STRUCTURAL REGULATION, CONCENTRATION,
AND DEMOCRATIZATION:
A POLITICAL ECONOMIC ANALYSIS OF
THE NATIONAL TELEVISION STATION OWNERSHIP RULE

A Thesis in
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by
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This dissertation uses a political economic approach to analyze the rhetoric surrounding debates of the National Television Station Ownership rule (NTSO) and the actual and potential consequences of increased media concentration. The study utilizes this interpretive empirical method to examine the historical context of the debates, their significance within the current U.S. political economy, and the state’s role in these deliberations.

The Federal Communications Commission (FCC) passed the NTSO rule in the 1940s with the belief that the rule would increase diversity of viewpoints and “fair” competition. But since at least the late 1970s, the rule has been viewed as an impediment to broadcasters’ pursuit of the benefits of economies of scale. The continued relaxation of ownership rules such as the NTSO rule has, in part, led to the proliferation of media mergers, for rules that once inhibited large companies from merging have consistently been eased or eradicated in the name of competition.

At the micro-level, this study focuses on the history of the NTSO rule, the Viacom-CBS merger, and News Corporation’s strategies for fulfilling the company’s special interests. I argue that attacks upon structural regulations once created to prevent media concentration and Federal Communication Commission (FCC) acquiescence are quite alarming when we consider how essential the media are to the democratic political process: to inform the citizenry for purposes of self-governance. At the macro-level, this study focuses on how the logic of capitalism is indeed antithetical to democratic ideals. The short-term goal of media ownership reform via the state, while seemingly necessary
to either decrease concentration or stabilize the current U.S. media structure, should be matched with long-term goals of social and economic justice, for democratization will be difficult to achieve if survival remains a constant challenge for a large portion of the U.S. population and an even greater proportion of the global population. As such, I present ways in which media activists can work for change within the current political economic system and propose possible alternatives to the capitalist media system.
# TABLE OF CONTENTS

Acknowledgements...........................................................................................................viii

Dedication........................................................................................................................ix

Chapter 1. INTRODUCTION.........................................................................................1

  The Problem....................................................................................................................1

  Research Questions........................................................................................................13

Chapter 2. CHALLENGING ORTHODOXY: THEORETICAL FRAMEWORKS

OF THE POLITICAL ECONOMIC APPROACH.........................................................15

Chapter 3. HISTORY OF THE NATIONAL TELEVISION STATION OWNERSHIP

RULE: FROM ADVANCING STRUCTURAL REGULATION TO ADVOCATING

DEREGULATION OF TELEVISION BROADCASTING.............................................28

  Early Regulation..........................................................................................................29

  Increasing the Ownership Limits................................................................................35

  A Change in Justification............................................................................................40

  Deregulation Attempts in the 1980s........................................................................47

  The Telecommunications Act of 1996 and Beyond..............................................61

Chapter 4. THE COURT, THE FCC, AND THE CONGLOMERATES:

DEBATING THE NTSO RULE, 2000-2003.............................................................64
Chapter 5. THE FIRST AMENDMENT CASE FOR REGULATION

Free Speech Arguments
The “Marketplace of Ideas,” Self-Governance, and Access
Profitable News
The First Amendment as a Shield
First Amendment Dichotomies
A Means to an End: A Need to Create Access

Chapter 6. RESISTANCE AND REFORM: MEDIA REFORM MOBILIZATION AND CHALLENGES

The U.S. Media Reform Movement
Efforts for Reform
Defining a Movement
Free Press Agenda
Challenges Faced, Challenges to Come
Future Possibilities for Democratizing the Media..........................162
Reform and Beyond..............................................................168

Chapter 7. BEYOND STRUCTURAL REGULATION: DEMOCRATIZATION
OF THE POLITICAL, ECONOMIC AND COMMUNICATION SYSTEMS.....171
  Refining Democracy: The Public Sphere....................................172
  The Role of the Media in a Democracy....................................181
  The Need for Democratization and Economic/Social Justice..........185
  Looking Forward...............................................................186
  Concluding Remarks..........................................................192

References.................................................................194
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DEDICATION

In Memory of

Djung Yune Tchoi

1971-2005

Scholar, Teacher, Activist, Friend
Chapter 1
INTRODUCTION

This dissertation examines the rhetoric and arguments surrounding debates of the National Television Station Ownership rule (NTSO) and the actual and potential consequences of increased media concentration using a political economic approach. At the micro-level, I focus on the history of the NTSO rule, the Viacom-CBS merger, and News Corporation’s strategies for fulfilling the company’s special interests. I argue that attacks upon structural regulations once created to prevent media concentration and Federal Communications Commission (FCC) acquiescence are quite alarming when we consider how essential the media are to the democratic political process: to inform the citizenry for purposes of self-governance. At the macro-level, I focus on how the logic of capitalism is indeed antithetical to democratic ideals. As such, I present ways in which media activists can work for change within the current political economic system and propose possible alternatives to the capitalist media system.

The Problem

Viacom announced in September 1999 that it would buy CBS Corporation for $34.45 billion in stock. It did not matter that the merger violated the NTSO rule, a rule that at that time prohibited any one entity from owning enough television stations to directly reach more than 35% of the national households, or the dual network rule, a 60 year-old rule that barred companies from owning two networks. Viacom owned 50% of the struggling UPN network at the time of the merger and had purchased the remaining 50% ownership from Chris Craft in early 2000. In May 2000, the FCC approved the merger with CBS on the condition that the company meet the 35% cap within a year.
Viacom challenged the condition, and a federal appeals court granted Viacom a stay in April 2001 (15 FCC 8230, 2000; Labaton, 2000a; Sutel, 1999; “Viacom Wins,” 2001). Additionally, the FCC required Viacom to divest its stake in UPN, but reversed itself by relaxing the dual network rule within months of the approval of the merger (16 FCC 11114, 2001). Subsequently, Viacom joined Fox to challenge the NTSO rule in court. Fox was also in violation of the rule with its parent company’s (News Corporation) purchase of BHC Communications and its ten Chris-Craft television stations in August 2000 for $5.5 billion in stock and cash (Hofmeister, 2000c). The U.S. Court of Appeals for the District of Columbia heard the case in September 2001, and in February 2002, remanded the NTSO rule, asking the FCC to provide evidence that the rule actually does what the FCC claimed it does: safeguard diversity and promote competition (Fox v FCC, 2002).

The Commission passed the NTSO rule in the 1940s with the belief that the rule would increase diversity of viewpoints and “fair” competition. But since at least the late 1970s, the rule has been viewed as an impediment to broadcasters’ pursuit of the benefits of economies of scale (18 FCC 288, 1953; 100 FCC 2d, 1984). The continued relaxation of ownership rules such as the NTSO rule has, in part, led to the proliferation of media mergers, for rules that once inhibited large companies from merging, or at least prohibited the acquisition of a formidable number of broadcasting stations and/or enormous reach, have consistently been eased or eradicated in the name of competition.

For example, the 1995 merger between Westinghouse and CBS also violated the NTSO rule. At that time, the rule stated that no one company could own more than 12 broadcast stations and/or reach more than 25% of the national households. This merger
would give Westinghouse 15 television stations and a 32% audience reach. As Ledbetter (1996) explained, Westinghouse, CBS, and the FCC did not let the rule stand in the way. They knew that Congress had been debating the relaxation of the rule, and they assumed that by the time the merger was official, the bills being debated in Congress would become law. The NTSO rule was relaxed a year later with the passing of the Telecommunications Act of 1996, which eliminated the number cap and increased the percentage cap to 35% (Telecommunications Act of 1996, 1996). Just in case, though, Westinghouse and CBS asked the FCC to suspend for eighteen months every rule that would potentially impede the merger. The FCC complied with Westinghouse/CBS’s requests for eighteen waivers that would allow the merged company to delay compliance with six ownership rules (11 FCC 3733, 1995).

In fall 2002, the FCC, in compliance with the court’s ruling that the Commission failed to justify the NTSO rule, began proceedings to review the necessity of the rule (FCC 02-249, 2002). This “failure” violated Section 202(h) of the Telecommunications Act of 1996, which stated that the FCC must review its ownership rules every two years and determine whether the rules are “necessary in the public interest as a result of competition” (Fox v. FCC, 2002, p. 1044). After this review, and despite the fact that the FCC approved the Viacom-CBS merger with the condition that the company would comply with the NTSO rule, the rule was modified in June 2003. The FCC voted 3-2 to raise the cap from 35% to 45% (FCC 03-127, 2003; Labaton, 2003a).

1 The FCC reduced the waiver period from eighteen to twelve months. Previous to this decision, the greatest number of waivers the FCC had granted for a merger was five.
2 The FCC had also decided to retain the UHF discount, which would allow a company to reach as much as 90% of the national households. As Tompkins (2003) noted: “Owners of UHF stations only count 50 percent of the TV households in markets in which they serve, because in the old days UHF stations were hard to tune in -- the channel numbers were high and often their signal power was low. So, the FCC figured maybe half of all households could not receive the signal” (http://poynteronline.org/content/content_view.
Viacom and Fox could retain the stations that once violated the NTSO rule under the 35% cap.

While it could be argued that the court’s remand of the rule forced the FCC’s hand, for the Court of Appeals interpreted Section 202(h) as carrying “a presumption in favor of repealing or modifying the ownership rules” (Fox v. FCC, 2002, p. 1048), it could also be argued that the FCC’s modification of the NTSO rule was motivated by political and economic factors. A Center for Public Integrity study found that in the months prior to the decision, the FCC held court with broadcast industry representatives behind closed doors 71 times and met only five times with consumer advocates (Williams, 2003). The Center also found that “FCC officials [had] taken 2,500 trips costing nearly $2.8 million over the past eight years, most of it from the telecommunications and broadcast industries the agency regulates” (“Well Connected,” 2003, www.publicintegrity.org). The Center for Responsive Politics also noted that in the weeks leading up to the FCC’s June 2003 vote, “media lobbyists were regular visitors to the 8th floor of the FCC—the floor that houses the commissioners” (“Tracking the payback,” 2003, www.opensecrets.org). In addition, the Center for Public Integrity found that from 1998 to June 2004, the broadcasting industry spent over $200 million on lobbying (Morlino, 2004). News Corporation alone expended over $3 million on lobbying in 2002 while Viacom put forth about $1 million (“Capital eye,” 2003). Further, the public’s voice was seemingly ignored as approximately 99% of the 750,000 people who commented regarding the FCC’s 2002 Notice of Proposed Rulemaking were in favor

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3 The Center did note that “[n]ot all of the money was spent to lobby specifically on the FCC decision.” See “Tracking the payback,” 2003.
of keeping the rules (“Statement,” 2003). After a concerted grassroots campaign
challenged the FCC’s decision, Congress began debating possible strategies for rolling
back the NTSO rule modification, including withholding funds necessary to implement
the FCC’s decision (see H.R. 2799, 2003). Despite reports that President Bush would
veto the measure, the House passed such a measure 400-21 (Gough, 2003; Shiver &
Anderson, 2003).4

However, in November 2003, the Washington Post reported that the White House
and Congress “reached a compromise…on consolidation in the television industry,
averting a threatened presidential veto of a measure that would have rolled back a
decision by the Federal Communications Commission to loosen the rules” (Ahrens,
2003b, p. A19). Negotiators agreed upon a decision to roll back the new 45% change to
39%. This conveniently allowed News Corporation and Viacom to keep the television
stations violating the 35% rule and allow General Electric’s NBC and Disney’s ABC to
acquire more stations. The 39% compromise was therefore implemented by Congress,

The fact that the FCC has continued to modify structural regulations once created
to prevent problems associated with concentration in the media is quite alarming when
we consider how essential the media are to the democratic political process: to inform the
citizenry so that its members can make rational political decisions.5 In fact, the press is

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4 Interestingly, and as discussed in chapter 3 of this text, the same strategy was used when the 1984 FCC attempted to eliminate the NTSO cap after a six year sunset period. See Second Supplemental Appropriations Act, 1984, 98 Stat. 1369, 1423 (1984).

5 Ideally, as citizens in a democracy we need to have access to a diversity of ideas in order to make reasoned, informed decisions. This argument is based in a definition of political equality that requires that all members of a society have an unrestricted equal voice in decision-making. By rational I mean more than strict adherence to the Enlightenment project, for I recognize that people do make decisions based on more than such “scientific” or “rational” aspects of argumentation as “facts” and figures and numbers, and speakers use more than “rational” argumentation to support an advocated position. The role of the audience
specifically protected under the First Amendment of the U.S. Constitution, and newspapers and later broadcasters were given this protection in exchange for a vigorous accounting of the powers that be. But what is missing from early discussions of the nature of the First Amendment are the notions that the government is not the only entity that can censor news and that money often equates with power (Jhally, 1989). Indeed, business also censors news, for it is seemingly much more profitable and “safe” to entertain readers and viewers with sensational and human interest stories rather than question and critique the status quo, a status quo media owners benefit from both economically and politically.

As McChesney (1999b) argued, “Virtually all defenses of the commercial media system for the privileges they receive…are based on the notion that the media play an important, perhaps a central, role in providing the institutional basis for having an informed and participating citizenry” (p. 2). Commercial broadcast media owners, for example, were given free licenses with the promise that they would serve the public interest, which has generally been defined by the courts and the FCC in terms of diversity, fair competition, localism, and the encouragement of “public life” (see Aufderheide, 1999, p. 7; Napoli, 2001). However, the historical record consistently demonstrates that the broadcast media have failed to fulfill their end of the bargain. Indeed, as McChesney (1999b) asserted, “the media have become a significant anti-democratic force in the United States” (p. 2; emphasis in original). Increased concentration and consolidation in the media industry and culture-turned-commodity to be bought and sold in the
marketplace have had detrimental effects on citizen participation in U.S. democracy and access to the means of communication.

