech does not exist in the abstract. On the contrary, the right to speak can flourish only if it is allowed to operate in an effective forum--whether it be a public park, a schoolroom, a town meeting hall, a soapbox, or a radio and television frequency. For in the absence of an effective means of communication, the right to speak would ring hollow indeed. And, in recognition of these principles, we have consistently held that the First Amendment embodies, not only the abstract right to be free from censorship, but also the right of an individual to utilize an appropriate and effective medium for the expression of his views.

-- Justice Brennan, dissenting in  
Columbia Broadcasting System, Inc.,  
Democratic National Committee  
412 U.S. 94, 193 (1973)

### Overview

This monograph is about the ways in which mass media economic structure and public policy affect freedom of speech and press. An understanding of the economic structure of the media is essential (though not sufficient) to public policy seeking to enforce basic First Amendment objectives. The present chapter is devoted to the discussion of a series of inter-related issues which must form the background for the study of individual media in subsequent chapters. There is, so far as I can discover, no way of dealing with the issues in this chapter in a "linear" fashion, at least without being very long winded indeed. Accordingly, the reader will find in the following pages a series of ideas and arguments which may not begin to fit into a coherent whole until they are applied to specific media in Chapters two through four. Having the Alexandria Quartet as a precedent, I do not feel terribly unhappy with this approach, but it does take patience on the reader's part, for which I can not hope to offer such rewards as Durrell's.

Lest any reader be misled, it is well to state at once those issues which, while they involve freedom of expression, are not dealt with in this monograph. These issues include: personal (non-media) expression, rights of assembly and petition, sedition, privacy, obscenity, pornography, libel, and religious and academic freedom. While these issues (particularly privacy and libel) are obviously of great importance (and indeed, occupy the bulk of Emerson's treatise [ ] on the First Amendment) they are not issues about which economics has a great deal to say. The issue which really provides the background for the present work is the constitutional and political role of the media in American society.

It is the press - broadly defined - which provides the greatest part of the flow of information and expression in society, and the press is essential to the "effectiveness" of more personal forms of expression in the social and political sphere. Thus, speeches and demonstrations are well-known to be affected by, as well as to affect, media presence, and much of their impact, if any, is due to this relationship.<sup>1</sup> People, either as citizens or as consumers, spend an enormous part of their lives consuming media output, and it is worth asking at least the traditional economic questions about the structure and performance of the industry producing this output.

The reader is entitled to an explicit forewarning of the author's maintained hypotheses -- or prejudices, at least those of which he thinks he has made conscious use. Briefly put, there is a libertarian, anti-paternalistic underpinning to the present work, consistent with a literal interpretation of the First Amendment. The Congress shall make no law . . . abridging the freedom of the press. This literal or "strict constructionist" interpretation is however modified or compromised to this extent: The "spirit" of the First Amendment will be taken to mean not merely a negative constraint on the power of government, but a positive obligation to intervene in various carefully defined ways when freedom of expression is threatened by private agglomerations of power. That is, I would permit - indeed encourage - intervention by government to remedy structural or institutional conditions which "constrained" unnecessarily the freedom of expression through the media. This extension of the First Amendment is con-

sistent with (but not identical with the theory of) such cases as Associated Press v. United States<sup>2</sup> where the Court found that the First Amendment did not bar antitrust activity against the media:

"It would be strange indeed however if the grave concern for freedom of the press which prompted adoption of the First Amendment should be read as a command that the government

was without power to protect that freedom. The First Amendment, far from providing an argument against application of the Sherman Act, here provides powerful reasons to the contrary. That Amendment rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public, that a free press is a condition of a free society. Surely a command that the government itself shall not impede the free flow of ideas does not afford non-governmental combinations a refuge if they impose restraints upon that constitutionally guaranteed freedom. Freedom to publish is guaranteed by the Constitution, but freedom to combine to keep others from publishing is not. Freedom of the press from governmental interference under the First Amendment does not sanction repression of that freedom by the private interests." (Associated Press 326 U. S. at 20.)

A very great deal can be accomplished, particularly in broadcasting, simply by regarding the first amendment as a statement of laissez faire, provided it is acknowledged that the antitrust laws in their present form are as applicable to the media as to other businesses. Some of the notions in this book go beyond this, and suggest particular institutional restructuring which might require legislation particular to the media. Although these results might conceivably be reached through anti-trust, some of them might not be. In most, if not all, of the cases considered, laissez faire is an acceptable alternative, and the improvement to be gained from going further is certainly a debatable trade-off with the philosophical argument against direct structural legislation.

The theme of this book is provided by the quotation from Justice Brennan which appears at the beginning of this chapter. Effective exercise of First Amendment rights requires freedom of access to the means of transmission at competitive market prices. Such a right is quite distinct from the right to insert messages in already existing edited collections of messages; the latter "right" may amount to a license to destroy mass communication, while the former is crucial to the free exercise of speech through the media. The distinction rests on an understanding of the economic and technological relationships among the stages of production within the present media, an understanding which seems heretofore to have escaped First Amendment scholars and jurists.

Freedom and Power

I am preoccupied in this book with questions of "power" and "freedom" which are likely to be annoying to economists. Much of what follows is about the manner in which we have acquired too much private economic and public regulatory power and, therefore, too little freedom in some of the media industries. But first, I must explain what is meant by "economic power" and why this leads to a reduction in freedom of expression in the media.

Power is a slippery concept. Some say, that power exists only when it is not exercised, since to exercise it is to lose it. In this sense, power is freedom - the freedom to do or to not do something, presumably at some affordable cost. If there is no choice there is no power and no freedom. A monopolist whose market is protected from entry by law has the power to set price, and to set price in a manner which achieves any objective he likes. Maximization<sup>is</sup> of profit is only one such objective. Just as there are degrees of monopoly power, limits on the range of action, there are limitations on the objectives which can be achieved; therefore power is almost always a matter of degree. Although I shall use the word rather freely, none of the firms in this industry have a true economic monopoly -- 100% of their market. By monopoly power, then, I mean a worrisom<sup>e</sup> degree of discretionary power, including the power not to maximize profits.

We must ask why it is undesirable for a firm to have monopoly power in this market. First, the monopolist <sup>c</sup>an, in order to maximize

profit, exclude certain ideas that would be produced in a competitive environment. He may even do this in order to appear "responsible" to a licensing authority, and thus to retain his legal monopoly. Or he may do it because a multi-product monopolist finds it unprofitable to produce products which are too close substitutes. Second, the monopolist may exclude ideas which he simply doesn't like even at a cost in terms of profit foregone. No one else will be in a position to do so. Presumably, monopolists may have views on political, social or economic issues which they are willing to pay to advertise or to prevent others from advertising. The monopolist of the media is in a fortuitous position to exercise these whims, since there is, by definition, no reasonable price any one else can pay to stop him. Finally, it may be that the profit function which depends on the ideas broadcast is flat or nearly flat in the relevant range, allowing the monopolist to exercise his whim without cost. If there were more than one or a few firms in the market, the opportunity for diversity, from the point of view of the audience, would be greater.

The greater the power of the monopolist, the less the freedom of other potential speakers. Freedom of expression must therefore mean something like "equal freedom" of all speakers, though the freedom of anyone may be less than that of the monopolist, since no one can prevent others from speaking. I believe this notion of freedom is approximated by an economically competitive market for ideas. Such a market imposes the constraint on freedom, that messages be worth something to their audience, so that they will pay to hear them. But the sum required need only be large enough to cover costs, and in equilibrium may be no larger.

There is a school of thought which suggests that a monopolist will supply all of the products demanded in the marketplace, only at a higher price. This theory suggests that from the First Amendment standpoint, monopoly is not necessarily a factor leading to a decline in diversity of sources of opinion. We must reject this. First of all, it is not clear that a monopolist does produce the same range of product choice produced by competition (Spence [ 87], and the appendix to Chapter 3). Moreover, there is considerable doubt that the take-over, capital-market check on failure to maximize profits (as, for instance, when a media monopolist unprofitably excludes certain political views) works very well in the newspaper industry (where family ownership is still very common) or in broadcasting (where all controlling stock purchases must receive FCC approval). Finally, monopoly does in any event charge a higher price, and this in itself is hardly defensible from the point of view of access, where price may very well be crucial. We will return to the issue of power after we have examined some of the theories justifying freedom of expression. Before we can do that, however, it is necessary to explain the marketplace metaphor.