According to Bagdikian (2000), the structure of the U.S. mass media and the destructive social and political consequences of such a concentrated and powerful institution seriously limit the citizenry’s involvement in political decision-making. He further argued that for the six massive media conglomerates that control the majority of what Americans see, read and hear the primary motivation for producing media products is profit rather than public interest. This drive for profit has turned news into entertainment, as sex and violence are used to sell audiences to advertisers. Further, with news reporting and commentary controlled by six corporations that depend on advertising for profits and the government for regulations that favor business culture, news media coverage becomes politically narrow and self-serving (see Bagdikian, 2000; Dolny, 2002; McChesney, 1997a). Capitalist interests and ideologies are perpetuated through the media to the detriment of serious debate and discussion of the issues and events that affect the populace. As such, media as capitalist enterprises largely forgo their public interest responsibilities for higher profit margins.

Additionally, the idyllic notion of the media as watchdogs is a myth, as government and media-as-big-business work together to promote their interests rather than the interests of the public. Bagdikian (2000) contended that these media firms “have so penetrated the law-making and regulatory machinery of Washington that it is close to a literal fact that these firms can directly and indirectly write our communications laws” (p. xviii). For example, the Center for Digital Democracy (2004) noted that News Corporation was to blame for the language of section 202(h) of the Telecommunications
Act of 1996, for News Corporation’s congressional lobbyist Peggy Binzel devised the provision so it could serve as an excuse to challenge ownership regulations. Mundy (2003) reported that Binzel and colleagues created section 202(h) in order to keep the NTSO rule on the agenda even after the Telecommunications Act passed. Binzel was quoted as stating: “You have to think long term…You have to convince a corporation that, when dealing with Congress, the front door may be locked, but there’s always a window open somewhere” (Mundy, 2003, p. 5).

As Bettig (1999) explained, the drive for profit maximization affects the form, content, and breadth of media products. For example, news budgets have been slashed, leading to less local and investigative news and more sensationalistic stories that grab audience attention (for example, see Project for Excellence in Journalism, 2002; Rogers, 2003). Network news is recycled on local news broadcasts, and journalists often rely on wire reports or “official” sources rather than providing the perspectives of the many groups affected by social and political issues, especially when one takes into account that the majority of sources in network news are white, male, and Republican (“Who’s On the News,” 2002). A 2001 Fair study also found that “Washington’s elite politicians were the dominant sources of opinion on the network evening news, making up one in three Americans (and more than one in four of all sources) who were quoted on all topics throughout the year.” While 75% of these sources were Republican, only 1% of these sources were “third-party representatives or independents” (Howard, 2002, www.fair.org). Jhally (1989) noted that the media, rather than promoting a diversity of ideas, “work to legitimate the existing distribution of power by controlling the context within which

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people think” (p. 67). Mainstream media, through both news and entertainment, reinforce dominant capitalist values and have the power to not only legitimate the current power structure but also to influence politics, in part by setting and controlling the national agenda (Bagdikian, 2000; Jhally, 1989). Politicians certainly recognize the power of the media to not only set the agenda, but also to make or break a politician’s career, as politicians need the media for local and/or national exposure. With their expansive lobbying power, the media also influence politicians to pass legislation that will meet their commercial interests (Bagdikian, 2000; McChesney, 1999b). This includes lobbying for elimination of regulations intended to limit the possibility of monopolistic power and abuses.

The media’s political economic power is accentuated when few companies control access to information. A small number of companies currently control the vast majority of commercial media, which gives them the power to control dissenting voices as they restrict access to the media, creating barriers to entry and homogenous news and entertainment. To reduce risk and maximize profits, the media horizontally and vertically integrate, which enhances their power to exclude potential competitors and raise prices (Herman, 1996). Mergers increase such benefits; in fact, mergers are desirable because conglomerates can quickly decrease costs by eliminating unnecessary or overlapping divisions or jobs, reduce risks by spreading them over a large range of media outlets and through anti-competitive practices such as price fixing or predatory pricing, and, in general, maximize profits through synergistic practices and recycling cultural products (Fusfeld, 1988; Herman, 1996; Jhally, 1989). For example, with the success of CBS’ 2000 hit, “Survivor,” reality television became a staple of network programming. Even if
a viewer did not watch “Survivor,” she or he could still be aware of the progression of the program by watching contestant interviews on CBS’ morning news program, which in turn promoted the show.

Further, the larger the share of the market a company has, the higher the profits, and when barriers to entry are high, profits increase (Fusfeld, 1988). As a result, companies benefit greatly when competition is decreased, but when so few companies own the means of communication, diversity suffers. It is also much more profitable for these large corporations to cooperate with one another: When oligopolistic firms cooperate and collaborate, forming a “shared monopoly,” profits are higher than when they compete with one another (Fusfeld, 1988). So, although the communications industry is not a pure monopoly, “oligopolistic markets are far closer to being monopolistic markets than they are to being the competitive markets described in capitalist folklore” (McChesney, 1999b, p. 139). As Fisher, Dornbusch, and Schmalensee (1998) noted, “it is in the interest of firms in an industry to get together, one way or another, to restrict output and raise prices above cost” (p. 260), two notions that certainly serve the corporate interest but not the public interest.

Fisher, et al. (1988) argued that monopolies can abuse their power in several ways: (a) Without competition, companies may not minimize costs as they would have little incentive to do so; (b) To attain or protect their monopoly positions, firms may waste resources, which results in costs that are passed on to the consumer; (c) Monopolies have excessive political power, which is detrimental to democracy, as excessive power exerted by certain groups negates the notion that each vote matters; and (d) Unfair redistribution of income could become an even larger problem when
monopolies exercise their power. Monopolies also use patents and copyrights to fend off competition (see Bettig, 1996). Although antitrust regulations can work to prevent monopolies that are not considered “natural,” oligopolies, or shared monopolies, can also practice price fixing, predatory pricing, mergers, and tacit collusion to secure their positions in the market and create high barriers of entry for potential competitors (Fisher et al., 1988). And because antitrust regulation guards against narrowly defined notions of monopoly, oligopolies continue to utilize monopolistic practices to secure their market power with little interference from the Justice Department.

In general, structural regulation has been the government’s deterrent for the problems of monopolies. The intent of structural regulations has traditionally been to disrupt monopolistic practices and instead promote competition and diversity. The problem is, however, that since at least the Carter era, which accelerated the deregulation machine, the FCC has generally accepted and perpetuated neoliberal “free-market” competition rhetoric, and as such, has been relaxing or eliminating structural regulations (see for example Horwitz, 1989). Instead of promoting the public interest goals of competition, localism, and diversity, the FCC’s approach is actually inhibiting such goals as fewer and fewer companies own the means of communication.

As McChesney (1999b) noted, Americans seemingly have an abundance of sources to choose from to obtain news and information, yet at the same time, society has become increasingly depoliticized. This, McChesney argued, is illogical, as “A flowering commercial “marketplace of ideas,” unencumbered by government censorship or regulation, should generate the most stimulating democratic political culture possible” (p. 2), or so the libertarian theory of the press would suggest (Siebert, Peterson, & Schramm,
1963). In order for a democratic society to flourish, citizens need to be able to make informed decisions based on freely accessible and diverse information that is open to discussion and criticism. The media are the primary vehicles through which this knowledge is disseminated. As late Senator Paul Wellstone (2000) succinctly stated, “The media is not just any ordinary industry. It is the life-blood of American democracy” (p. 551). As such, the media have the responsibility to inform the citizenry, providing access to a diverse range of sources and perspectives.

However, it can be argued that the “marketplace of ideas” is indeed dominated by a corporate ideology, is encumbered by corporate censorship, and has stunted vibrant public discussion and debate regarding governmental policy and decision-making. And culture is indeed treated as a marketplace, as cultural products are bought and sold as commodities (Jhally, 1989). This is due, in part, to the fact that a handful of dominant multinational corporations own the means of disseminating information and have a special interest in maintaining their current political and economic power. As such, the citizenry does not have access to diversity of information necessary for participation in democracy. Indeed, citizens only receive part of the story, if at all.7 The business elite, a club to which media owners belong as well, control what news and culture are disseminated and how (see for example Jackson, Hart, & Cohen, 2003). Additionally, with the concentration of media and the proliferation of mega media mergers, it is almost impossible for citizens to gain access to the means of communication. Owning a

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7 For example, the Project for Excellence in Journalism (2005) found that 28% of nightly network news stories provided one view, or, at best, made a passing reference to another view, on controversial issues. See The State of the News Media, 2005, http://www.stateofthemedia.org/2005/index.asp. Also see Project Censored, a media research group out of Sonoma State University that compiles a description of stories that have not been reported or have been underreported in the mainstream news media, as discussed at http://www.projectcensored.org/about/index.html
television station or a newspaper operation is extraordinarily expensive,⁸ which creates barriers to access and makes it much more difficult for local, independent owners to compete (see for example Isidore, 2003). Congress and the FCC also construct barriers to entry as they continue to relax or eliminate structural regulations that were originally adopted in order to promote media competition and diversity.

**Research Questions**

With the assumption that the normative goals of the media in a democratic society are to inform the citizenry for purposes of self-governance, to serve as a watchdog on government and business, and to serve as a site for diversity and creativity, this study attempts to answer the following questions:

- Has structural regulation of the television broadcast industry, particularly the NTSO rule, served the public interest goals of diversity, localism, and competition? Or, can regulation serve the public interest?

- How have the courts, the FCC, the industry, and consumer advocates justified their arguments for and against broadcast regulation in general, and the NTSO rule in particular, throughout history? What arguments do they put forth today? Have these arguments changed over time? If so, how have they changed? What are the possible reasons for these changes, and what are the possible consequences?

- How has the public resisted corporate ownership of the public airwaves? What other possibilities exist for resistance in the current political economy?

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⁸ For example, in 2002, Viacom acquired KCAL-TV in Los Angeles, CA, for $650 million (Mermigas, 2002) and in 2004 acquired KOVR, a CBS affiliate in Sacramento, CA, from Sinclair Broadcast Group for $285 million (“Viacom buys TV station,” 2004).
What does it mean to democratize the media? What strategies and transformations are necessary for democratization?

Chapter two provides the theoretical framework and methodology that guide this analysis. Chapter three offers a critical legal investigation of the evolution of the NTSO rule. Chapter four analyzes challenges to the NTSO rule and the effects of media concentration that is in part due to deregulation of broadcasting and is in large part due to the logic of capital. Chapter five puts forth the First Amendment case for media ownership regulation. Chapter six discusses resistance to deregulation of the airwaves and increased concentration of the media as well as media reform efforts prior to and after the FCC’s June 2003 decision. Chapter seven presents alternatives to media reform efforts via the state, alternatives that have the goal of democratization at their core.
Chapter 2

CHALLENGING ORTHODOXY:
THEORETICAL FRAMEWORKS OF THE POLITICAL ECONOMIC APPROACH

Under monopoly all mass culture is identical, and the lines of its artificial framework begin to show through. The people at the top are no longer so interested in concealing monopoly: as its violence becomes more open, so its power grows. Movies and radio need no longer pretend to be art. The truth that they are just business is made into an ideology in order to justify the rubbish they deliberately produce. They call themselves industries; and when their directors’ incomes are published, any doubt about the social utility of the finished products is removed. (Horkheimer and Adorno, 1944/2000, p. 121)

Radical political economy is and has been a reliable source of challenges to orthodoxy as well as the political status quo. It enjoys this influence most often when its analyses have the compelling character and appearance of truth; when it leads those within and outside the radical camp to agree that the argument makes sense, and that the representation of reality is accurate, even if not comprehensive. Its greatest accomplishments are seen not when it produces agreement and consent, but when it disturbs consensus; when it challenges the conventional, and generates uncertainty, debate and the search for more information. (Gandy, 1992, p. 37)

According to Gandy (1992), political economy can be defined as an “oppositional stance, opposed to orthodox, mainstream, neo-classical economics” (p. 23) and a critique of the way things are in relation to the way things ought to be (see also Herman, 1982; Smythe, 1954). As such, political economy criticizes the notion of the capitalist marketplace, as concentration and conglomeration restrict true competition and diversity. Political economists make normative goals and values explicit; as such, this study begins with the assumption that in a democratic society, the media ought to inform the citizenry for purposes of self-government, serve as a watchdog on government and big business, provide diversity of viewpoints and serve as a site of creativity. Political economy examines how democracy as a political system is undermined by capitalism as an
economic system as well as how the political system encourages and supports the economic system.

Further, it can be said that political economy is an interdisciplinary approach that is rooted in historical analysis, for a primary goal of the political economist is to understand social structure and reproduction (Mosco, 1996). The use of the political economic approach allows a media scholar the opportunity to combine sociology’s power structure and institutional network analyses, critical historical and legal methods, geography’s class analysis, classical and contemporary political theory, and radical economics to examine the dynamics among, in the case of this analysis, structural regulation, media concentration, and democratization. In short, the political economic approach extends its analysis “over the entire social totality, with an eye to social transformation” (Mosco & Reddick, 1997, p. 28; emphasis added).