The "marketplace of ideas" is a metaphor with more than one interpretation. The one that will occur to most non-economists is suggested by the epigraph from Milton's Areopagitica at the beginning of the book. That is, "ideas" compete for intellectual domination over men's minds, and presumably truth wins just often enough to keep the game interesting. The sense in which I wish to use the term is, however, rather different than this. In particular, I want to take the "marketplace" notion quite literally. There is a market in which information and entertainment, intellectual "goods," are bought and sold. The media comprise an important part of this market, though not by any means the whole of it. It happens that to operate effectively in this market, either as a buyer or as a seller, one must usually deal with intermediaries, such as printing presses, broadcast transmitters, and post offices. It will be clear, then, that by "monopoly in the marketplace of ideas" I do not mean that circumstance in which one idea has, by its intellectual or emotional force, gained ascendancy over men's minds. I mean, rather, a state in which one firm or institution has an economic monopoly, generally achieved by controlling access to the means of transmitting messages. Such a monopoly has two vices: the first is that the quantity, quality and variety of goods produced may be inefficient in the economic sense; the second is that

the Miltonian process may not work properly, and ideas which are not the truth may come to dominate the intellectual market as a result of the systematic exclusion of messages which do not suit the economic or political interests of those who control access to the media of transmission. Even if the second vice does not obtain (as, for instance, when the government as the monopolist explicitly seeks popular truth), there is arguably a case for assuming that the competitive Miltonian process is a desirable end in itself. Indeed, the notion that "truth will conquer" has in nearly all the writings on this subject from Milton to Mill been put forward by way of apology for the more fundamental proposition that personal freedom of thought and expression is a desirable end of social organization.

What justifies freedom of expression? What, for instance, was the original motivation for the first amendment? Historically, suppression of dissent had taken the form not only of newspaper and book censorship, including prior restraint, but also economic sanctions (see Collet [8]). These have the effect, other things equal, of reducing the power of non-establishment groups, whether religious or political. The American revolutionists suffered from the effects of these tactics, and they presumably sought to prevent their use in the future. It is important to note at once the economic context which faced the framers of the First Amendment in 1791. Their experience suggested a set of "communications media" which was comprised of a number of small enterprises. Particularly as regards pamphlets and books, there seemed to be no difficulty of entry, and the resources required to achieve access by this means to the populace were not great. <sup>3</sup>

In 1780 there were about 37 newspapers published in the former colonies, most of them weekly or twice-weekly. The first daily appeared in 1783. By 1790 there were 8 dailies and 83 weeklies. A great deal of political expression also took place in printed pamphlets and books, often published by the same printers who published newspapers.

Thus, we can regard the First Amendment as having at least one implicit assumption, and that is that competition in the marketplace of ideas will be conducive to political freedom in a democratic system. It is then a small step from the condemnation of monopoly by government in this marketplace to a general objection to monopoly by any private institution. The founding fathers were quite naturally preoccupied with constructing checks on government power; but the spirit of their endeavor, the search for freedom, surely extends to private power as well.

We can now identify at least six motivations for seeking freedom of expression. First, it can be regarded somewhat pathetically as a simple revolutionary reaction to the ~~oppressions~~<sup>opp</sup> of colonial government. Second, it can be regarded as a means of guaranteeing that truth will emerge from decentralized political and philosophical debate, giving in the colonial context an opportunity for the adherents of each religious faction to prove the validity of their own vision. This is what I have called the Miltonian process. Third, a more modern view, freedom of expression may serve as a "safety valve" for dissenting groups, a substitute for violence.<sup>84</sup> Fourth, open debate and a free press may serve as a check on the power of government, by revealing corruption or malfeasance among

government officials. Fifth, a free press serves as a means of producing an informed and alert citizenry, a prerequisite of elective democracy. Sixth, freedom of expression may be a valuable end in itself, an improvement of the human condition.

The objections raised against freedom of expression are generally made by those who know they possess the truth and are in a position to impose that truth on others. Being in power is not, however, a prerequisite for denial of the usefulness of freedom of expression; see Wolff, et al. [100].

The political role of the press is said to be founded on antagonism toward government. This doctrine has permeated First Amendment discussion for many years. The theory is that a skeptical, even cynical, press which questions government activity at every level will help to maintain virtue in political life. This model of the press suggests not merely the exposure of corruption in government, but the use of the press to keep the public continuously informed regarding substantive public decisions which ought to affect the electoral process. It is important to note that this model of the press does not necessarily require competition. The press here is merely a conduit for information which is essential to informed voting. In order to find a role for competition, we have to ask what incentives are otherwise present for vigorous performance of this role by the press, and what abuses might arise within the press itself in the absence of competition.

Clearly the demand side is of enormous importance, and we can trace many of the failures of the First Amendment system<sup>9</sup> to imperfections in its theory of demand. There does not seem to be any difficulty in the area of scandal and corruption. The public's appetite for scandal seems nearly insatiable, although Watergate may have strained the outer limits.<sup>10</sup> But for other kinds of information, particularly technical information relating to government actions affecting the public, as individuals, only slightly, demand is not so great. Much of the activity of the federal and state governments comes under this heading, and this makes possible a great deal of special interest legislation and anti-consumer interest regulatory activity. Special interest legislation favoring farmers, for instance, is likely to get covered in the local agricultural-state press, whose readers are benefited, and not in the rest of the country, which pays the bill. The reasons for this are fairly obvious.

If there is a deficiency in the First Amendment's theory of demand, one must raise serious questions about the rest of the theory and its implications. For special interest groups, the theory works well. Particular industries, trades, professions, and societies are generally well-served by specialized publications which provide quite complete and thorough reports on government activity affecting the interests involved. Such organs are often crucial to the organization of lobbying efforts by these groups. It is often, if not always, true that the gains scored by such organized activity come at the expense of the general public.

It is not entirely clear that the media catering to the general public fail to provide relevant information on these issues; perhaps the public is well aware of and content with the situation, or resigned to it.

The First Amendment theory of the press was formulated, of course, in the days of newspapers, and the world is different now. The electronic media - radio and television - have in large part supplanted the newspaper as the source of news and opinion (and entertainment) for most citizens. Does the end of the Gutenberg revolution imply that our constitutional theory of the press is outmoded? Do we need a new theory for the electronic media? These are serious questions to be addressed after we have examined the economic context of the media.

### Methodology

There has been a tendency in the literature on the economic structure of the media to equate "numbers" with the degree of competition and the degree of freedom. This is not readily defensible. Numbers, while important, cannot tell the whole story. For instance, the dramatic decline in the number of newspapers over the past 70 years is not in itself necessarily a bad thing. First, other media may have grown more than enough to offset the decline. Second, the character of the newspaper may have changed in such a way as actually to increase ease of access.

There are a number of separate issues to untangle.

The narrowest possible focus for the present work would be this: an examination of the economic structure of each mass medium, on the presumption that an understanding of the economics of mass communication will assist courts, the Congress, and regulatory authorities in making policy affecting First Amendment rights involving the media. This is fine, so far as it goes, if somewhat naive. But one would like to make positive statements about the way in which mass media economic structure does affect freedom of expression. This is much more difficult.

It is virtually impossible to make general descriptive statements along this line. On the other hand, it may be possible to make statements about narrowly focused issues: What is the effect of media economics on alternative sources of information about local political events? The effect on local politicians seeking to communicate with the electorate? On national politicians

seeking to express their views on specific policy issues? On the ease with which private citizens can gain information about specific classes of events? All of these questions can, with some degree of accuracy, be answered. For some speakers and consumers it is now cheaper and easier to send or receive communications than it used to be, and there are more alternatives. For other classes the opposite is true.

Finally, "freedom of expression" can in no way be measured. It has many dimensions and many meanings, and means something different (and perhaps contradictory) when applied to speakers or to the audience. All I can hope to do in the present work is to deal with such approximations to or proxies for freedom of expression as the ~~price~~<sup>cost</sup> of access by speakers, the ~~price~~<sup>cost</sup> of access by the audience, and the range of product choices for each. These things throw light upon but do not fully span the concept of freedom, which has, of course, a much richer philosophical basis than economics alone. Moreover, the media industry supplies other things besides <sup>a means</sup> ~~freedom~~ of expression: things like privacy, accuracy, immediacy, and entertainment. Evaluation of media performance must also be multidimensional.

The point is that the issues being dealt with in this book are only part of the picture, and we must avoid the temptation to impute undue significance to those phenomena or those trends which happen to be quantifiable. Numbers, while important and helpful, do not tell the whole story. The shadows on the wall of the cave may have sharp edges, but they remain shadows.

### The Demand for Mass Media Messages

The traditional and most useful taxonomy of economic effects is the distinction between supply and demand. Before we can explore these two sides of the media marketplace, we must ask what commodity is being supplied and demanded. This is a difficult point, since the output of the media is neither one-dimensional nor concrete. The most obvious answer is to say that the media supply "information."