Political economy of communications is an approach that examines who controls power, wealth, and knowledge. In the United States, this includes an examination of the interrelationships between the praxis of democracy, the logic of capitalism, and the commercial media system. Commercial media support and encourage capitalism and are capitalist businesses themselves; however, capitalist logic and media undermine the ideal of democracy, as “Capitalism is characterized by power and rewards being increasingly concentrated in the hands of those who own the means of production at the expense of the much larger group of people who own only their own labor power which they sell in exchange for wages” (Jhally, 1989, p. 67; emphasis in original). Marx attacked this disparity as he defined his theory of alienation:
We start with a contemporary fact of political economy: The worker becomes poorer the richer is his production, the more it increases in power and scope. The worker becomes a commodity that is all the cheaper the more commodities he creates. The depreciation of the human world progresses in direct proportion the increase in value of the world of things. Labour does not only produce commodities; it produces itself and the labourer as a commodity and that to the extent to which it produces commodities in general. (in McLellan, 2000)

Marx explained that under capitalism, wage laborers are not only alienated from the product (for they are not producing for use-value or for creativity), but also from the process of production (working for a capitalist rather than for self), from their “species-being” (or one’s “humanness”), and from other laborers. In combination, alienation and exploitation, or the capitalists’ usurpation of laborers’ surplus value, seem to keep workers from thinking about or acting upon their condition, for one needs to work in order to survive. Not much time is left over to think about changing the system (plus, as Frankfurt School members Horkheimer and Adorno (1944/2000) suggest, popular culture distracts us from the drudgery of life under capitalism). But while technology is often hailed as labor-saving and thus “progressive,” Marx argued that “machinery, while augmenting the human material that forms capital’s most characteristic field of exploitation, at the same time raises the degree of that exploitation” (p. 518). In the twenty-first century, the workday has become 24 hours a day, seven days a week as workers are continually accessible through email, cell phones, instant messenger, and BlackBerries.
Marx (1867/1976) also discussed the role the state plays in capitalism in his work, *Capital*. For example, he explained that though the state passed labor laws, “What strikes us, then, in the English legislation of 1867, is, on the one hand, the necessity imposed on the Parliament of the ruling classes of adopting, in principle, such extraordinary and extensive measures against the excesses of capitalist exploitation; and, on the other hand, the hesitation, the unwillingness and the bad faith with which it actually put these measures into practice” (p. 626). This is not unlike the debates that surrounded the Bush administration’s proposed changes to the Fair Labor Standards Act (see for example Gest, 2003). Companies argued that the 1938 Act was outdated, while the unions argued that the proposed changes would benefit capitalists, not laborers. But, with the changes to the regulation in question being framed as beneficial for the worker, the state helps to placate workers, which in turn benefits the capitalists. The state, however, remains implicated in the perpetuation of the exploitative status quo.

Gandy (1992) succinctly set forth seven critiques of neoclassical economics that political economists have explored and should continue to examine: a) Capitalism does not give consumers what they want; instead, consumers choose from options that are market-driven and packaged through advertising, keeping the consumer uninformed; b) Markets are certainly not perfect; indeed, competition is thwarted by concentrated oligopolistic markets that are protected by regulation; c) Information, defined as a public good, counters the idealistic neoclassical marketplace; d) The prevailing forces in the political economy are institutions rather than individuals, as a few large transnational corporations cooperate and dominate over the idealized and unrealistic neoclassical vision of competition among many small firms, and as such, these large corporations
have greater power in economic, political, and even social decision-making; e) Markets are not competitive in the neoclassical sense of supply and demand, for oligopolistic markets promote monopolistic pricing and restriction of output, which lead to ever higher profit margins; f) A static equilibrium is impossible, for the economy is variable and manipulated; and g) The state is much more involved in the economy than neoclassical economists admit, for corporations and industries depend on the state to intervene on the behalf of their special interests and to protect and maintain the status quo.9

Although democracy and capitalism have become synonymous terms, McChesney (1997b) argued that “the relationship between capitalism to democracy is a rocky one,” for capitalism generates, benefits, and sustains a small wealthy class and permits this class “to have inordinate power over political and economic decision-making to the detriment of the balance of society.” At the same time, capitalism “encourages a culture that places a premium on commercial values and downplays communitarian ideas” (p. 65). This is not a new phenomenon, as history does tend to repeat itself. In the 1940s, economic historian Karl Polanyi (1944/2001) hoped that arguments for the utopian self-regulating market were finally going to be laid to rest, for he “thought the cycle of international conflict could be broken,” and with the implementation of the New Deal, he saw positive democratic possibilities that put humanity above markets. To do so would first necessitate invalidating “the belief that social life should be subordinated to the market mechanism” (p. xxxv). But to the contrary, the future brought to bear Reagan and Thatcher in the 1980s with the same pro-market rhetoric and a systematic attack upon the ideals of the New Deal. Polanyi also noted that Adam Smith believed “that universal plenty could not help percolating down to the people; it was impossible that society

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9 See also Mosco (1996), particularly chapter 2.
should get wealthier and wealthier and the people poorer and poorer” (p. 129). History demonstrated that this theory did not hold water, as this same ill-fated concept returned with Reagan’s rhetoric of trickle-down or supply-side economics in the 1980s and yet again in the early twenty-first century with what Ronald Bettig calls “déjà vu-doo economics,” that is, tax cuts to the rich to presumably stimulate the economy and create jobs. Polanyi (1944/2001) noted that the apparent contradiction between “boom in trade” and “signs of growing distress of the poor” in the 18th century would become the “most perplexing of all the recurrent phenomena in social life” (p. 97). And this is quite perplexing, as seen in a January 2003 New York Times article headlined “Economic Inequality Grew in 90’s Boom, Fed Reports” (Andrews, 2003). Though Polanyi (1944/2001) hoped for the best, politicians and corporate moguls still hail the self-regulating market as the ideal, and at the same time, these same corporate moguls turn to the state to prod the invisible hand of the market. The fact that inequality is perpetuated by the enforcement of laws created to protect private property contributes to the “naturalization” of the disparities that exist.

In order for the elite to maintain power, media become “vital institutions that far from providing a marketplace of ideas work to legitimate the existing distribution of power by controlling the context within which people think and define social problems and their possible solutions,” and at the same time, sell cultural products as commodities (Jhally, 1989, p. 67). Indeed, political economists look at how the ruling class uses and abuses the information system in order to perpetuate itself and allow its members to maintain their wealth and power, in part by controlling knowledge and its distribution (Schiller, in Maxwell, 2003).
Jhally (1989) put forth a framework for examining media structure and content that includes an examination of both the culture industry—how the pursuit of profit has ultimately replaced notions of the public interest—and the consciousness industry—the ideologies perpetuated by corporate media. The culture industry is a concept born from Horkheimer and Adorno’s (1944/2000) arguments that with industrialization, the profit motive overrode notions of aesthetics and art, and as such, the production of culture-as-product became largely dictated by the market rather than by genuine demands. As Mosco and Reddick (1997) stated, commodification “has long been understood as the process of taking goods and services that are valued for their use…and transforming them into commodities that are valued for what they can bring in the marketplace” (p. 19).

Rather than concentrating on producing goods and services that meet the public’s “vital” needs (Kellner, 1989) or aesthetic needs (Horkheimer & Adorno, 1944/2000), the media, like other industries, manufacture goods and services for their exchange-value; if a product does not have sales potential, it will more likely not be produced. Thus, under industrial capitalism, “Culture itself is made into a commodity and is bought and sold in the marketplace” (Jhally, 1989, p. 71). And within much of the commercialized media system, the advertising industry has much control over what is profitable and what is produced, for advertisers buy access to audiences, and the media deliver affluent audiences (Jhally, 1989). Moreover, as the media marketplace becomes more concentrated and companies realize the benefits of economies of scale, the profit motive subordinates all other public interest standards, including diversity of viewpoints, for one company can own multiple media platforms across the nation, and increasingly,
worldwide, for less monetary output and less risk. Media output is thus limited when profit is the motive for creating media products.

Jhally’s (1989) conception of the consciousness industry, a term borrowed from Enzensberger (1974), examines the power of those who own the media to assert their conservative corporate view of the world. As discussed, in capitalist societies, the distribution of wealth and power is concentrated, for less people own the means of production than those persons who only own their own labor. In order to maintain and reproduce the status quo, those who have economic and political power attempt to gain “the consent of the dominated, by convincing the majority to identify and support the present system of rewards and power rather than opposing it, in fact, to live their own domination as freedom” (Jhally, 1989, p. 67). The media are vital in this process, naturalizing the dominant ideology as transhistorical and inevitable. As Enzensberger (1974) argued, the primary goal of the “mind industry” is “to ‘sell’ the existing order, to perpetuate the prevailing pattern of man’s domination by man, no matter who runs the society, and by what means. Its main task is to expand and train our consciousness—in order to exploit it” (p. 10). The mainstream media, as oligopolistic, private entities owned by those who benefit most from the status quo, have a vested interest in perpetuating the dominant capitalist ideology in order to maintain (or increase) their wealth and their power. The business and political elite, although a small portion of the population, have similar needs and interests, and in order to “coordinate the various interests they represent” (Jhally, 1989, p. 68), they work together through stock ownership, venture capital investments, interlocking directorships, lobbying, think tanks, business organizations, joint ventures, and social networks. As a result, the media, as owners and
agents of wealth and power, perpetuate the status quo and “punish” those who do not conform, including errant politicians, through such means as marginalization, avoidance of dissention and silence on issues, restriction of access, or ridicule.

While much of the discussion of capitalism in the Marxist tradition seems to focus on the adversarial relationships between the capitalist and the laborer (see for example Harvey, 1999), what is striking is the perpetuation of the notion of “every capitalist for himself” (or, less often, herself). The individual capitalist must not only look out for his or her own self-interest, but also look out for the interests of the capitalist class as a whole. Now while some “individual” capitalists, such as the heads of Enron, Adelphia, WorldCom, and Martha Stewart, broke the rules and got caught doing so, it can be said that the business elite, as a whole, is much more stable and cohesive than the working class. Rather than maintain their power through physical force, the ruling class and business elite perpetuate ideologies that serve their interests and at the same time fetter resistance to the system.

Unlike the dominant paradigm in social science, which assumes that “Science is pure; it exists in a rarefied vacuum (as far as real world pressures are concerned) and is value free” (Smythe, 1971/1979, p. 171), critical communication researchers question their presuppositions, making “our positions, our assumptions, and our values available to other people so they know where our epistemological and political foundations are, so that they understand what it is that is founding the argument” (Hall, 1989, p. 45-46). As Smythe (1971/1979) stated, the dominant paradigm’s “inhuman quest for neutral objectivity in the study of mankind was a necessary corollary of the scientific approach to social affairs” (p. 173), and as such, the study of humans and communication systems
becomes reductionist. For example, social scientists within the dominant paradigm have been criticized for focusing on the trivial and for making generalizations without considering context. Providing an interpretive framework and the context surrounding a phenomenon are essential elements of critical scholarship. Further, critical research does not pretend to be neutral because, as McChesney (2004) argued, a case can be made “that scholarship that grows out of an engagement with real and immediate political struggles, rather than handcuffed by political bias and opportunism, can be the laboratory for breakthroughs in social theory and analysis” (p. 13). For the critical scholar as public intellectual, engagement with social, economic, political, and cultural struggles is a vital component of one’s scholarship, for creating awareness, challenging the status quo, and affecting change are (or should be) the ultimate goals of research. That is, scholars should “return from ivory-towered departments to the public sphere; and [move] away from individualist, esoteric research toward collective inquires into social ills” (Giroux, Shumway, Smith, & Sosnoski, 1984, p. 473).

Too often in academia professors are isolated, writing for journals that are often left unread. And by continuing to construct boundaries in order to defend one’s discipline, researchers wind up neglecting, even avoiding, serious critique of the dominant culture and the unequal distribution of power in social, economical, and political relations. Giroux et al. (1984) called for a different notion of the intellectual, that of the transformative intellectual, who “can provide the moral, political and pedagogical leadership for those groups which take as their starting point the transformative critique of the conditions of the oppressed” (p. 480). As such, political economists contribute to and participate within the many oppositional public spheres that are united by a common
cause: radical social change. As Mosco (1996) noted, political economists “are motivated by a sense of praxis, by the need to act on the world as well as to explain it” (p. 133). Research becomes “one tool, one form, of social transformation” (p. 133).

One criticism of political economy is that it ignores the text and the audience. As Ang (1991) suggested, audience readings of media texts do not, and cannot, exist separate from the economic, the political, the social, and the cultural. To analyze audience readings and the possibilities for resistance, it is also necessary to examine the complex relationships of such factors under which audience readings are constructed and articulated. Furthermore, it is imperative that we examine the media choices available to audiences, and the set of relationships under which decisions regarding media content are made, for to talk about audience readings, one must acknowledge what audiences are actually reading. In their text, *Manufacturing Consent*, Herman and Chomsky (1988/2002) demonstrated that media content is produced and distributed within an intricate set of interrelated structures and constraints that privilege and serve dominant political and business elite interests while marginalizing dissenting voices. Herman and Chomsky (1988/2002) provided a framework for analyzing media that they call the Propaganda Model. They explained that this model “traces the routes by which money and power are able to filter out the news fit to print, marginalize dissent, and allow the government and dominant private interests to get their messages across to the public” (p. 2). These filters include ownership patterns and the profit motive of the culture industries, advertising, sourcing, flak, and the ideology of anticommunism.\(^\text{10}\) As will be discussed in

\(^{10}\) In a discussion of the criticisms of the Propaganda Model and the model’s usefulness ten years after it was proposed, Herman (1998) noted that the “anticommunist ideology…is possibility weakened by the collapse of the Soviet Union and global socialism, but this is easily offset by the greater ideological force of the belief in the ‘miracle of the market’ (as Reagan tagged it)” (p. 201).
the following chapters, these filters can have devastating effects, especially when one considers how much information fails to pass through the filters.

To examine the structure of the media, the interrelationships among the political, economic, and communication systems, and the dominant ideology the media put forth, political economists such as Bettig (1996), McChesney (1999b), and Wasko (2001) utilize legal texts, trade journals, and popular and business press as empirical data, for such sources “provide much of the way we know about what occurs in the realm of business practice” (Bettig, 1996, p. 6). Using the political economic approach, these authors interpret the “topics and events described by business journalists…as to their structural causes” (p. 6), and, in the tradition of Schiller, political economists “listen in” on the words of those in power, including the political and business elite (in Maxwell, 2003). This approach does not examine isolated events in and of themselves; instead, the political economic approach “offers a map with history and context” (Bettig, 1996, p. 6). Using this interpretive empirical method, this study extensively “listens in” to examine the arguments for and against the National Television Station Ownership (NTSO) rule and the state’s role in these debates. It provides an examination of the historical context of these debates and their significance within the current political economy.

In sum, this political economic study will use Jhally’s culture industry and consciousness industry framework to examine the debates regarding structural regulation, specifically the NTSO rule, and the consequences of continued deregulation. In the spirit of Mosco (1996), this study also proposes transformations that would attempt to bring about social change. In order to examine the ramifications of modifications to the NTSO rule, it is important to begin by examining the historical development of the rule and how
the justifications for maintaining the rule to serve the public interest shifted to justifications for altering the rule to serve commercial interests, as set forth in the following chapter.
Chapter 3

HISTORY OF THE NATIONAL TELEVISION STATION OWNERSHIP RULE: FROM ADVANCING STRUCTURAL REGULATION TO ADVOCATING DEREGULATION OF TELEVISION BROADCASTING

As noted in chapter two, historical analysis is central to the political economic approach (see also Bettig, 1996). This chapter traces the evolution of the National Television Station Ownership (NTSO) rule by examining court and Federal Communications Commission (FCC) interpretations of and justifications for the rule, from its inception in 1941 to its reassessment in the 1980s, a time when neoliberal ideals overshadowed notions of a collective good and radically dismissed Keynesian economic policies. Until the late 1960s, the rule was justified by the idea that diversity of ownership leads to diversity of viewpoints, and was thus deemed necessary, interpreted as “useful” for serving the public interest. However, once the FCC began allowing and justifying multiple ownership, the concept of competition in the marketplace overpowered all other public interest arguments, including diversity and localism. With the release of the FCC’s 1984 Report (100 FCC 2d 17, 1984), neoliberal commissioners saw the NTSO rule as contrary to the public interest and that a “free market” economy and the benefits of economies of scale would better serve the public interest than would structural regulation.

However, the history of television broadcast regulation shows that the public interest has consistently been overshadowed by commercial interests. Before the Communications Act of 1934 and the creation of the FCC, the commercial broadcasting system, the dominant players in the radio industry, and the practice of chain broadcasting were solidly in place. As television broadcasting evolved, these same systems that served the radio industry became benchmarks for the implementation of television broadcast
licensing. The FCC, working within the confines of a commercial broadcast system, attempted to interrupt the anti-competitive practices that arose in such a system, including abuses of chain ownership. Rather than creating a viable noncommercial broadcast system or assigning licenses “one to a customer,” though, the FCC’s course of action was structural regulation. But by the 1980s, the FCC’s goals of diversity, localism, and competition gave way to the goals of “viable” competition and economies of scale. The FCC argued in its 1984 Report that concentration of ownership would lead to quality and quantity of programming that consumers want, as broadcasters could take advantage of the benefits of economies of scale and supply and demand. Broadcasting, it reasoned, should be treated as any other business competing in the “free market” economy. Limits on ownership hindered this goal.

**Early Regulation**

The claim that American media is the result of market competition won by a handful of multinational corporations is one of the Big Lies that media firms desperately propagate. Like a lot of their programming, it’s a load of crap. Our media system is the direct result of government action—laws and regulatory policies—that established not just the playing field but the winners of the game. (McChesney & Nichols, 2002a, p. 27)

The battle for public access to the airwaves can be traced back to the 1920s. Although the Radio Act of 1912 provided for regulation of the airwaves, radio evolved so quickly that the provisions of the act were no longer applicable in the early 1920s (Barnouw, 1966; Douglas, 1987; Slotten, 2000). For a medium that in 1912 was primarily developed under the auspices of the U.S. Navy and used for ship to shore communications, there were no statutes regulating how frequencies would be allocated or who should receive them. As a result, Secretary of Commerce Herbert Hoover was
required to accept each licensing application that crossed his desk. Amateurs and commercial broadcasters interfered with each other’s broadcasts as they vied for space on the radio band, and complaints about technical interference led to the call for “the orderly assignment of scarce spectrum space” (Mosco, 1976, p. 8). However, while broadcasting amateurs and experimentalists can be credited with innovations in radio, by the late 1920s, the spectrum became controlled by commercial interests, particularly by two chain broadcasters: National Broadcasting Company (NBC), owned by Radio Corporation of America, and Columbia Broadcast System (CBS), controlled by the Paley family from 1928 until 1995. The commercialization of broadcasting is due in large part to the reallocation of spectrum space by the Federal Radio Commission (FRC), predecessor to the FCC, as a result of the Radio Act of 1927 (McChesney, 1993). Large commercial station owners would presumably have the capital necessary to produce “quality” programming. As such, commercial broadcasters were given the prime frequencies, while nonprofit educational, labor, and community stations were often relegated to sharing lower frequencies or forced off of the air (McChesney, 1993).

As stated in the Communications Act of 1934, section 307 (a): “The Commission, if public convenience, interest, or necessity will be served thereby, subject to the limitations of this Act, shall grant to any applicant therefore a station license provided for by this Act” (Communications Act, 1934). However, as Howard (1974) noted, this Act did not contain provisions regarding multiple ownership of broadcast stations. In general, the early FCC, much like the FRC (see Barnouw, 1968; McChesney, 1993), took to automatically renewing licenses without much consideration of “public interest, convenience, or necessity.” In fact, the Commission was often pressured by commercial
radio lobbyists, and, as Barnouw (1968) noted, “Many licensees—or their Washington representatives—kept in close touch with commissioners. The commissioners knew the men, not the programs” (p. 30). Additionally, the airwaves had been deemed “public” rather than “private” property, and thus a license could not, theoretically, be sold as property. The equipment, however, could be sold. The FCC approved sales with prices that were obviously much more than the value of the equipment, implying that the place on the dial was what was actually being sold (Barnouw, 1968). It can be argued, then, that early on, the FCC took a passive role in the broadcasting arena, and decisions were primarily left to the commercial broadcasters, particularly the chain broadcasters, whose role was firmly entrenched by the mid-1930s.

When commissioners such as James Lawrence Fly, chairman of the FCC during the late 1930s and early 1940s, did try to take an active role in broadcast license decision-making, they were attacked not only by the industry but also by Congressmen sympathetic to the industry’s cause. According to Barnouw (1968), Fly felt that the licensing procedure should “foster competition—including competition in ideas—through diversity of licensees” (p. 169). Congenial to the anti-monopoly provisions found in the Communications Act of 1934,11 Fly felt that the FCC needed to take an active role in preventing concentration of ownership, a trend that was “especially dangerous in an information medium” (Barnouw, 1968, p. 169). Under his direction, the Report on Chain Broadcasting was released in 1941. This report proposed a divorcement of Radio

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11 *Communications Act of 1934*, 47 U.S.C. sec. 311, stated: “The Commission…is hereby authorized to refuse such station license and/or permit to any other person (or to any person directly or indirectly controlled by such person) which has been finally adjudged guilty by a Federal court of unlawfully monopolizing or attempting unlawfully to monopolize, radio communication, directly or indirectly, through the control of the manufacture or sale of radio apparatus, through exclusive traffic arrangements, or by any other means, or to have been using unfair methods of competition.”
Corporation of America (RCA) owned National Broadcasting Company’s (NBC) two networks, Red and Blue, finding that the two networks:

- operated as a restraint on competition, handicapped the Blue Network, gave RCA a competitive advantage, and resulted in an undue concentration of control in a field where because of physical limitations on the number of available radio facilities the public interest imperatively demanded the elimination of restraints on competition and as wide a dispersion of control as possible. (10 FCC 212, 1943, pp. 212-213)

In other words, due to scarcity of spectrum space, these powerful dual networks created barriers to entry and competition. These barriers were not in the public interest, traditionally defined as “fair” competition, diversity of viewpoints, and localism (see Napoli, 2001). The networks and the National Association of Broadcasters (NAB) pressured Congress to block the proposals found in the Report on Chain Broadcasting, and a personal attack on Fly was launched (Barnouw, 1968). The Supreme Court, however, upheld the proposals suggested in the report, and NBC was required to divest one of its networks (NBC v. U.S., 1943).

The Court also defended the FCC’s role as regulator when NBC charged that the FCC “went beyond the regulatory powers conferred upon it by the Communications Act of 1934” (NBC v. U.S., 1943, p. 209). The Supreme Court disagreed, stating:

The Act itself establishes that the Commission’s powers are not limited to the engineering and technical aspects of regulation of radio communication. Yet we are asked to regard the Commission as a kind of traffic officer, policing the wave lengths to prevent stations from interfering with each other. But the Act does not
restrict the Commission merely to supervision of the traffic. It puts upon the
Commission the burden of determining the composition of that traffic. (pp. 215-216)

Furthermore, the Court affirmed that its role was not to make regulation regarding
broadcasting; rather, this role was relegated to the FCC and Congress in compliance with
the Communications Act of 1934. It stated: “We would be asserting our personal views
regarding the effective utilization of radio were we to deny that the Commission was
entitled to find that the large public aims of the Communications Act of 1934
comprehend the considerations which moved the Commission in promulgating the Chain
Broadcast Regulations” (p. 218). Hence, the Court affirmed the power of the FCC to
make and implement regulatory decisions regarding broadcasting, including national
ownership restrictions.

Though the Report on Chain Broadcasting did not set ownership limits, it
asserted that NBC and CBS utilized anticompetitive practices, such as long-term
contracts with affiliates that prohibited them from broadcasting non-network affiliated
programming, that “obstruct[ed] the growth of new networks” (p. 59). The Report did
confirm that broadcasting is best served within a “free competition” market, but this did
not mean that the networks could have free reign. Rather, the FCC asserted that like other
industries, the broadcast industry must adhere to the antitrust regulations of the Sherman
Act, which was “enacted ‘to preserve the right of freedom to trade’ and ‘based upon the
assumption that the public interest is best protected from the evils of monopoly and price
control by the maintenance of competition’” (Report, 1941, p. 46).12 The Report

12 See also United States v. Colgate & Co., 250 U.S. 300 and United States v. Trenton Potteries
continued: “This Commission, although not charged with the duty of enforcing [The 
Sherman Act], should administer its regulatory powers with respect to broadcasting in the 
light of the purposes which the Sherman Act was designed to achieve” (p. 46).

These findings advanced the creation and adoption of the first commercial 
television multiple ownership rule in 1941, which stated that no one person or group 
could own more than one television station unless it could be shown that “such ownership, 
operation, or control would foster competition among television broadcast stations or 
provide a television broadcast service distinct and separate from existing services.” The 
rule stated that “the Commission will regard ownership, operation, or control of more 
than three television broadcast stations as constituting a concentration of control of 
television broadcasting facilities in a manner inconsistent with public interest, 
convenience, or necessity” (5 Fed. Reg. 2282, 1941, p. 2285). The intention of this rule 
was to foster competition, and any more than three stations per owner would violate this 
public interest standard. The goal of competition would be perpetuated in justifications 
for regulation (and deregulation) throughout the FCC’s future decision-making.

Furthermore, when the FCC granted the transfer of NBC’s Blue network to the 
American Broadcasting Company (ABC), it posited that the transfer “should aid in the 
fuller use of the radio as a mechanism of free speech” (10 FCC 212, 1943, p. 213). It 
continued:

The mechanism of free speech can operate freely only when the controls of public 
access to the means for the dissemination of news and issues are in as many 
responsible ownerships as possible and each exercises its own independent 
judgment. The approval of the transfer will promote such diversification. (p. 213)
This premise that diversity of owners leads to diversity of viewpoints and programming would continue to serve as the foundation for the justification of broadcast ownership rules until the late 1970s-early 1980s.

Further discussion of free speech rights was brought forth in *National Broadcasting Co., Inc. v. United States* (1943), the same case that upheld the FCC’s 1941 *Report on Chain Broadcasting* proposals. NBC argued that ownership regulations abridged their First Amendment rights. The Supreme Court disagreed, noting that spectrum scarcity rendered this argument null:

> Freedom of utterance is abridged to many who wish to use the limited facilities of radio. Unlike other modes of expression, radio inherently is not available to all. That is its unique characteristic, and that is why, unlike other modes of expression, it is subject to governmental regulation. Because it cannot be used by all, some who wish to use it must be denied. (*NBC v. U.S.*, 1943, p. 226)

Thus, because the spectrum was viewed as limited, the Supreme Court again affirmed the power of the FCC to refuse licenses, presumably in the name of the public interest. In actuality, this power was rarely used.

**Increasing the Ownership Limits**

Television broadcasting regulation in the United States followed the trajectory of radio broadcasting regulation, as the FCC adopted the same public interest standards for television as it did radio. And as with radio broadcasting, the FCC saw television station group ownership as a viable economic model, as group owners could provide “quality” programming that non-group owners may not have the resources to do. Additionally,
group ownership was necessary so that independent owners and small group owners could compete with the established networks.

After the implementation of the 1941 ownership regulation that limited the number of television stations one entity could own to three, NBC petitioned the FCC to increase the limit to seven stations (Howard, 1974). In response, the FCC increased the maximum limit to five stations (9 Fed. Reg. 5442, 1944), and this limit was upheld in a 1953 *Report and Order* (18 FCC 288, 1953). Opponents of the rule, including Paramount Pictures and CBS, argued that the FCC did not have the authority to “adopt rules of general applicability dealing with the subject of multiple ownership;” rather, they argued that application of rules should be on a case-by-case basis (p. 288).