The term information has acquired a rather clear mathematical meaning as a result of studies in the theory of communication, which is concerned with such questions as how to code signals efficiently, and how to maximize the information flow in a given channel of communication.<sup>11</sup> Information is defined, in that literature, as an event which changes an individual's a priori probability distribution regarding alternative possible realities. When you are walking home in the afternoon, you do not know whether your house is on fire or not. Presumably, your a priori expectation that it is not on fire is rather high. But smoke on the horizon provides a signal which may reduce the probability with which you hold this expectation, and fire trucks headed down your street may reduce the probability drastically. Both events or signals have provided information. An event does not contain information if it does not change your a priori subjective probability distribution of any possible reality.

These notions do not seem to help very much in dealing with the media, at least at first glance. After all, much of media output is "entertainment" or "opinion." Relatively little is "news" of the

kind which fits into the decision theory paradigm. But what is "entertainment?" Clearly we must look at these ideas from the point of view of consumption behavior. Here, the social psychology of media consumption may help us sort out the nature of the commodity. Unfortunately, most of the social psychology research in this area is concerned with attitude change and persuasion, and particularly propaganda.<sup>12</sup>

These studies are of course useful in advertising research, but they do not seem to shed much light on the consumption of entertainment. (One theorist (Stephenson [89]) has however constructed a "play theory" of mass communication.) They are also troubling to an economist who is used to assuming (no doubt quite unrealistically) that tastes are exogenous to the economic system. One idea which is prominent in the psychological literature is the "dissonance" theory of communication (Festinger [28]). Briefly put, people tend to discount messages which are at variance with their a priori expectations. Thus, persuasion requires use of devices to overcome this resistance to cognitive dissonance, such as repetition. "Reinforcing" messages or signals, on the other hand, are "accepted" by consumers and valued highly even though they do not impart much information, precisely because it gives satisfaction to have one's opinions "confirmed." Now it is perfectly rational not to change one's opinion on a matter simply because one dissonant signal has been received. And it is understandable that the psychological cost of changing a belief system in any significant way may lead people to "reject" (put a low value on) dissonant signals. Presumably the same reasoning explains people's tendency to put a high value on "reinforcing" messages. These considerations may very

well explain why the economic value of information may have a great deal more to do with its relationship to people's belief systems than with its "objective" content measured in decision theory terms. Whether this approach is sufficiently robust to "explain" entertainment or "play" demand is another matter. The empirical work on persuasion and attitude change does suggest that it is extraordinarily difficult to make people believe things they are not already inclined to believe.

It seems clear that it will not be fruitful to proceed very much further on the psychological level here. Henceforth we shall take it for granted that people have "a demand" for news and entertainment, and that this demand is affected by such standard variables as price and income, and that different people like different things. Since it is essential to the political theory of the First Amendment, we shall also assume that people demand information about their government and its behavior. This will be demanded in varying degrees of detail as individual economic interests and tastes warrant. Finally, no distinction will be made among news, opinion, and entertainment. This last assumption requires some justification.

Why not treat news separately from entertainment? First, news is sometimes consumed because it is entertaining. It is otherwise difficult to explain yellow journalism, political cartoons, "happy talk" TV news shows, or movie magazines. Second, much entertainment contains political and social commentary which is crucial to the First Amendment system. Surely the most powerful and subtle vehicles for attitude change and persuasion, as well as reinforcement, are dramatic and literary works.

These arguments suggest that from the point of view of First Amendment theory any distinction among communicated messages by "type" is fruitless, and indeed dangerous. The courts have generally accepted this view, with the exception of pornography and obscenity cases, and with the important exception of "commercial" speech.<sup>13</sup>

The demand for mass media messages surely depends on the social and cultural environment in which people live, since this environment conditions the "usefulness" of the information received. This effect will determine, or help to determine, the structure of the media themselves, since the media affect the attractiveness of the message, a la McLuhan [49], (see also Innis [39]). The present work is hardly broad enough in scope to encompass this set of issues in a way which can lay any claim to comprehensiveness. They are nevertheless important, and will be brought into the discussion from time to time. Suffice it to say, for the moment, that media technology is not exogenous to the socio-economic system. Social conditions are no doubt different in the electronic era than they were in the age of print, but it may be very difficult to separate cause from effect with respect to the role of the media themselves in this change.

### The Stages of Production of Media Messages

There are three stages of production on the supply side of the media marketplace. These are: (1) The creation of messages, (2) the selection or editorial process, and (3) the transmission of messages to the audience. This has more than taxonomic significance, for each stage has different economic characteristics.

The creation of messages takes place in the writing of a news story, in the process of authoring an article or book, or in the production of a TV program or movie. In this process there is great heterogeneity. The frequency distribution of messages with respect to their "creators" is very nearly flat. There is great competition, despite the fact that creative talent is relatively scarce. There are few barriers to entry, in the sense that nearly anyone can sit down and write a novel or a screenplay or a news story; but getting it published or produced is another matter.

The editorial process is performed by newspaper editors, publishers, TV directors and program executives, motion picture studios, and the like.<sup>14</sup> Economic organizations at this stage decide which of many potential messages will in fact be transmitted to the public - which messages the public will be allowed to choose from. This "gatekeeping" role is enormously influential if editors have monopoly power.

magnetic spectrum, or movie theaters. The technology of the transmission process has been subject to enormous change over the years, in marked contrast to the creative and editorial stages. In this century even printing technology has changed drastically, to say nothing of the invention of phonograph records, tape recorders, motion pictures, radio, television, and cable television. These technological innovations have had a profound effect on media structure and costs, and derived effects on consumption patterns.

In terms of information flow, probably the most important aspect of the new technologies is that they are cheaper. An investigation of the question would doubtless reveal that the proportion of average household income required to consume constant quantities of information has declined significantly over the past 100 years. In terms of "bits" television has a far lower transmission cost than newspapers. Whether the economic value of bits transmitted in the two cases is the same is another question. (Even from the technical point of view much of the television transmission is "redundant.") More significant, perhaps, is the fact that the new media are much more "popular" than the old, and the fact that the electronic media face a constraint (time) not faced to the same degree by the print media. Time spent watching television (and, earlier, listening to the radio) is far greater on average than the time people used

probably

### Vertical Integration

Figure 1-1 provides a stylized view of the three-stage production process for five major media. Reading across the figure, it is apparent that there are marked similarities among the first two stages in different media. Neither creation nor editing requires much capital investment (except for movies); both are labor-intensive. Entry is (conceptually, treating the stages as independent) easy. There ought to be a great deal of competition in these stages.

In contrast, the transmission stage is characterized by heavy capital investment costs, economies of scale, licensing, and other barriers to entry. These effects are particularly important for broadcasting, newspapers, and motion pictures. They are less important for magazines and books, largely because postal service is independently supplied, and even subsidized.

The economic conditions for private power in individual media are clearly present in stage three. They are not present in stages one and two. Yet we find great concentration at stages one and two in some media. Why is this? Clearly it must be an effect of the non-neutrality of stage three.

Consider the media where concentration is absent at stages one and two: magazines and books. For these media, the transmission stage (printing, mailing, bookstores, bookclubs, newsstands) is independently owned; there is little or no vertical integration. In contrast, for broadcasting and newspapers, the owners of the concentrated transmission stage are vertically integrated; they control editing and sometimes creation. Consequently the number of competing message sources and competing editorial services is reduced. Competition is constricted by

FIGURE 1-1: STAGES OF PRODUCTION

|                   | <u>TV</u>                              | <u>NEWSPAPERS</u>                                 | <u>MAGAZINES</u>            | <u>BOOKS</u>                 | <u>MOVIES</u>                               |
|-------------------|--|---|-----------------------------|------------------------------|---|
| Creation          | program packagers<br>and their factors | news source<br>reporters<br>syndicates<br>UPI, AP | writers<br>photographers    | authors                      | writers<br>producers<br>directors<br>talent |
| Editing           | networks, stations                     | editors<br>publishers                             | editors<br>publishers       | publishers                   | studios                                     |
| Trans-<br>mission | transmitters<br>spectrum               | press<br>trucks<br>newsboys<br>newsstands         | press<br>mail<br>newsstands | press<br>bookstores<br>mails | distributors<br>theaters<br>(Also TV)       |

virtue of the power of the most concentrated stage to control access and content.