Nonetheless, the FCC contended that the Communications Act of 1934 gave the Commission the authority to make and adopt rules “pursuant to the statutory touchstone of ‘public convenience, interest, and necessity’” (18 FCC 288, 1953, p. 289), a notion that was solidified in the *National Broadcasting* case. Furthermore, the FCC posited that ownership regulations adhere to the “underlying considerations” of the 1934 Act: “to effectuate the policy against the monopolization of broadcast facilities and the preservation of our broadcasting system on a free competitive basis” (p. 291).\(^\text{13}\)

Reiterating its 1940s regulatory stance, the FCC stated:

> It is our view that the operation of broadcast stations by a large group of diversified licensees will better serve the public interest than the operation of broadcast stations by a small and limited group of licensees...the fundamental purpose of this facet of the multiple ownership rules is to promote diversification

\(^{13}\) This stance was reiterated by the Supreme Court in *FCC v. Sanders Brothers Radio Station*, 309 U.S. 470, 474-75 (1940).
of ownership in order to maximize diversification of program and service viewpoints as well as to prevent any undue concentration of economic power contrary to the public interest. (pp. 291-292)

The FCC continued to adhere to the postulation that diversity of ownership leads to diversity of viewpoints and that anti-competitive regulations are necessary to serve the public interest. But it also adhered to the notion that commercial, capitalist, for-profit owners receive licenses.

However, the FCC noted in its Notice of Proposed Rulemaking in December 1953, just four weeks after the reaffirmation of the five station limit, that the television station limit did not distinguish between VHF and UHF stations. It stated that one reason for the lack of distinction was that the Commission was “engaged in a study of the position of post-freeze television stations” (18 Fed. Reg. 8904, 1953, p. 8904). The FCC had received several petitions requesting that the ownership rules be eliminated or modified in order to allow for additional ownership of UHF television stations. The Commission agreed that an increase was necessary to “encourage the rapid and effective development of the UHF band” (p. 8905). It stated:

On the basis of our review of the petitions and oppositions directed to this matter, we believe that of the proposals before us, an increase in the maximum permissible ownership of television stations to 7, no more than 5 of which may be in the VHF band, is best designed to achieve this objective consistent with preventing an undue concentration of control of television facilities. (p. 8905)

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14 The FCC had halted the issuing of television station licenses in 1948. The Commission had already granted licenses for 108 stations, and hundreds more were put on hold until it could study problems related to such issues as interference, allocation of licenses, opening additional spectrum space, and a standard for color television (see Sterling & Kittross, 1990). Barnouw (1968) noted that the Korean War had become a primary reason for continuing the freeze, which was lifted in 1952.
So although an increase in stations would be permitted, the FCC believed that this ruling would be consistent with previous rulings and justifications for ownership limits and, at the same time, help to increase the viability of UHF stations.

Proponents of the limit increase, including the three networks—CBS, NBC, and ABC—argued that the increase would not only benefit communities in which the networks would establish UHF stations, but would also benefit the industry as a whole, as there would be “increased confidence in the capabilities of UHF” (11 RR 1519, 1954, p. 1520). Furthermore, the proponents argued that the limit of five television stations was adopted at a time when there were fewer channels and license agreements. Now, the petitioners contended, with a large increase in the number of channels and communities reached (the addition of 70 UHF channels would raise the number of possible assignments from less than 400 in 140 cities to 2,000 in approximately 1,300 communities), “the proposed amendment would result in a far less concentration of control of television facilities than that permissible at the time of the adoption of the old rule” (p. 1521).

The FCC agreed, increasing the ownership limit to seven stations, five of which could be VHF. It noted that this increase “in no way is a departure from the recent multiple ownership Report and Order” (11 RR 1519, 1954, p. 1523). It continued:

In that Report and Order the Commission re-affirmed its view that the operation of broadcast stations by a large group of diversified licensees will better serve the public interest than the operation of broadcast stations by a small and limited group of licensees. Thus, the Commission has provided that a grant of even one additional broadcast station will not be made where it ‘would result in a
concentration of control of...broadcasting in a manner inconsistent with the public interest, convenience, and necessity.’ Clearly, if the only relevant consideration were implementation of the policy of diversification, an absolute limitation of one broadcast station to any one person or persons under common control would best serve the public interest. But, of course, that is not the case. (p. 1523)

Rather, the Commission argued, “Our nation-wide system of broadcasting as we know it today requires that some multiple ownership of broadcast stations be permitted” (p. 1523). However, the Commission did not explain why multiple ownership was a necessary requirement for broadcasting; instead, it contended that it had “always recognized these needs” and had “by rule permitted multiple ownership of broadcast stations in light of such (other and competing) considerations” (p. 1523).

As the FCC purported, if diversity was the only goal it sought to achieve, then licenses would have been issued “one to a customer.” But, as stated previously, the Communications Act of 1934 did not address ownership limits, and the network system was already in place before serious consideration of ownership regulations began. Thus, because the system of chain ownership was solidified by the time the Communications Act passed, the proposal that each entity could only own one license would have been met with much resistance from the radio and television industries. Although the airwaves were deemed publicly owned, the stations were certainly treated as private property, and thus protected as such.

Furthermore, the FCC contended that the goal of competition was also a significant objective to consider. With the television network system firmly in place by
the 1950s, having been modeled after and controlled by the radio industry, the FCC deemed it necessary to raise ownership limits so that competition and diversity could thrive. New multiple station owners could benefit from economies of scale, and thus produce diverse programming, in order to compete with NBC, ABC, and CBS. Yet, the proposal to increase the number of stations one entity could own seemingly contradicts the purpose of the NTSO rule. That is, the chain rules were created because the networks had too much control over stations. Now, by allowing networks to own multiple stations, their influence and control would increase considerably, and new entrants would struggle to compete with the incumbents. At this point, however, the FCC still thought that ownership caps were necessary to serve the public interest. But, the FCC’s stance that diversity of ownership leads to diversity of programming would soon be seriously questioned and criticized, perhaps in part due to the fact that the ownership limits, which had been raised from five to seven in a matter of months, could be seen as arbitrary: If the limits could be raised using the same justifications, then why have limits at all?

A Change in Justification

In 1964, the FCC began proceedings to adopt another multiple ownership rule in pursuant of the goals of competition and diversity. Concerned with the concentration of ownership in the 50 top markets, the FCC, fearing that the number of voices in these large markets would be diminished without intervention, attempted to regulate the perpetuation of such concentration with an interim policy:

Absent a compelling affirmative showing, we will designate for hearing any application filed after December 18, 1964 for the acquisition of a VHF station in one of the top 50 television markets, if the applicant or any party thereto already
owns or has interests in one or more VHF stations in the top 50 markets; we shall
treat likewise any application to acquire interests in two or more VHF stations in
these markets if the applicant now has no interests in VHF stations in these 50
markets. (22 FCC 2d 696, 1968, p. 697)

After further study of the matter, in June of 1965, the FCC released a Notice of Proposed
Rulemaking and Memorandum Opinion and Order that considered raising the cap of the
proposed rule to no more than three television stations or more than two VHF stations (5
RR 2d 1609, 1965). After comments and petitions were filed regarding this proposal, the
FCC decided to deal with the issue on a case-by-case basis rather than adopt a blanket
rule (22 FCC 2d 696, 1968). However, the petitioner would still need to show a
“compelling interest” for the FCC to grant a license. It reported that of all the comments
filed, only one commenter expressed the notion that there was undue concentration in the
top markets. Furthermore, the Commission noted that “many new UHF stations have
been activated in the major markets,” which “has lowered the previous degree of
concentration of station ownership…providing as many separate owners and separate
viewpoints as would have occurred with a more restrictive multiple ownership rule in the
absence of these stations” (p. 699).

According to the concurring opinion of Commissioner Lee Loevinger, the
proposed rule would have been ineffective for several reasons. First, he noted that the
cost of program production was “inordinately expensive,” resulting in “an economic
barrier to extensive activity of this kind by any enterprise without very large capital
resources” (22 FCC 2d 696, 1968, pp. 703-704). To compete with the big three networks,
smaller businesses needed to have the ability to horizontally expand, as “The most
realistic hope for increasing the number of television networks and the number of substantial national program sources is to encourage the growth of more strong enterprises engaged in television station operation. The present multiple ownership rules are far more likely to do that than the proposed new rule” (p. 706). The notion that owners with “very large capital resources” would be better positioned to provide “quality” programming guided the FRC’s allocation of licenses in the late 1920s as well.

Second, he posited that the data used by the FCC to determine the number of voices in the top 50 markets was misleading. After recalculation, Loevinger found that under the seven station rule, a “substantial” increase in the number of television stations and station owners occurred within the top-50 markets since 1956 (22 FCC 2d 696, 1968, p. 706). This evidence suggested that the proposed rule was not only based on erroneous statistics but also obviously unnecessary.

Third, he contended that the proposed rule would create barriers to competition rather than foster it. He stated that the rule would “impose no handicap” on the networks or other large multiple station owners because the rule did not require these companies to divest their holdings. Instead, the rule would prevent newcomers from obtaining as many stations as these larger entities held. Thus, he stated, “the proposed rule would tend to perpetuate the present network oligopoly and protect the present multiple owners against new or increased competition” (22 FCC 2d 696, 1968, p. 707).

Although Loevinger’s arguments sound quite logical and persuasive, one may wonder why the FCC did not require these large corporations to divest their holdings to comply with such a rule. One reason may be the pressure placed on the FCC not to adopt this measure, evidenced in the lack of comments stating that competition was threatened.
Based on this reasoning, one could argue that no threat to competition existed. Furthermore, with television stations regarded and protected as private property, it would be difficult for the FCC to order divestiture after the owners had purchased and maintained their stations for some time.

However, Loevinger’s comments also suggested that the networks and large multiple station owners were too large, and thus limits would create barriers to competition with these growing entities. So there was, in effect, a real threat to competition prior to the proposal. As Commissioner Nicholas Johnson stated in his dissent:

This Commission has long purported to start from the premises that diversity of control of broadcasting and local ownership of broadcast properties are desirable. Thus, the question before us ought to be, ‘How is the public’s interest served by having a nonresident, corporate, multiple owner control one of the major sources of news, opinion and entertainment for a city of millions?’ (22 FCC 2d 696, 1968, p. 709)

He also worried that the Commission was changing its prior stance that “[t]he public interest—not the private interest—is paramount” (8 FCC 333, 1940, p. 340). He stated, “Hopefully, all would acknowledge that the economic self-interest of the multiple owners—clearly powerful spokesmen within the broadcasting establishment—are not, alone, the equivalent of a public interest basis for our present course” (22 FCC 2d 696, 1968, p. 711).

It appears that the justifications for eliminating proposed rules began to shift with this Report. Rather than promote the rules as serving the premise that diversity of
ownership leads to diversity of voices as a primary reason for their decision, the majority of commissioners were concerned with what they saw as economic limitations imposed by the rules. That is, the rules hindered competition rather than promoted it, as the networks and multiple station owners gained more power than those owners holding one or two stations. Nonetheless, this proceeding did not attempt to terminate the “seven station rule” or argue against ownership rules per se, nor did the Report eliminate consideration of the number of stations owned in the top-50 markets. The 1979 Report and Order, however, set the stage for the revamping of FCC assumptions.

In 1979, the FCC terminated its policy that allowed it to consider the number of stations already owned in the top 50 markets when deciding whether to grant new licenses or license transfers in such markets. The 1979 Report began with the premise that ownership rules were based on “a concern for insuring diversity in sources of programming and information, and for fostering economic competition” (75 FCC 2d 585, 1979, p. 585). It continued: “Although both are important, the Commission has placed principal reliance on insuring diversity in sources of information because of the part such diversity serves in reaching First Amendment goals” (p. 586). However, since the enactment of the 1968 policy, the Commission considered a number of cases, was “persuaded by the applicant’s ‘compelling showing,’” and granted the applications without hearings, suggesting that the policy was unnecessary (p. 586).

After the FCC released its Notice of Proposed Rulemaking regarding this issue in 1978, comments were filed by television group owners, who urged the FCC to abolish the policy. As well, the Citizens Communication Center and the National Black Media Coalition (NBMC) urged that the policy not only be enforced but strengthened (75 FCC
Both sides provided differing conclusions regarding trends in ownership patterns, and not surprisingly, the group owners’ data suggested decreased concentration of ownership since 1968, and thus argued that there was no need for the policy because there were “no problems of anticompetitive practices or concentration for which a ‘Top-Fifty’ Policy would be needed” (p. 588). On the other hand, the citizens’ group and the NBMC’s evidence suggested an increase in concentration, arguing that stations controlled by group owners (especially those in violation of the policy) collected more advertising income than competing stations controlled by individual owners, creating “substantial barriers to entry,” particularly for minority owners (p. 588).

The FCC compiled its own data to determine whether there was an increase in ownership concentration, using 1968 as the baseline and defining concentration as “the number of different owners in the top fifty markets, the percentage of singly-owned outlets in the top fifty markets and the degree to which access to the nation’s television households is concentrated in a few owners” (75 FCC 2d 585, 1979, p. 593). It found: (a) “The number of owners in the top fifty markets remained the same;” (b) As for potential audience reach, its data did “not present a convincing picture of national concentration resulting from group ownership in the top fifty markets.” In fact, it found that based on the seven station rule, “a group owner with one station in each of the top seven markets would potentially reach only 28% of the nation’s households,” and that because the top fifty markets have the greatest number of “competing voices,” the owner’s share of that audience would actually be much less—74% of the largest groups reached less than 5% of U.S. households, 96% reached less than 15% and none reached more than 25%.

Therefore, “in terms of national program diversity, we do not see that ownership of more
than one station in the top fifty markets creates a problem that is so substantial as to
require either a retroactive or proscriptive prohibition of such ownership;” and (c)
Economically speaking, it suggested that access to less than 25% of U.S. households did
not create barriers to competition, in part because it was unlikely that the actual share of
the audience would exceed 5% (pp. 594-596).