The owner of a newspaper press does not act like the post office; he does not accept all requests for transmission at published rates.<sup>15</sup> He actively controls transmission, editing, and to some extent, creation. Thus, in an important sense, it is vertical integration of control in some media which is responsible for private monopoly power in the marketplace of ideas, given the increasing degree of concentration in the transmission function occasioned by scale economies, licensing, and other causes. Behind this, of course, lies the technical or economic source of concentration in the transmission stage; these effects will be explored below. In addition, there may be technical or economic reasons why vertical integration is "necessary" in some media. It may be hard to imagine a daily newspaper publisher acting like a common carrier, for instance, largely because this may interfere with the economics of the editorial process, or because of "externalities" within the newspaper. It is somewhat easier to imagine TV stations as common carriers, like the postal service, and we shall explore this idea later.

The important point is that given the perhaps necessary or natural concentration of the transmission level, vertical integration may be "responsible" for concentration in the crucial creating and editing stages. After all, provided that the transmission media are neutral (that is, do not discriminate systematically among messages or speakers on the basis of content),

there is no other reason to suppose that there would be significant concentration at the earlier stages. For those media (magazines and books) which are characterized by neutral transmission media, there is extensive and vigorous competition at the earlier stages. It is only in the broadcast, newspaper, and motion picture industries that economies of scale, licensing, or other conditions give rise to individual firms with discretionary power to control content. We shall return to this point again and again, since vertical integration is often the key to policy changes which might enhance freedom of expression.

The preceding argument is not meant to imply that the concentrated transmission stage acquires control over vertically related processes for predatory reasons. The reasons for vertical integration may be quite innocent, or even dictated by technological or economic necessity. It is easy to see why, in the media, a newspaper would hire reporters rather than buy news stories from independent free-lance journalists. First, there is an element of timeliness which does not allow much opportunity for dickering over terms and conditions of sale. Syndication is much more common and competitive for non-news items. Second, the "product" is in this case one which has to be in effect "consumed" by the buyer in order for him to make a bid; but the news story is not easily protected from piracy as a result of such transactions, since the event involved, once known, can usually be independently verified and reported. For less timely material, the author or creator can and does exercise greater control, but ideas are practically impossible to appropriate. While free-lance reporters do exist their existence depends on conventions of "gentlemanly behavior" on the part of buyers, or (in the case of news wire services) the absence of much competition.

Backwards vertical integration by a monopsonist (that is, the monopolist of transmission in his role as a buyer) may be motivated by a number of factors. A monoposonist can gain from vertical integration by eliminating the deadweight efficiency loss of monoposony buying. (A monopsonist buying from a competitive industry takes account of the effect of his marginal purchases on the price of inframarginal units of the input. This leads him to purchase less of the input than he would use if it were internally produced.) Second, depending on various conditions in the supplying industry and the output markets of the monoposonist, the monopsonist can in some circumstances appropriate some portion of the rents generated by fixed factors in the competitive supply industry. Finally, manipulation of prices of the input can be managed by partial integration, and this can have an effect on competitors of the integrating firm if it is not a monopsony but simply a dominant firm. Thus, there are circumstances in which optimal integration is less than complete integration, and other circumstances in which it is optimal to integrate gradually rather than all at once.<sup>16</sup> Finally, in an industry such as television, individual programs as inputs are rather risky -- their audience productivity is not known with certainty in advance. Under these circumstances, the monopsonist or oligopsonist may be able to reduce costs by vertical integration or other equivalent measures which have the effect of pooling these risks, something an independent competitive producer of programs can not do.

In general, then, partial or total vertical integration by a monopsonist or oligopsonist may well be profitable. In many circumstances it is also efficient, in the sense of reducing industry costs.

The implication is that barriers to vertical integration, proposed often in this book, may result in efficiency losses. These can be eliminated in principle by regulation of the monoposonist himself, although in practice this may not be feasible. The efficiency gains from vertical integration may, depending on the elasticity of demand for the final product, be rather small compared to the redistributive and non-economic effects.

### Economies of Scale

If the source of power and concentration in the first two stages is vertical encroachment from the concentrated transmission stage, what is the source of power in the transmission stage?

Typically this power derives from economies of scale in transmission.

There are two sorts of scale economies. The first we shall call "first copy" costs. These costs are incurred no matter how large the audience; they are the same for one reader or viewer as for ten thousand or ten million. Obviously, the larger the audience, the lower the pro rata (average) first copy costs are. The effect is illustrated in Figure 1-2. It is essentially a "public good" effect, and we will return to it in the next section.

The second sort of scale economy is found in the technology of distribution itself. It may be cheaper to produce and deliver the 100,000th copy of a newspaper than the 50th. Put another way, a newspaper of 100,000 circulation may have lower average total costs than one of 50,000, even leaving first copy costs aside. An extreme case is that of a TV station, where an additional viewer (within the signal area) costs the station literally nothing.<sup>17</sup> This effect is illustrated in Figure 1-3, showing declining marginal cost of circulation.

FIGURE 1-2  
FIRST COPY COSTS

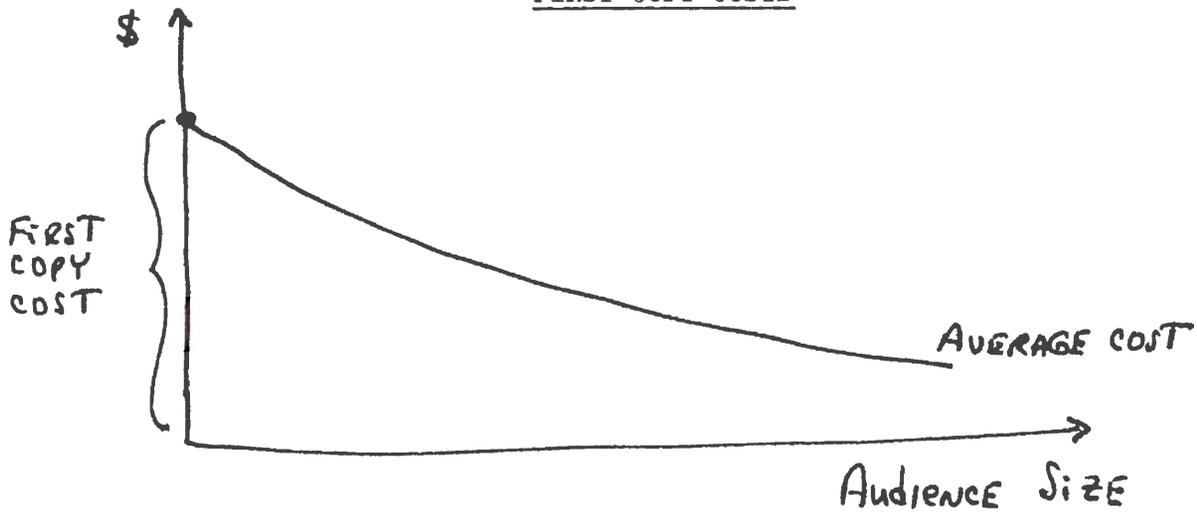
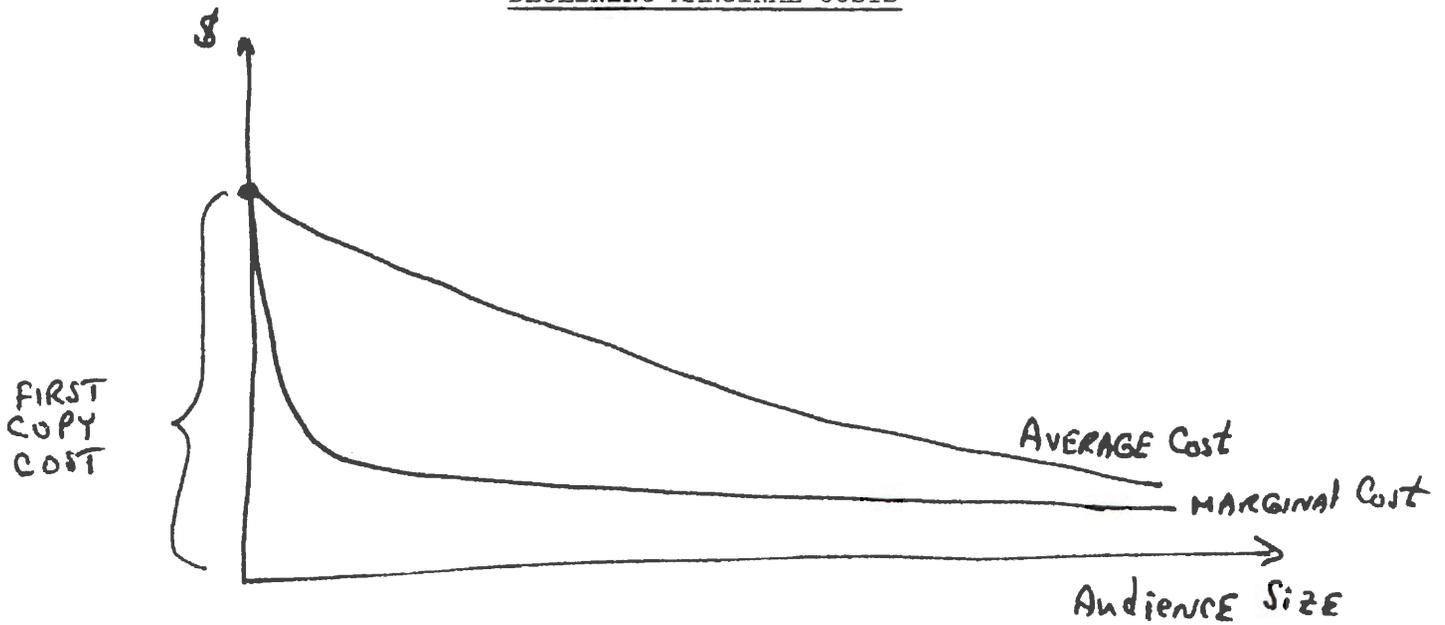