Thus, the FCC, based on its interpretation of the empirical data it collected, sided
with the group owners and eliminated the policy set forth in 1968. This reliance on data
collection to quantify competition, and indirectly, diversity, was a relatively new
condition, one that would haunt the Commission in 2002. And as Bettig (1996) noted,
“the positivistic and apparently empirical nature of economic analyses makes economists
more forceful in the policy making process than those making predictions or voicing
concerns that are based more on an intuitive, philosophical, or even historical basis” (p.
107). This shift in analysis can be seen in the 1979 Report, as the previously accepted
assumption that diversity of owners leads to diversity of viewpoints was dismissed in
favor of the numbers that prove that there is competition, and thus diversity, in the
marketplace.

The Commission also determined that the “Top Fifty” policy was ineffective at
the local level, as “the viewer usually can receive only one station of a particular group
owner” (75 FCC 2d 585, 1979, p. 591).15 Thus, the FCC reasoned, “the question of
diversity must be framed in terms of access to the nation rather than to a specific local
market or region” (p. 594). This question would be addressed in a series of proceedings
that began a few years later, and, contrary to the 1979 FCC stance, the answer that would

15 The “duopoly” rule prohibited ownership of two television stations with intersecting Grade B
contours (1964). See Amendment of Sections 73.35, 73.240, and 73.636 of the Commission’s Rules Relating
to Multiple Ownership of Standard, FM and Television Broadcast Stations, 45 FCC 1476 (1964).
emerge in the 1980s reversed previous justifications for limiting multiple ownership: Diversity at the local level is more significant than diversity at the national level. As such, national ownership rules were unnecessary.

**Deregulation Attempts in the 1980s**

In their 1982 influential article, “A Marketplace Approach to Broadcast Regulation,” FCC chairman Mark Fowler and his Senior Legal Advisor Daniel Brenner argued that a marketplace approach to broadcasting would be more effective and efficient than government regulation. They stated:

The proposition that consumers are best off when society’s economic resources are allocated in a manner that enables people to satisfy their wants as fully as possible permeates all sectors of our economy. Depending on what goods or services are involved, consumer satisfaction is enhanced by freedom of choice in the price, quality, or variety of products. We increase social utility by promoting competition, removing artificial barriers to entry, preventing any one firm from controlling price or eliminating its competitors, and in general establishing conditions that allow the price of goods to be as close as possible to their cost of production. (p. 210)

They argued that traditionally, the FCC has refused to recognize the “undeniable fact” that broadcasting is a business and should be treated as such. Fowler and Brenner (1982) assumed that the market would create more competition as broadcasters would be free to pursue the benefits of economies of scale to compete not only with each other but with other media outlets, such as cable and newspapers. And, in their view, because there were so many media outlets to choose from, diversity would be accomplished as well.
For Fowler and Brenner (1982), “consumer satisfaction is enhanced by freedom of choice in the price, quality, or variety of products” (p. 210). That is, it is presumed that in the unregulated marketplace, competition thrives, and as such, prices decrease while quality and variety increase. Consumers benefit as this model enables them to satisfy wants, for they are able to “voice” their demands through their purchases/viewing habits. Further, they argued that the trusteeship model advocated by the government was flawed from the beginning: “[B]y abandoning a marketplace approach in the determination of spectrum utilization, the government created a tension, in both first amendment and economic terms, that haunts communications policy to this day” (p. 213). In fact, the authors argued that the spectrum would have been allocated more efficiently if Congress had auctioned spectrum space rather than licensed it. With frequencies sold in the marketplace as property, “the highest bidder would make the best and highest use of the resource” (p. 211). But instead, the Communications Act of 1934 authorized the FCC to license broadcasters in the “‘public convenience, interest, or necessity,’ providing for a ‘fair, efficient, and equitable distribution of radio service’ to all communities” (p. 214). This, Fowler and Brenner (1982) argued, gave the FCC broad deference to influence programming, as inclusion of public affairs programming, for example, could be considered in the application process if such programming was deemed in the public interest. However, because the First Amendment prohibits censorship, consideration of content when granting and renewing licenses is problematic. Thus, the market, based on supply and demand, should determine what content consumers want rather than the government.
Fowler and Brenner (1982) also argued that “the trusteeship role of the Commission has…distorted competition in the broadcasting marketplace” (p. 219). They posited that regulations that attempted to protect broadcasters would actually increase barriers to entry and discourage promotion of more services. They stated that the FCC’s “misguided premise was that trustees [i.e., broadcasters] could carry out their stewardship only in an environment protected from ‘ruinous’ competition” (p. 220). The FCC, they noted, has placed unreasonable responsibilities on broadcasters, “obligations that go beyond providing goods and services that the public wants” (p. 220). Instead, broadcasting should be treated as other industries, and broadcasters’ primary obligation should be survival in the marketplace. Further, if broadcasting was left to market forces, the government would not need to provide regulations that protect children and adults from the pervasiveness of broadcasting; instead, the market would be an adequate substitute, as advertisers and viewers would not support programming that offended potential customers.

In sum, Fowler and Brenner (1982) posited that a purely market-governed approach would be more effective than the trustee model. By entering broadcasting into the “free” marketplace, tensions between the state, broadcasters, and the First Amendment would cease because the market would govern content, not the FCC. Additionally, the public would decide what is in its interest rather than the government, as markets rely on the forces of supply and demand. Rather than the FCC requiring public affairs programming that would not be aired voluntarily if consumers do not demand it, broadcasters in the market system would give their customers what they want. Furthermore, open competition would serve the public interest more so than protectionist
regulations, as more stations could compete in the marketplace. These same arguments can be found in FCC proceedings under Mark Fowler’s reign as FCC chairman from May 1981 to April 1987.

In 1983, the Fowler-led FCC began proceedings regarding the viability of the multiple ownership rules that had been in effect since 1954. Based on what the FCC saw as “dramatic changes in the communications marketplace” since the adoption of the rule and the possibility of “increased programming diversity likely to result from its relaxation,” the FCC suggested that the rule be discussed, and ultimately, eliminated (95 FCC 2d 360, 1983, p. 360).

For one, the FCC posited that the rule was arbitrary, as it did not take into account the signal coverage of individual stations nor the size of the population that these stations reached. It also argued, as Loevinger had argued in 1968, that the rule actually served to enhance the power of the networks and precluded the possibility of new networks or programming due to economies of scale—that is, group ownership is economically more efficient than single ownership, and in order to compete with the networks, group ownership would be more effective. Furthermore, it opined that the growth of the number of stations since the 1950s “constitutes a fundamental change in the nature of the media marketplace that of itself calls for a reexamination of our approach to national ownership limitations” (95 FCC 2d 360, 1983, p. 374). The FCC also suggested that there was “substantial national ownership diversity.” 571 group-owned stations in 1982 were controlled by 169 different owners, and no group owner reached as much as 20% of the 83.3 million television households (p. 378). The increase in the number of stations and owners as compared to 1953 rendered the seven station rule arbitrary as well.
The FCC noted that the seven station rule survived because it “seemed to the Commission to be the best option available at the time, given the nature of the Commission’s analysis and policy objectives and the level of industry development,” but it felt that the growth of the broadcast industry, in addition to the growth of other media sources, “may have simply rendered the rule obsolete” (95 FCC 2d 360, 1983, p. 382). Additionally, the FCC noted that the Commission’s diversification policy regarding concentration of ownership derived from antitrust policy, and because the Department of Justice and the Federal Trade Commission regulated antitrust issues, it may be more appropriate to defer antitrust concerns to these regulatory agencies. However, using the Herfindahl-Hirschman Index utilized by the Justice Department, the FCC proposed that concentration was not an issue, especially because the calculations it performed did not include other media. The Commission thus suggested that because there were other media products that could be substituted for television programming (e.g., newspapers, radio, and video cassettes), concentration in television ownership was no longer an issue nor a problem.

The FCC purported, though, that its “principal concern in implementation of its policy of diversification of ownership has not been the enhancement of economic competition but, rather, the advancement of diversity in sources of information in order to further First Amendment values.” It continued: “A major purpose of the First Amendment is the furthering of political discourse so that debate on public issues may be ‘uninhibited, robust, and wide-open’” (95 FCC 2d 360, 1983, pp. 390-391). On a national level, the FCC suggested, television competes with the voices of newspapers, radio, and magazines, and therefore discourse is varied. And, the argument that group owners serve
as gatekeepers that “govern the flow” of discourse was irrelevant because individual stations have their own local staff that make editorial decisions. “Outlets of national information should be seen as quasi-independent, if not truly independent, information sources” (p. 392). Thus, competition, not diversity, should be the primary concern.

The FCC argued that the previously held notion that diversity of ownership leads to diversity of viewpoints was negligible when one considers economic issues. That is, although the ownership regulations “tend to increase the number of total owners,” a reduction of diversity of programming could occur “due to the inability of station owners to benefit from the program production and distribution opportunities which the efficiencies of group ownership facilitate” (95 FCC 2d 360, 1983, pp. 393-394). As such, quality is equated with production expenses; the more money that can be spent, the better the programming. The idea that concentration in broadcasting leads to diversity of programming thus negated the prior justifications for national television ownership regulations.

Commissioner Henry M. Rivera dissented, stating:

The philosophy and objectives set forth in this Notice represent a reversal of the FCC’s long-held approach to media ownership diversification that has profound implications…the public interest lies in the widest possible dissemination of ideas from diverse and antagonistic sources, and that this public interest is best achieved by maximum diffusion of media ownership and control. (95 FCC 2d 360, 1983, pp. 400-401)

He noted that he found no reason to support “such a radical rethinking of the structural diversity policy; no urgent need to change these rules drastically; and no alternatives
short of outright repeal sincerely considered in the Notice” (p. 401). As for the majority’s argument that the rule was arbitrary, Rivera noted that this was “a price the FCC has long been willing to pay in exchange for the public benefits accruing from maximum diversification of ownership and viewpoint in broadcasting. That the rules have permitted uneven results does not diminish the fact that they have prevented concentration of the broadcast media in the hands of a few powerful companies” (p. 401).

Rivera also argued that the economic approach to broadcast regulation, that is, the “free market” philosophy put forth by the majority, may be unobjectionable for industries not characterized by technical scarcity, and not affected with a nearly unique capacity to influence public opinion…However, ownership patterns and economic measurement tools that may be perfectly appropriate for industries involving steel, breakfast cereal, or appliances should be regarded with caution in the sensitive field of information dissemination. (95 FCC 2d 360, 1983, p. 404)¹⁶

If broadcasting was opened to the “free market” philosophy, the result would be a handful of companies controlling the means of communication, a proposition that would surely thwart First Amendment goals (95 FCC 2d 360, 1983).

The 1984 Report and Order, however, reinforced the majority FCC’s position that the NTSO rule was out-dated, arbitrary, and unnecessary. It noted that the rule, rather than increasing diversity, “may be an obstacle to the broadcast of the types of programming that might more adequately address the interests and concerns of the public” (100 FCC 2d 17, 1984, p. 19). Furthermore, it argued that the “traditional scarcity

¹⁶ Compare to Mark Fowler’s comment in a 1981 Reason article: “It's time to move away from thinking of broadcasters as trustees and time to treat them the way that everyone else in this society does, that is, as a business. Television is just another appliance. It's a toaster with pictures.”
arguments” were no longer applicable because “improvements in technology and changes in spectrum regulation accompanied by expanding audience and advertising markets have eliminated monopolistic control as a serious threat” and “the fact that there are more who would like to operate broadcast facilities than can actually do so…fails to distinguish broadcasting in any practical sense from other businesses…for which resources are limited or the available economic base constrains the number of firms that can successfully participate in the market” (p. 19). Additionally, the FCC posited that the “only genuine barrier to entry” in regard to broadcasting is “insufficient capital” (p. 19). Thus, by contending that scarcity was not an issue in the “competitive” media marketplace, the FCC also solidified the position that the broadcast media were businesses first, an idea contrary to the notion that broadcasters were granted licenses with the promise that they would serve the public interest.

Additionally, the FCC argued that nationwide, there were many “voices,” such as radio, newspapers and cable, within each local market. Instead of concentrating on the national ownership limits, it contended, many commenters noted that Commission should “focus its concerns for diversity on the local markets.” It continued:

Indeed it would appear eminently reasonable to consider viewpoint diversity to be primarily a matter pertaining to local diversity, in that viewers in San Francisco, St. Louis and Philadelphia each judge viewpoint diversity by the extent of sources of ideas available to them, not by whether those same or other ideas are available in other broadcast markets. Moreover, it is apparent that restrictions on the ownership of radio and TV stations at a nationwide level bear no necessary relationship to the number of independent viewpoints in a particular local market,
nor does relaxation or abolition of this rule affect the Commission’s local ownership restrictions. (100 FCC 2d 17, 1984, p. 27)

Because there was a “dramatic increase in broadcast outlets, especially when considered relative to the number of print outlets such as daily newspapers,” special restrictions for broadcasting should not exist (p. 30).