FIGURE 1-3  
DECLINING MARGINAL COSTS



So long as marginal cost is declining, so must average costs decline. The effect of this is clear: The larger the audience the greater the competitive advantage. Large<sup>18</sup> newspapers will tend to drive out smaller ones; two smaller newspapers can both gain by merger; a new motion picture distributor must have great difficulty obtaining a viable foothold in the industry; a UHF station which can only reach some of the homes in its market will do poorly compared to a VHF station which can reach all homes.

Scale economies of one kind or another are responsible for much of the concentration we observe at the transmission stage of mass media, but they are not the only cause. (In broadcasting, government policy is at least equally important.) Moreover, it must be remembered that scale effects are not and cannot by themselves fully determine the extent of competition. They must be taken in context with the "extent of the market" and the characteristics of consumer demand. Just one illustration of this point: If newspapers have economies of scale, why is there not only one newspaper in these United States? The reason is clear: demand for newspaper content is geographically specialized; this specialization of demand eventually offsets the scale effects, and determines the geographical extent of local newspaper monopoly.

Scale economies have mixed effects on consumers. Given the structure of the market, economies of scale mean increased consumer welfare as the extent of the market grows, simply because costs and

therefore prices fall.<sup>19</sup> But the presence of scale economies tends to produce non-competitive markets; non-competitive markets are characterized by inefficient monopoly pricing and perhaps a deficient rate of technological innovation. Depending on the magnitude of the scale effects and the elasticity of demand, consumers (and advertisers) may or may not derive a net benefit from this trade-off. This is the sort of problem with which the antitrust authorities must constantly deal. But in the present context the presence of monopoly power due to scale effects has an additional negative effect: it constricts access and freedom in the market place of ideas, and this in turn generates pressure for government intervention which may extend to content.

### Public Goods and Monopolistic Competition

A "public" good has the characteristic that one person's consumption does not reduce the amount available for others. Clearly, by this definition, a TV broadcast is a public good while bananas are not. Most goods have some element of the public good in them; there are few "pure" private goods and few "pure" public goods. But media messages are close to being pure public goods, although they are often embodied in a private good, such as the physical newspaper, book, magazine, or a TV set. (In television, both the program and the signal are public goods.)

Public goods have enormous economies of scale in consumption; marginal cost for an additional reader or viewer is almost literally zero beyond the transmission cost. This phenomenon is simply the "first copy" cost discussed in the previous section, and resembles all fixed costs in its effects. Note that the first copy cost does presumably influence how many people will want to receive the message, but not how many can.

Truly competitive production of public goods is either impossible (price competition will drive prices down to equality with marginal cost, which is zero) or likely to be inefficient, relative to the social optimum.<sup>20</sup> On the other hand, media messages are almost by

definition "differentiated:" No two are identical.<sup>21</sup> This product differentiation attenuates the debilitating effects of price competition. If there are a large number of firms producing goods which are sufficiently differentiated to make them only imperfect substitutes, we refer to the market as being monopolistically competitive. The creation and editing stages of mass media production can therefore (absent concentration) be described as the monopolistically competitive production of public goods.

One characteristic of monopolistic competition is that entry (of new products) and competition (in price and product space) keeps profits of individual firms down to "normal" levels. There are no profits in excess of normal returns. Until recently not much was known about the problem of firm location in product space in monopolistic competition. Recent work has demonstrated that firms in a monopolistically competitive equilibrium tend to produce too few products of a certain type, relative to the social optimum. The products which tend not to get produced are those with low price elasticities of demand. These are generally associated with small groups of customers who place

a high value on products with specialized characteristics. There is a bias toward production of "mass consumption" products; this is "caused" by the presence of fixed costs. On the other hand, it can be demonstrated that media structures characterized by relevant forms of monopoly do even worse in this respect. What this means is that specialized, minority tastes are not well-served.

We will return to this issue below in the context of our discussion of television. But the public good "problem" is quite a general one in the mass media, and it has certain implications for freedom of expression. One of these implications is that there may be a tendency toward underproduction of messages generally, simply because of the difficulty and cost of excluding "free riders." The law of copyright is a sort of second-best solution to the public good problem in communication. There are two interests at stake: The need to provide an economic incentive to producers of messages, and the inefficiency which results from charging a price above the marginal cost of making the message available.<sup>22</sup> A second implication is that efficient solutions are unlikely to be available without direct government intervention in the process of defining message sources and content. We are constrained from this by the First Amendment itself. In any event, the information requirements for an efficient solution are so heavy, and the incentives

for people to give false information are so great, that government intervention in practice is certainly not guaranteed to leave anyone better off even in economic terms. For related reasons, the private, price-discriminating monopolist solution to the public good problem must be rejected in the present context.

Despite its demonstrated biases, monopolistically competitive production of public good messages may be a tolerable second-best situation from the First Amendment viewpoint. This is so at least in part because the character of consumer demand is apparently sufficiently heterogeneous that the worst conceivable cases of market failure are not observed in practice. A really dominant plurality of consumers with nearly identical tastes in media content could have very serious implications for the robustness of expression, given the incentives facing producers in this market. As things are, the more serious problems are found on the supply side, and even here the pathologies are traceable to influences external to the creating/editing process which is at the heart of First Amendment concern.

If we wished to measure diversity from the economic point of view, we could try to partition individual items of content into categories such that the cross-elasticity of demand<sup>25</sup> within categories was high, and cross-elasticity among categories low. This would be an empirical matter, not a conceptual one.

But whatever its interest as an ethical or humanistic concept, diversity is really a red herring for our purposes. When it refers to content it has no necessary relationship either to freedom or to economic efficiency and consumer welfare. If, on the other hand, it refers to the sources of media messages, then it may be a measure of freedom of access, provided that the society itself is heterogeneous. But we might as well go directly to the main issue, which is ease of access to the media of expression, for speakers, and ease of access to alternative independent sources of information for the audience.

Access

There is a close relationship between freedom of expression and ease of access to the media for individuals. Ease and flexibility are definitions of freedom. If one or a few persons control who shall speak and who shall not, there is no freedom of access or expression. If access to the media is controlled by a multiplicity of persons or by a set of neutral rules, and if it is not structured in a way which makes expression by some groups much more difficult than for others, then there is relative freedom of expression. But there are a number of thorny problems which remain.

First, freedom of access to the media means little if there is no audience. Second, the cost of access (in a private system) can hardly be zero, because the cost of transmission is greater than zero. This means that people with "too little" money are denied some degree of freedom of expression, just as they are denied some degree of freedom in other economic activities. Third, if the number of media channels is limited, some rationing device (such as prices or queues) must be employed, and it is hard to think of "fair" rationing devices. Finally, effective economizing behavior by consumers leads to their

selection of editors or editorial services which screen out in advance unwanted messages. A right of access to such edited collections of messages would be an intolerable burden on the consumer, leading to a complete breakdown of mass communication. Access, if it is to be a useful concept, must mean the opportunity to utilize the means of transmission for the conveyance of messages. That is, the ease or degree of access is determined by the economic and institutional conditions surrounding transactions between speakers and the owners of the transmission stages -- the airwaves, the presses, and the mails. Access cannot usefully mean the opportunity to insert messages into the editorial process of another. This distinction is no doubt confusing when, as with television and newspapers, the owners of the means of transmission also own their own editorial and creative services, but the distinction is nevertheless conceptually clear and essential to the formation of appropriate policy. Moreover, it is a distinction which would greatly aid in clarifying the meaning of the First Amendment in its application to modern media.

Clearly freedom of access to the media cannot mean "free" access - access at a zero price. For this would have two consequences, both likely to be intolerable. The first would be a demand for media capacity which could not be satisfied without government subsidies. With subsidies comes intervention.<sup>27</sup> The second would be an "overload" of

consumption capacity such that few messages would be received. The cost to consumers of exercising choice would be raised to the point that far fewer choices would be worth making. I am not saying that it is undesirable to allow as many people as wish to, to manufacture (say) automobiles, of all descriptions. What

would be intolerable is a "right" on the part of anyone to attach accessories to the automobiles of any manufacturer, forcing the manufacturer to sell them as a unit with the car. Such a right would simply reduce the value of automobiles, and certainly increase their prices, with the result that few, if any, would be sold. Freedom of access cannot be taken to mean the right to insert messages "in the midst of" a package of edit-

industry. Note that freedom of access in this context clearly means the right to publish and mail a periodical (or book), not the right to insert messages in any already existing publication. Happily, this freedom of access for "speakers" seems to result in a significant degree of freedom of access by the audience to a range of independent sources of information and opinion.

Freedom of access in this sense is restricted, in the newspaper industry, by the economies of scale of publication, and by the peculiar editorial characteristics of a newspaper. While one can conceive of a common carrier newspaper printer<sup>29</sup> which provided this right for message creators, one can also imagine significant economic harm being visited on newspaper readers as a result, depending on the rules and on the equilibrium size and content of the newspaper which results. This trade-off may nevertheless be worth making.

Freedom of access in television might be satisfied by the establishment of a private market in spectrum, so that "anyone" could buy enough to start a new station. It might also be satisfied by a right of paid access to existing channels, or by some modification of the present structure of concentrated control.

There remains a fundamental difficulty with our concept of freedom of access, and that is that the price of access need not (should not) be zero. At a non-zero price, some messages will be excluded. What kind of messages will be excluded from the marketplace by a non-zero access price? The first kind are messages which are valued by consumers at less than their cost of creation and transmission, and which no person or group is willing or able to subsidize. The second kind are messages which consumers would value (and pay to receive) more than their cost, but which creators cannot produce because of the biases of monopolistic competition in product space.<sup>30</sup>

The first sort of message ought not to be produced at all, from an economic point of view, but might conceivably be desirable from the political standpoint. The second sort represents a real market failure, and the cost of this failure may fall heavily on persons and groups at the lower end of the income distribution scale. A great deal of the activity of eleemosynary institutions

can be regarded as an effort to remedy this problem, and it is conceivable that some government subsidy programs, properly structured and administered, could also alleviate it. To the extent that the

problem results not merely in inefficiencies, but also in inequities,<sup>31</sup> we can regard it as a reflection of the underlying inequities of wealth and income distribution.

Messages excluded due to the non-optimality of monopolistic competition in product (as well as price) space are likely to be associated with demands from relatively small groups of consumers with rather intensely felt wants. The market failure is due to the inability of competitors fully to respond to the consumer's valuation of such products. On the other hand, if the groups involved are sufficiently small or identifiable, their members may be able to form coalitions for the purpose of satisfying these unmet demands.

Finally, it should be noted that the "price of access" as a barrier to freedom of expression may be of significance even if the media are free from concentrations of power leading to monopoly prices. That is, it may simply be "too" expensive to create and transmit messages even if the media themselves are competitive and efficient. This would mean that the socially correct production of messages (taking account of political considerations) was greater than the economically correct level of production. It is difficult to tell whether this would be the case, and still harder to say what to do about it.

The Right to Hear vs. The Right to be Heard

Supreme Court interpretations of the First Amendment in the context of the mass media are not frequent. In recent years only in Miami Herald Publishing Co. v. FCC,<sup>32</sup> CBS v. DNC, and Red Lion has the Supreme Court dealt in any depth with the issues we are discussing. The Red Lion decision was remarkable for its theory of the "right to hear" via the broadcast media, a "right" which the court did not choose to extend to the print media five years later in Tornillo. We will discuss the Red Lion decision below in the chapter on television, but the concept of a right to hear is worth a word or two at this point.

In Red Lion, the court said that the public has a right to hear, or be informed, on certain issues (those which are "controversial" and of "public importance"). The court saw the mechanism of this right being exercised through government intervention in the behavior of private broadcast licensees. Broadcast licensees have highly circumscribed, if any, First Amendment rights themselves.

The Red Lion decision says, in effect, that the government has an obligation to promote conditions which would have the same end effect as freedom of expression (that is, an informed public), and that this obligation must be exercised through direct regulation of the content of the electronic media. But freedom of expression is important not (just) for its effect on the public's information, but as a process which is an end in itself. This is the essence of the wrongheadedness of Red Lion: The same principle could have been served by structural remedies.

The new right to hear is clearly distinct from the right to be heard, which I shall take to be synonymous with a reasonable interpretation of a right of access. Arguably, freedom of expression, reasonably defined, might not result in the fulfillment of the public's passive right "to be informed." This raises certain rather dangerous questions about the responsibilities and powers of the state.

A great deal of the substance of this controversy is attributable to the peculiarities of institutional conventions surrounding economic transactions. A simple example is postal service. In the eighteenth century, and well into the nineteenth, it was conventional for the recipient to pay postage on letters and other mail. Indeed, it was not until the 1880's that prepayment of postage on newspapers became effectively mandatory, although rates were higher on C.O.D. mail long before that date. Under such an institutional arrangement, the locus of choice is shifted in large part from the sender to the receiver of the message. Institutional arrangements of this sort can have a profound effect on media content and on choice. When the sender pays the cost of transmission, the recipient is passive with respect to the whole range of messages he is ignorant of, and therefore has not "ordered." When the recipient pays, senders have a greater incentive to lay before the consumer a wide range of content, some or all of which can be consciously rejected.

It is doubtful that the First Amendment really contains an implied "right to hear" which is distinct from freedom of expression.

The whole concept of such a right, and its exercise, runs counter to the most basic notions of freedom of expression, precisely because the institutional arrangements implied by the first "right" requires subjugation of the second. To be sure, the First Amendment must be taken to mean the absence of government control of the content of information or messages which the consumer receives, and this is a "right to hear" or a freedom from censorship, which affects recipients. But the "right" to be "informed" by the state, particularly when the implementation of this right restricts freedom of expression, is not reconcilable with the constitutional doctrine. It is possible that alterations in the institutional structure of transactions (such as the postage question, or in another context, the pay TV question), can shift the balance of choice between producers and recipients of messages, and thus require trade-offs between the right to hear and the right to speak. It is doubtful, however, that such issues can be treated in general terms.

Economic Freedom

Economic freedom<sup>33</sup> for consumers can mean only the degree to which they are ~~constrained from~~ <sup>able to</sup> achieving <sup>e</sup> satiation of their wants.<sup>34</sup> A number of such constraints exist. Wealth and income constraints are present for nearly all consumers, and these can be traced to much more general and basic conditions in the economic order. Economic freedom is also constrained by the existence and tastes of other consumers, given economies of scale, fixed costs, or other non-convexities in the production process. A consumer with unconventional tastes will be more constrained in his choices <sup>(less well off, less free)</sup> than one with conventional tastes, because the production process in general discriminates against him.

On the other hand, the competitive private enterprise system is ideally suited to maximize consumer freedom, since it responds only to consumer wants. Absent the many imperfections which in fact exist, a competitive private enterprise system would give consumers greater economic freedom (qua consumers) than any other system of resource allocation. The story may be quite different for consumers qua workers, however.

Economic efficiency - making consumers as well off as they can be, given available resources and the distribution of their ownership -

is consistent with a competitive system of private enterprise. The proof of this proposition<sup>35</sup> has been one of the greatest achievements of economics, and its political implications are worth a moment's reflection. What it means is that decentralized individual decision-making, involving only the calculus of personal gain, results in an overall state which is the best that can be achieved for everyone. Moreover, there exists such a state for every conceivable distribution of the ownership rights in resources, or wealth, so that there is no necessary "inequity" attached to the efficiency of decentralized decision-making. Personal economic freedom in the conventional sense is not constrained by the system of allocation. Of course, there remain those "imperfections" which can and do make the system work at less than its theoretical efficiency.<sup>36</sup>

Against this freedom for consumers, we can contrast the utter lack of freedom for competitive producers. To be sure, producers are free to enter or leave the market at will, and to produce "what they like." But the mechanism of an efficient, competitive private enterprise system (to the extent it really works) will reward the firm or producer with economic survival only in highly constrained circumstances.