The FCC also posited that national ownership limits were adopted “on the basis of prognostication, not empirical proof, and relied on assumptions which at the time were untestable” (100 FCC 2d 17, 1984, p. 24). Thus, the 1984 FCC would use “empirical evidence” to “prove” that the seven station rule was unnecessary. For example, using data acquired by the networks, the FCC argued that group owned stations are able to offer increased quality and quantity of public service programming, including news and public affairs, unlike non-group stations. Moreover, it contended that network evidence showed that editorial content was “autonomous:”

The fact that such diversity of viewpoint in local news reporting and in editorializing on local issues exists alongside a group or network ownership structure means that it is indeed possible to have greater viewpoint diversity than there is ownership diversity. This, combined with the fact that commenters presented evidence indicating that network and group-owned stations are more likely than independents to editorialize, is important evidence that allowing increased group ownership will aid in providing consumers with the variety of information they want. (p. 34)

Furthermore, the FCC purported that artificial restrictions on group ownership reduce the amount of information necessary to “foster an informed electorate,” as “our fundamental
concern for a well-informed citizenry is better served by removing rather than retaining government barriers to group ownership of broadcast stations” (p. 35). Additionally, the FCC contended that within the commercial broadcasting system, national advertisers require at least 75 percent of the nations’ homes before committing to a program, and with independent programming as “an enormously expensive process,” group owners would benefit from economies of scale and consumers would benefit from new and innovative programming (100 FCC 2d 17, 1984).17

Thus, the FCC expounded the view that the NTSO rule was a constraint to competition and diversity, quite the opposite view that early regulators presented. According to the 1980s FCC, without group ownership, stations could not compete with the networks nor afford to produce public affairs or entertainment programming. Therefore, by lowering the “artificial barriers” the ownership limit created, group competition would be more effective in creating diversity than independent owners. But, ironically, the FCC noted:

In sum, given that we see little possibility that repeal of the rule could cause competitive or diversity harm, we believe licensees should be afforded the opportunity to exploit any possible efficiency from group ownership. While the empirical record on their magnitude is weak, the efficiencies posited by the commenters are plausible. Furthermore, given that efficiencies could really only be proven if the rule were eliminated, ironclad proof of their existence should not be a requirement to justify repeal. (100 FCC 2d 17, 1984, p. 46)

This seemingly contradicts the FCC’s argument that the prior justifications for ownership regulations were merely “prognostications,” for the FCC stretched beyond the empirical

17 Argument based on the comments of Metromedia, Inc. in 100 FCC 2d 17, 1984.
data it said was needed to justify regulation. It appears that “empirical evidence” could not be obtained in either case.

Further, the relaxation of the NTSO rule was justified by the notion that independent and small group-owned stations could not compete with the networks. However, the *New York Times* reported that the relaxation of the rule was “expected to spur the expansion of the three main television networks in particular and of media companies that have sought to expand but have been inhibited by the limit” (Jones, 1984, p. A1). Throughout the 1940s and 1950s, the Commission justified the rule on the grounds that the public interest was best served by multiple owners. The FCC had contended that diversity of ownership would lead to diversity of viewpoints, a consideration consistent with the goals of the First Amendment. This stance changed, in part due to the increase in stations and licenses, but also due to the dominance of the networks. It was difficult for independent stations to compete with the networks, and thus, diversity of ownership did not necessarily lead to diversity of viewpoints or programming, particularly because programming was so expensive. As a result, the FCC raised ownership limits with the hope that group owners would be able to compete in such a marketplace. The problem with this postulation, however, is that the relaxation of ownership limits benefits the already dominant networks rather than small group owners. Moreover, as Smith, Harris Upham & Company media analyst Edward Atorino stated, the relaxation would be “a monumental step” (p. A1). Large companies were gearing up to increase their holdings, and based on the “expected demand,” the price of television stations would increase as well (p. A1), creating larger barriers to entry for small group owners and minorities.
Nonetheless, the FCC proposed to eliminate the ownership cap. It explained, however, that although it did not “believe that repeal will result in any harmful restructuring of the industry, we are sensitive to [commenters’] concern that if all restrictions were removed immediately then structural changes might occur before the full ramifications of these changes became evident” (100 FCC 2d 17, 1984, p. 18). Therefore, “out of an abundance of caution,” the FCC established a six year transitional limitation for which the ownership limit would be capped at twelve stations. After six years, the cap would be eliminated, and the Commission would “continue to scrutinize each individual acquisition to assure itself that the acquisition does not contravene any of the Commission’s public policy concerns, particularly those related to diversity and competition” (p. 18). Commissioner Mimi Weyforth Dawson dissented, arguing that the twelve station cap was as arbitrary a number as seven. Instead, she proposed that the cap be based on a percentage, as numerical limits were “unfair:”

The numerical approach has restrained, and will continue to restrain, the growth of group owners vis-à-vis the major networks. This growth has been restrained, not because of any collusive or anticompetitive behavior on the part of the networks, but because of the ownership patterns established very early in the history of broadcasting together with the Commission’s own policies. (p. 65) Rather than imposing a numerical limit that “handicaps” non-network group owners forced to compete against the already established networks, she argued that an audience reach approach, the same approach that advertising rates are based upon, would better serve FCC goals and benefit non-network group owners. Commissioners Mark Fowler and Dennis Patrick disagreed with Dawson, arguing that a percentage limit would be no
less arbitrary than a numerical limit (100 FCC 2d 17, 1984). Nonetheless, under either system, the rule would, after the six year sunset period, be eliminated in the name of economies of scale. And as George Schweitzer, vice president of CBS stated, “We applaud [the decision] as it reflects the view that media investment decisions are best made by business people rather than by Government regulations” (Jones, 1984, p. D2).

However, Congress blocked the elimination of the NTSO rule by withholding funds necessary to implement the FCC’s 1984 decision (98 Stat. 1369, 1984), forcing the Commission to reassess its proposal to eliminate the NTSO rule after a six year sunset. It ultimately decided to increase the number of stations a single owner could own from seven stations to twelve stations with a 25% cap on audience reach, but not without further opposition from another large, concentrated media industry: film (100 FCC 74, 1985).

In its 1985 Memorandum, the FCC systematically refuted the arguments set forth by the Motion Picture Association of America, which opposed the repeal or relaxation of the seven station rule as it applied to the networks, contending that a repeal would diminish opportunities for new independent programming and networks and would increase network economic concentration and anticompetitive activity. The FCC concluded that the petitioners did not demonstrate that the retention of the seven station rule would “prevent undue economic concentration” (100 FCC 74, 1985, p. 87). Furthermore, it posited that the 25% cap would restrict substantial network expansion, as the network owned and operated stations were located in high population areas, and thus

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18 The New York Times reported that Colorado Congressman Timothy Wirth (D) met with Fowler “and told him that if the commission did not agree to a delay [to implement the rule change], it faced the prospect of Congress banning the expansion outright and taking away decision-making power from the F.C.C.” (“F.C.C. Delays Changing,” 1984, p. D1).
the networks would not be able to expand significantly under the new provisions. However, just six months earlier, Commissioners Fowler and Patrick argued that the percentage approach was as arbitrary as assigning a numerical limit, and Commissioner Dawson posited that the numerical approach was just as arbitrary. It can be said, then, that this new proposal facilitated two arbitrary limitations. This would haunt the FCC in subsequent cases, particularly the *Fox Television Stations, Inc. v. Federal Communications Commission* case, as will be discussed in the next chapter.

What is evident from the arguments set forth in this Memorandum is the shift from the notion that diversity of ownership leads to diversity of viewpoints to the notion that economics of scale and concentration lead to quantity and quality of programming. Relaxation of the NTSO rule, which was previously thought to increase diversity, was now seen as an objective “consistent with the public interest goal of providing maximum service to the public” (100 FCC 74, 1985, p. 88). Subscribing to the idea that broadcast media are businesses leads to the idea that viewers are no longer citizens but consumers or customers. Thus, it was argued that by allowing more concentration, customers could get what they want, as the broadcast station owners could benefit from the externalities of group ownership. However, the notion that with deregulation the “marketplace” would give viewers what they want is problematic. As Smythe (1954) succinctly argued, “the public cannot vote for what it has never experienced” (p. 32). Broadcasters continue to produce the same programming over and over again, which advertisers like because it takes much of the risk out of allocating ad dollars, but viewers have few options for determining what will be produced and how it will be produced. Other than choosing between similar options on multiple channels, viewers are not invoked in programming
choices other than as consumers. Nonetheless, the trend toward deregulation would continue with the adoption of the 1996 Telecommunications Act.

**The Telecommunications Act of 1996 and Beyond**

After sixty-two years of existence, the Communications Act of 1934 was amended in 1996. According to a Senate Report, the amendment had two primary purposes: “to provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition” (S. Rep. No. 104-230, 1996). The 1996 Act further relaxed the NTSO rule, eliminating the twelve station cap and increasing the national television station audience reach from 25% to 35% (110 Stat. 56, 1996). The Act also provided that:

> The Commission shall review its rules adopted pursuant to this section and all its ownership rules biennially as part of its regulatory reform review under section 11 of the Communications Act of 1934 and shall determine whether any of such rules are necessary in the public interest as the result of competition. The Commission shall repeal or modify any regulation it determines to be no longer in the public interest. (sec. 202h; emphasis added)

It appears, then, that Congress determined that oligopolistic competition should be the FCC’s foremost goal, and if competition was protected, then diversity and localism may result.

In 2000, the FCC, in compliance with section 202(h) of the Act, released the *1998 Biennial Regulatory Review* (FCC 00-191, 2000). In this Review, the FCC addressed the
concern that the language of the Telecommunications Act of 1996 “limits our review only to competitive matters and that our analysis must be devoid of diversity considerations” (p. 6). It argued: “Because the statutory language requires reference to the public interest standard, and because diversity and competition have both been critical components of that standard, our review must consider diversity issues as well” (p. 6), thus reaffirming the goals of competition and diversity.

The major networks, not surprisingly, supported “total repeal” of the rule, arguing that elimination of the rule “would have no effect on the level of diversity and competition in local markets” and that “retention of the rule hinders broadcasters from achieving economic efficiencies” (FCC 00-191, 2000, p. 13), the same arguments put forth by the FCC in its 1984 Report. Proponents of the rule argued that not only were the new ownership limits not “in effect long enough to warrant modification at this time,” but also that “an increase in the audience reach cap will increase the bargaining power of the networks and, therefore, diminish localism by making it more difficult for affiliates to program their stations in the interests of the communities they are licensed to serve” (p. 14). Contrary to its stance in 1984, the Commission sided with the proponents and decided not to change the NTSO rule. Having recently relaxed local ownership rules, the same rules that the 1984 Commission noted were more essential than the national television ownership rule to insure diversity of voices, the FCC wanted to observe and assess the results of the changes before modifying the national limit. Additionally, the FCC stated that the increase of the national limit from 25% to 35% in 1996 had resulted in increased concentration; thus, it seemed necessary to wait to see the results before restructuring the rules again (FCC 00-191, 2000). However, at the same time the FCC
was conducting its biennial review, two challenges to the NTSO rule arose, and as a result, the FCC would again review the NTSO rule to determine whether it was “necessary in the public interest as the result of competition.”
Perhaps this is an obvious point, but the democratic postulate is that the media are independent and committed to discovering and reporting the truth, and that they do not merely reflect the world as powerful groups wish it to be perceived. Leaders of the media claim that their news choices rest on unbiased professional and objective criteria, and they have support for this contention in the intellectual community. If, however, the powerful are able to fix the premises of discourse, to decide what the general populace is allowed to see, hear, and think about, and to ‘manage’ public opinion by regular propaganda campaigns, the standard view of how the system works is at serious odds with reality. (Herman & Chomsky, 1988, p. lxiv)

Mergers such as Viacom and CBS and News Corporation’s purchase of Chris Craft’s television stations, and the deregulation that occurred to allow such mergers, have potentially dire political and economic consequences, including detrimental effects to diversity, competition, localism, and journalism. These effects are perhaps most potent at the local level: When more than 7000 cities are without a local newspaper and when the country is divided into 210 television markets (out of approximately 65,000 voting districts), local news suffers, especially local political news, due in part to time and space constraints (Bagdikian, 2000).\(^{19}\) Further, it is much cheaper to use syndicated news, video news releases, and recycled network news than it is to produce quality local investigative news. However, the needs of citizens are neglected as television news, the primary source citizens use to obtain news about their world and their communities, becomes caught up in the need to maximize profits. As Bagdikian (2000) argued, “Mass advertising made television a profitable spectacle called ‘a license to print money’” (p. 132). As such, television has “maximum advertising power as long as it offends or bores as few viewers

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\(^{19}\) For example, the Project for Excellence in Journalism (2005) found that some 12 minutes of a 30 minute nightly news broadcast consists of commercials and network self-promotion.
as possible” and to create a “buying mood” (p. 133). Television news, like newspapers, tends to choose “noncontroversial, light, and nonpolitical” news and programming (p. 133). This is especially problematic as decisions regarding the allocation of resources often occur at the local level.

With the continued relaxation of ownership regulations, the potential for more media mergers increases, exacerbating the effects of media concentration and creating ever higher barriers to entry. These multinational companies profit tremendously from vertical integration, exploiting synergies and cross-promotions to the detriment of entertainment creativity, journalistic diversity and depth, and fair competition. Journalism especially suffers at the hands of such concentration, particularly as media conglomerates such as Viacom and News Corporation promote the causes of the political elite and marginalize or ignore dissent in order to gain favor from the state.

Beginning with the News Corporation/Fox, Viacom/CBS, and General Electric/NBC challenge to the National Television Station Ownership rule (NTSO) in *Fox Television Stations, Inc. v. Federal Communications Commission* until the Federal Communications Commission’s (FCC) June 2003 decision, this chapter analyzes the arguments set forth by the courts, the Federal Communications Commission (FCC), and the conglomerates regarding the National Television Station Ownership (NTSO) rule. It uses the public record to examine the rhetoric propagated for the continued relaxation of ownership regulations. Then, combining Jhally’s (1989) culture industry and consciousness industry framework, it explores the political economy of media mergers in the twenty-first century, focusing primarily on the Viacom-CBS merger. Using an institutional approach, this chapter explores how deregulation has led to the concentrated
structure of the media, the interrelationships between media elites, big business, and big
government, and the effects of structure and the aforementioned interrelationships on
journalism and entertainment media.