Any deviation by the firm from efficient prices or outputs or locations or product choices or speed of reaction to innovation or changes in consumer tastes will result in its instant economic nonviability. There is no real freedom for producers in a private enterprise system which is competitive in the sense required to maximize consumer freedom. Producers achieve freedom from this survival mechanism only at the expense of consumers, and they achieve it by acquiring in one way or another some degree of monopoly power.

How can there be "freedom of expression" in such a system? A message can be created and produced only if it "survives" in the economic sense. Producers have only the freedom to try to survive. The market guarantees that after the dust has settled all economic messages will be produced, and that all "uneconomic" ones will fail to survive. But this very freedom to enter the market, to test consumer response, which is guaranteed by the competitive mechanism, may be all that is essential to freedom of expression, from the constitutional viewpoint, provided consumers demand the right information about political matters. Surely the framers of the constitution did not have in mind an absolute right to survival in the marketplace for all potential purveyors of ideas.

An immediate difficulty is that messages by their very nature do not fit the assumptions of the competitive model. Messages are in-

herently differentiated, not homogeneous,<sup>37</sup> and competition in their production must be imperfect or "monopolistic." And as we shall see, monopolistic competition in product space does not result in the "right" mix and number messages because of the fixed costs of production and non-homogeneity of tastes. More serious, it may well be precisely those messages which are of critical importance in the political sense which are squeezed out by imperfect competition. Monopoly is no remedy for this, luckily, and government intervention would be of little help to the economic issue because of its information requirements. An efficient solution may not be available. On the other hand, there are many areas in which we have not achieved even a second-best solution, so there remains room for improvement over the present system, provided we accept the structure of the producing industry itself as a valid and practical policy instrument.

Improvement must generally take the form of reducing monopoly power. Here, the political and economic goals coincide. For monopoly denies both political and economic freedom to consumers in the marketplace of ideas, just as in the marketplace of goods. The acquisition and maintenance of monopoly power denies freedom to other producers as well, and thus directly impinges on freedom of expression in message

production. When private firms join with government to establish and maintain such power, as they do in broadcasting, there is ample room for improvement in the system of freedom of expression and economic freedom as well.

The critical point about monopoly power in the media is that it gives the media owner the power to decide what people shall and what they shall not see and hear. The diversity of sources of information is constricted, and there is no source of marketplace relief, such as entry of new firms, for egregious behavior. If the owners of the media are then drawn from a class with similar backgrounds or similar economic interests, there will be a systematic tendency to bias media content in certain predictable ways. This may even be possible without economic loss, since such subtle (or potentially subtle) factors as "political slant" in content may not affect the economic value of messages to consumers.<sup>38</sup> This is particularly likely to be true of entertainment programming. Even if this is not the case, the monopoly media owner has power in the discretionary use of his excess profits, and he can afford to "spend" these profits in ways which further the economic, political, or social interests of his class. He can simply exclude even those who can "afford" to pay for access. He can choose to behave "uneconomically" to the extent

permitted by the barriers to entry in his market and by the structure of control of his firm. He can defy the discipline of the market system, which works hand in hand with the system of freedom of expression. That he often fears and respects his power and seeks to act responsibly is of little moment. Why should we be content with a "responsible" monopolist? Competitive media owners, whatever their class, do not have this power if they are to survive in the marketplace.

### The Role of Advertising

Advertisements are simply a special class of messages which convey signals about products or services. They deserve special attention because of their role in the economic process of resource allocation and because of their prominent place in the financing of the media. (See Table 1-1.)

In many important respects advertisements are indistinguishable from other media messages. They are valued by consumers (many people read newspaper ads more regularly than editorial content). They are sometimes entertaining, sometimes informative. They are sometimes exaggerated and untruthful, but so is much non-advertising content. They are distinguishable mainly by virtue of their role in allocating other goods and services, rather than being end-products in themselves. To the extent that they are not valued by consumers, such messages must be accompanied by other material which is, or there will be no audience. Thus, "popular" (economically viable) editorial content is sometimes produced in order to facilitate the consumption of advertising, as in sugar coating a pill. This is an accurate description of commercial broadcasting. It is just as often the case, however, that advertising enhances or complements the value of editorial content.

Why do advertisements appear in some media and not in others? Books and motion pictures seldom carry advertising. On the other hand, broadcasting depends entirely on advertising revenue, and such revenue is very important for newspapers and magazines. The answer lies partly in timeliness - books are read over an extended period

TABLE 1-1  
 VOLUME OF ADVERTISING 1867-1970  
 (millions of dollars)

| <u>Year</u> | <u>Total</u> | <u>News-<br/>papers</u> | <u>Magazines</u> | <u>Radio</u> | <u>Television</u> | <u>Direct<br/>Mail</u> |
|-------------|--------------|-------------------------|------------------|--------------|-------------------|------------------------|
| 1867        | 50           |                         |                  |              |                   |                        |
| 1900        | 546          |                         |                  |              |                   |                        |
| 1909        | 1,142        |                         |                  |              |                   |                        |
| 1920        | 2,935        |                         |                  |              |                   |                        |
| 1930        | 2,607        |                         |                  |              |                   |                        |
| 1935        | 1,690        | 762                     | 136              | 113          | 0                 | 282                    |
| 1940        | 2,088        | 815                     | 198              | 216          | 0                 | 334                    |
| 1945        | 2,875        | 921                     | 365              | 424          | 0                 | 290                    |
| 1950        | 5,710        | 2,076                   | 515              | 605          | 171               | 803                    |
| 1955        | 9,194        | 3,088                   | 729              | 545          | 1,025             | 1,299                  |
| 1960        | 11,932       | 3,703                   | 941              | 692          | 1,590             | 1,830                  |
| 1965        | 15,255       | 4,457                   | 1,199            | 917          | 2,515             | 2,324                  |
| 1970        | 19,600       | 5,745                   | 1,323            | 1,308        | 3,596             | 2,766                  |

Source: Historical Statistics of the U. S. p. 526; Statistical Abstract 1973, p. 759.

Note: Total includes outdoor and miscellaneous advertising not reported separately.

after publication, and most advertisers change product types or styles sufficiently often to make the book medium unsuitable for this reason. A more important answer lies in the superiority of some media over others as advertising vehicles. Compared to movies and books, other media are simply better vehicles, with larger audiences, faster response times, and/or lower costs.

Without advertising revenue most of the mass media would be unable to survive. Advertising revenue accounts for 100% of commercial broadcast revenue, and more than 50% of newspaper and magazine revenue. (See Table 1-2.) This is the principal reason that this class of messages is worthy of special consideration.

As to the influence of advertisers on freedom of expression, there is a great deal to say, but little concrete evidence to cite. It has often been alleged by program and news personnel in broadcasting, and by their counterparts in the print media, that advertisers have a good deal to say about editorial content which affects their interests. The counter culture would presumably suggest an inherent establishment bias in the media for similar reasons. If true, such allegations suggest systematic discrimination against a certain class of ideas, and this is antithetical to the First Amendment principle. Actual evidence of such influence is however scarce. More likely, media owners and employees practice self-censorship in the sense that ideas likely to

TABLE 1-2

SOURCES OF REVENUE FOR MASS MEDIA-1967

(millions of dollars)

| <u>Medium</u>   | <u>Revenues</u>  |                    |               |
|-----------------|------------------|--------------------|---------------|
|                 | <u>Consumers</u> | <u>Advertisers</u> | <u>% Adv.</u> |
| Television      | 0                | 2275               | 100           |
| Radio           | 0                | 907                | 100           |
| Newspapers      | 1654             | 3896               | 70            |
| Magazines       | 1121             | 1547               | 58            |
| Motion Pictures | 3476             | 0*                 | 0*            |
| Books           | 2255             | 0*                 | 0*            |

\*Negligible.

Statistical Abstract, 1973, p. 500, 502, 506, 755.

offend seriously an important advertiser simply are never seriously proposed for publication or broadcast. This process is insidious.

It is, however, merely a reflection of underlying imperfections in the structure of the media, since a competitive media would not have the power not to offend advertisers.<sup>39</sup>

From a purely economic point of view, advertising is a mixed blessing. It is a blessing because its presence permits the production and transmission of certain messages, and the existence of certain media, which for various reasons could not exist on the basis of subscriber or consumer revenue. Certainly it would have been more difficult to develop TV and radio if advertising were not available, because of the substantially greater transactions costs involved in collecting money from consumers.<sup>40</sup> But advertising is also a bane, especially in broadcasting, because it requires the media to respond to incentives which have little to do with consumer interests. This point will be made in more detail in our discussion of program-bias effects in Chapter 3. The basic problem is that the advertiser buys audiences while the con-

sumer buys content. Generally, the consumer's value of content exceeds the advertiser's valuation of the consumer. This leads to decisions about the type and quality of content which are inefficient, at least, and possibly non-neutral from the First Amendment standpoint.

### Inter-Media Competition

While newspapers compete with each other, they also compete with television; intermedia competition for audiences and for advertisers is a matter of some consequence in certain parts of the media marketplace. Historically, of course, the electronic media have eclipsed parts of the print media either because of their superior audience appeal or because of their advertising productivity, or both. Meanwhile, one electronic medium (radio) has been eclipsed by another (television) which in turn seems threatened by a third (cable television). These Schumpeterian [82] processes have accelerated in recent years, despite the efforts of the media themselves to seek government protection from the march of technology. The protection thus afforded is, in historical perspective, a short respite.<sup>41</sup> We will discuss intermedia competition and cross-media ownership more fully in the chapter on television below.

Economics and Personal Expression

Although this book is concerned with expression, and particularly the expression of political ideas, through the mass media, it is important not to understate the significance of other forms of communication. We live increasingly in an "information" economy - one in which a large fraction of the productive sector is engaged in producing and consuming information. There are a number of things which economists can say about this process, although the study of the economics of information is itself a very young science. Much of the social concern with privacy of information about persons or with security of corporate information can be traced to problems of signalling on the one hand, or the non-appropriability of information as a public good on the other. There is a significant degree of "economic content," therefore, in copyright, privacy, freedom of information, credit terms disclosure, and similar laws. Although an examination of these issues would take us far afield, they are vital issues to which economics is just beginning to make a contribution.<sup>42</sup>

The Search for Humane Systems: Flight From the Market

An enormous amount of government activity in the regulation of industry - from railroads to agriculture - can be "explained" by humane dissatisfaction with the impersonality and arbitrariness of market systems.

Citizens who regard themselves as victimized by the market may feel better, even with the same result, if the process is carried out under conditions which institutionalize humanistic criteria as part of the decision-making process. A man who loses \$100 as a result of a judgment in court may feel less sense of loss than if the same sum were lost through a salary reduction by his employer. What people seem to require is that the process by which their economic interests are determined be "fair." At least, this is the response of the legal system to the political process which brings these problems before the public. That a monopolist should reign in a market is "unfair." That a competitive market should let some farmers starve every other year is "unfair."

Concern for due process as a form and for at least the appearance of humaneness in decision-making underlies much of the behavior of government agencies and courts concerned with economic regulation, including both antitrust and utility regulation. It leads, of course, to the traditional rejection of economic efficiency as a paramount criterion of decision-making. There are nevertheless flaws in the system itself, judged by its own purposes. Among these is the frequent tendency not to be "fair" to parties who happen not to be represented by effective lobbying organizations. These parties may well have a considerable stake

in the matter, but are not represented because of the difficulty of organizing or because the necessary organizations would exist only if a certain set of decisions were already reached. (See Mancur Olsen [61].)

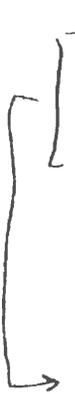
Unfortunately, the first amendment does not say anything about fairness. Indeed, the framers of the bill of rights and the early proponents of press freedom were painfully aware of the extreme unfairness of the press. One must question the very relevance of fairness in matters of mass media policy. Even if fairness is relevant, there is ample evidence that the administrative process, despite all its procedural safeguards, does not in fact achieve fairness, but only discriminates systematically in favor of well-organized and monied special interests.

FOOTNOTES

CHAPTER 1

1. Thus, the notion of a "media event" - that is, an event created by or for the media while pretending to be of spontaneous and independent origin and significance.

2. 326 U. S. 1 (1945); see also Judge Tamm's concurring opinion in Hale v. FCC, 425 F.2d 556 (D.C. Cir. 1970).



4. Personal expression alone may be inadequate to the purpose if there are barriers, political or economic, to mass dissemination of those expressions.

3. Equipment to start up a newspaper could be had, at the end of the eighteenth century, for well under \$1000 (Mott [ 57 ] 162). See generally pp , infra.

5. Whether or not a publisher "censors" the news, reporters may be reluctant to say unkind things about the country club set to which the publisher and major advertisers belong, or about their own peers.

6. Indeed, a close reading of Woodward and Bernstein [ 8 ] suggests that competition did play a role in hastening the publication of the story.

7. By "countervailing power" I mean the notion, popularized by Galbraith [ 31 ], that large monopolistic institutions are necessary to deal effectively with the corresponding power of, in this instance, government. See Schumpeter [ 82 ].

8. The editorial process by definition involves the exercise of discretion. But in a world of competition the resulting output must stand the test of the market. The editor who makes unprofitable discretionary choices will not survive.

9. I mean the "system" which has the press serve as a check on government activity.

10. There is, of course, no guarantee that the degree of exposure of malfeasance is "optimal."

11. Shannon and Weaver [83], Cherry [13].

12. See the surveys in Pool [68].

13. That is, advertising messages as a class seem to have a much lower degree of First Amendment protection than most other utterances; on the other hand, they are viewed kindly by the media.

14. And may be subject to control by capital market decision makers.

15. Although, for advertising matter, something close to this does happen.

16. I am indebted to Martin Perry for much of the preceding analysis.

17. In the partial sense. It may cost a relatively significant sum to improve the attractiveness of a program sufficiently to induce the marginal viewer to watch.

18. As we shall see, the most important scale economy in daily newspapers may be with respect to the number of pages, rather than circulation.

19. Even a monopolist lowers his price if his marginal costs fall.

20. See the Appendix to Chapter 3.

21. Copyright laws are intended to prevent them from being identical, and represent an interesting social response to an economic problem which was only defined by economists much later.

22. It is inefficient to exclude a consumer from consumption of such a good by means of a price which exceeds that consumer's reservation price; this does not preclude charging a positive price for the good, but it may imply a need for price discrimination.

23. For an example of this methodology see Ephron [23].

24. At least, an explicit theory; they do contain an implicit theory, but it is very naive.

25. The non-economist's patience at this point has surely been exhausted. The term refers to the effect on the quantity demanded of good X resulting from a change in the price of good Y. Obviously, if X and Y are close substitutes this effect will be greater than if they are unrelated.

26. It is hard to define a neutral rule. Many rules are neutral with respect to content per se but non-neutral with respect to the economic, social, or other characteristics of speakers, and thus the messages they are likely to want to deliver. First-come, first-served discriminates against people who value their time highly or who don't like queues.

27. A trivial example: A government subsidized TV channel would surely have rules against pornography. Less trivial examples are likely. If the subsidies and their rules were really controlled by elected officials rather than bureaucrats, we could argue their workability, perhaps, but reality is different.

28. Various publications have been denied second class privileges on political and moral grounds.

29. "Shopper" newspapers consisting entirely of commercial and classified ads are close to this.

30. See the Appendix to Chapter 3.

31. These being, of course, a subjective and ethical matter.

32. 418 U. S. 241 (1974), hereafter cited as Torshillo.

33. I have been and will continue to use the word "freedom" without strictly defining it. For one economist's definition, see Moore [ 56 ].

34. Satiation occurs when additional consumption would not add to one's subjective well-being. The concept is relativistic and personal.

35. Adam Smith [85 ], and Koopmans [41 ].

36. Leaving aside what are essentially confusions about the relationship between capitalism and inequity of wealth and income distribution, the "socialism vs. capitalism" controversy boils down to the question of whether the private enterprise system can be patched up well enough to work tolerably, or whether it should be scrapped. In this debate it is common, but irrelevant, to compare ideals. It is relevant, however, to ask whether consumers are to decide for themselves or whether the state is to decide for them. See Nozick [ 59 ].

37. Perfect competition, whose virtues were outlined above, requires inter alia that there be many producers of each good, and the output of one producer be indistinguishable from that of another.

38. Consumers can and do place an "economic" value on political content in general; this is subsumed in the proposition.

39. This is a delicate point. A firm on the margin of existence may, by alienating an advertiser, go out of existence. But unless the advertiser is important to all media, some other medium will convey the harmful information anyway. So the advertiser finds no advantage in ceasing to patronize a medium which carries unfavorable information about him, except to the extent that it may be awkward to juxtapose the two messages. So, in the competitive case it may be true that an advertiser can "discipline" a media firm. But this does not restrict the flow of information.

40. Even though consumers pay for TV programs indirectly through their purchases of advertised products, they pay less than they would have to pay if they purchased the same programs directly in the present system.

41. Since many or most politically important events are 'short-lived' phenomena, this long-run optimism is hardly grounds for complacency.

42. See Spence [86], Hirshliefer [36], and Miller [53].