**Fox Television Stations, Inc. v. Federal Communications Commission**

As noted in chapter one, the Viacom-CBS merger and News Corporation’s
acquisition of Chris Craft’s ten television stations violated the NTSO rule, a rule that
prohibited any one entity reach over 35% of the national households with its owned and
operated stations. Rather than comply with the FCC’s condition that the corporations
meet the 35% cap, they filed suit against the Commission (*Fox v FCC*, 2002). In
Viacom Inc., and CBS Broadcasting, Inc. challenged the NTSO rule on two grounds.
Their first argument contended that the FCC violated the Administrative Procedure Act
(APA), an act for which the purpose, in part, is “to prescribe uniform standards for the
conduct of formal rule making and adjudicatory proceedings,” (U.S. Department of Labor,
1947) and section 202(h) of the Telecommunications Act of 1996. Their second argument
posited that the rule violated their First Amendment rights. The Court of Appeals agreed
with the petitioners’ first argument, but did not deem the rule unconstitutional (*Fox v.
FCC*, 2002).

Fox and co-plaintiffs contended that the FCC’s decision to retain the rule violated
section 202(h) of the Telecommunications Act and was “arbitrary and capricious in
violation of the APA” for three reasons: 1) The NTSO rule is “fundamentally irrational,”
and the FCC’s justifications for retaining the rule are “correlatively flawed;” 2) The FCC
“failed meaningfully to consider whether the Rule was ‘necessary in the public interest’;”
and 3) The FCC did not successfully explain why it departed from its 1984 stance that the rule should be repealed (Fox v. FCC, 2002, p. 1040). In contrast, the FCC argued that the rule safeguarded competition and promoted diversity. The networks, however, posited that the FCC did not provide evidence for either justification, and the court agreed, stating:

[W]e agree with the networks that the Commission has adduced not a single valid reason to believe that the NTSO Rule is necessary in the public interest, either to safeguard competition or to enhance diversity. Although we agree with the Commission that protecting diversity is a permissible policy, the Commission did not provide an adequate basis for believing the Rule would in fact further the cause. (p. 1043)

The court also agreed that the FCC failed to comply with section 202(h) of the Telecommunications Act of 1996, stating that the FCC’s brief mention of the status of the media marketplace in their 1998 report was “woefully inadequate” and did not address Congress’ mandate that the FCC review its regulations to determine whether such rules were in the public interest (Fox v. FCC, 2002, p. 1044). Furthermore, the court concurred that the FCC failed to address its contradictory stance in the 1984 Report that purported that the NTSO rule should have been repealed, which raised the question as to why it should be defended in 2002. Thus, the court agreed that the FCC’s decision to retain the NTSO rule was “both arbitrary and capricious” and contrary to the APA and 1996 Act.

However, the court did not agree with the networks’ contention that the rule violated their First Amendment rights because it prevented them from speaking directly to 65% of the potential television audience. The networks had argued that: (a) The
scarcity rationale associated with Red Lion Broadcasting Co. v. FCC (and discussed in the Radio Corporation of America and American Broadcasting System, Inc. case) was no longer applicable in “today’s populous media marketplace;” (b) Even if scarcity was a problem, the NTSO rule did not “mitigate the effects of scarcity;” and (c) The FCC v. League of Women Voters “mandates heightened scrutiny for all restrictions on broadcast speech” (Fox v. FCC, 2002, p. 1045).20 Although the networks argued that scarcity was no longer an issue (as did the FCC in 1984), the Court of Appeals stated that the scarcity rationale was still applicable in this situation:

The scarcity rationale is based upon the limited physical capacity of the broadcast spectrum, which limited capacity means that ‘there are more would-be broadcasters than frequencies available.’ In the face of this limitation, the national ownership cap increases the number of different voices heard in the nation (albeit not the number heard in any one market). But for the scarcity rationale, that increase would be of no moment. (p. 1046)

Additionally, the court stated that the FCC v. League of Women Voters case did not mandate heightened scrutiny in this case, as the prior case was based on a content-based rule, while the current case was based on a content-neutral regulation, and thus was not in violation of the First Amendment. Furthermore, the court disagreed with the networks’ contention that by allowing them to own as many stations as possible, the public would benefit, as networks would provide more programming that their customers preferred. The court stated that although this may be true, this rationale did not address

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whether Congress could “reasonably determine that a more diversified ownership of television stations would likely lead to the presentation of more diverse points of view” (Fox v. FCC, 2002, p. 1047). They continued:

By limiting the number of stations each network (or other entity) may own, the NTSO Rule insures that there are more owners than there would otherwise be. An industry with a larger number of owners may well be less efficient than a more concentrated industry. Both consumer satisfaction and potential operating cost savings may be sacrificed as a result of the rule. But that is not to say the Rule is unreasonable because the Congress may, in the regulation of broadcasting, constitutionally pursue values other than efficiency—including in particular diversity in programming, for which diversity of ownership is perhaps an aspiration but surely not an irrational proxy. (p. 1047; emphasis added)

Thus, the contention that the rule was unconstitutional was not viable, as was the case in the 1943 National Broadcasting Co. Inc. v. United States decision (see chapter three). As such, the court ordered the FCC to review the rule rather than vacate it.

The stance that the Court of Appeals took regarding the application of the APA and section 202(h) of the Telecommunications Act of 1996 contrasts with the deference the courts gave the FCC in earlier days. As discussed in chapter three, the Supreme Court noted in 1943 that the role of the FCC was not merely that of a “traffic officer.” Instead, the FCC was given broader latitude in deciding how the traffic would be composed and regulated (see NBC v. U.S., 1943). Although the Court of Appeals reiterated that ownership rules were constitutional and that efficiency was not the only value to be considered, it also noted that “Section 202(h) carries with it a presumption in favor of
repealing or modifying the ownership rules” (Fox v. FCC, 2002, p. 1048). This statement seems to imply that the court was attempting to define how the FCC should monitor traffic rather than allowing the FCC to make such decisions. The courts in earlier days also accepted the justification that diversity of ownership leads to diversity of viewpoints without “empirical” evidence. Then, in the 1984 Report, the FCC argued that though there was little evidence to suggest that the elimination of the national cap would result in efficiencies, there was no need for “ironclad proof” to justify eliminating the cap (100 FCC 2d 17, 1984, p. 46). The 2001 court seemingly assumed that empirical evidence means quantification, and the numbers that they want to justify retention, modification, or elimination of the rule are impossible to attain, for diversity and localism cannot be counted like cattle or money.

Furthermore, the court stated that, “The statute is clear that a regulation should be retained only insofar as it is necessary in, not merely consonant with, the public interest” (Fox v. FCC, 2002, p. 1050). However, the Court did not define what it meant by “necessary:” Does necessary mean useful or indispensable? The justifications for retention of the rule deemed the rule useful for promoting diversity and competition. However, opponents to the rule argued that it was unnecessary: For example, as previously discussed in chapter three, the FCC argued in 1984 that the rule was not crucial, as it did not fulfill the goals of diversity and competition, particularly at the local level. If “necessary” means indispensable, then the implication is that the rule is not essential, and thus needed to be modified or eliminated, as it is difficult to provide empirical (defined as quantification), undeniable proof that the rule fosters (or hinders) such abstract concepts as diversity and competition. As Napoli (2001) noted, these
concepts remain “contested territory,” as “the precise meaning and appropriate application of [these principles] have been subject to years of debate and, in many instances, contradictory interpretations” (p. 23). Therefore, based on one’s definition of the principles of diversity and competition, the NTSO rule could be considered useful, indispensable, or unnecessary.

Retention, Modification, or Elimination?

In compliance with the court’s remand of the NTSO rule and the conditions of the Telecommunications Act of 1996, the FCC released its Notice of Proposed Rulemaking regarding the 2002 Biennial Review in fall 2002 (FCC 02-249, 2002). The FCC noted that the purposes of early limitations on ownership balanced several goals, including the promotion of competition and diversity of viewpoints as well as economies of scale (a contention raised in the 1968 and 1984 Reports, as noted in the previous chapter). It repeated the Commission’s concern, brought forth in the 1998 Biennial Review, that “consolidation of ownership in the hands of a few national networks would not serve the public interest” because networks would gain an unfair advantage and increased bargaining power over affiliated, yet independently owned, television stations (p. 42). However, because the court remanded the NTSO rule, the FCC needed to determine whether the NTSO rule was “necessary in the public interest as the result of competition” (p. 42). As such, the FCC proposed the following questions:

Does [the NTSO Rule] continue to serve its original purposes of promoting competition and viewpoint and programming diversity? Does the rule promote […] localism and the various other forms of diversity and competition? If the rule
serves some of our purposes and disserves others, does the balance of its effects argue for keeping, revising, or abolishing the rule? (p. 42)

What is most notable, however, in the 2002 Biennial Review is that this Commission seemingly reiterated the 1984 FCC’s stance that the NTSO rule “should be repealed because it focuses on national, rather than local markets and thus has an insignificant effect on viewpoint diversity” (FCC 02-249, 2002, p. 44). This view is somewhat different from the 1998 Biennial Review; at that point, the FCC wanted to observe the 1996 Telecommunications Act’s relaxation of local ownership limits before initiating changes to the national ownership limits. Nonetheless, the 2002 Commission concluded: “It appears that the national TV ownership rule is not directly relevant and perhaps not relevant at all, to the goal of promoting viewpoint diversity” because viewers “generally do not travel to other cities to obtain viewpoints” (p. 44). Rather, the FCC reasoned, people rely on various “local” media sources for news, including the Internet, newspapers, radio, and cable. Thus, the dual network rule, a rule that “permits broadcast networks to provide multiple program streams (program networks) simultaneously within local markets, and prohibits only a merger between or among [the] four networks [ABC, CBS, Fox, and NBC],” would better serve viewpoint diversity at the local level than would the NTSO rule (p. 50).

National caps do matter, though, as demonstrated by concentration in the radio industry. As a result of the 1996 Telecommunications Act’s elimination of national caps for radio broadcasting, concentration of radio stations in the hands of a few large corporations diminished diversity, competition, and localism. Prior to the 1996 Act, the top two radio station owners held a total of 115 stations. In early 2003, however, the top
two owners controlled over 1,400 stations (Staples, 2003, p. A30). Clear Channel Communications, for example, grew from 40 stations pre-Act to 1,240 stations in a $30 billion wave of mergers and acquisitions; with $8 billion in revenue, this corporation is one of the 250 largest publicly traded companies in the United States. As of 2003, the company also claimed 20 percent of U.S. radio advertising revenue and attracted approximately 25 percent of radio listeners (Hiestand, 2003; Lee, 2003). As noted, deregulation proponents argue that national ownership caps do not affect local markets, particularly because people do not tend to travel to different radio markets in order to listen to the radio; rather, they tend to listen to a particular format in their own market. Yet, the more one travels, the more one does hear and see the same thing. Large group owners like Clear Channel format their playlists and news from headquarters, resulting in less localism. As Hiestand (2003) reported, “Clear Channel is knocked for the alleged ‘McDonald-ization’ of playlists and a subversion of the fundamental concept of localism in broadcasting by, among other business practices, simulcasting one DJ across several stations while giving the impression that the DJ is local to each market.” Though “Clear Channel insists that this…practice, known as voice tracking, makes major-market talent available in towns that can’t otherwise afford it” (p. M7), this insistence neglects a fundamental principle of radio broadcasting: localism.

Further, radio news broadcasts are often distributed by broadcast news services such as Viacom’s Metro Networks. In 2000, Metro Networks supplied traffic, weather and sports reports to 1,700 radio stations and supplied news coverage to several stations within the same market; for example, Metro serviced 41 New York stations (Taglang, 2000, www.benton.org). Metro prepares the newscasts, and client stations “use the same
reports, even if delivered by different announcers, many of whom appear on several stations using different names to match the format of the station of the moment” (Schwartzman, 2000, p. 516). Thus, rather than promoting localism and funding local radio journalism, the large radio chains prepare or hire an outfit to prepare blanket newscasts that cover the nation.

“Free market” advocates argue that competition leads to diversity, but as Aufderheide (1999) argued, format diversity after the Telecommunications Act passed did not necessarily result in social diversity but “[i]t certainly raised the price for experimentation and encouraged new lows of commercialism” (p. 92). For example, she noted that in Minneapolis, Disney/ABC bought “a small alternative and community-oriented music station,” replacing it with a rock music format, and in such areas as Washington, DC, Chancellor Media began playing long-form infomercials as broadcast programming (p. 92). Moreover, format variety does not equate with viewpoint diversity. As Huntemann (1999) argued, “commercial radio tends to represent narrow musical tastes and conservative political perspectives” due to the need for advertising dollars and profit maximization (p. 398). For example, she noted, if a disc jockey, a news staff member, or a recording artist upsets an advertiser, the offending material will be pulled, and concessions will be made to the advertiser. Self-censorship is a strong motivating factor, ultimately resulting in cautious conservatism. Additionally, advertisers not only want to reach as many consumers as possible, but they also want to reach the most affluent listeners. As Huntemann (1999) reported, in 1999, the top five formats—adult contemporary, top 40s, oldies, news/talk/sports, and country—were listened to by the “widest and most sought-after listeners—adults age twenty-five to forty-four, 93 percent
of whom are white and typically hold the most discretionary income.” She noted that, “Although station choice per region may have increased, station formats nationwide are narrowing to a few of the most advertising-lucrative formats” (pp. 398-399). This was also demonstrated in an FCC study that found radio stations owned by minorities or that targeted minority listeners encountered advertisers or ad agencies with “no Urban/Spanish dictates,” due in part to “ethnic/racial stereotypes that influence the media buying process” (see Ofori, 1999).

In addition, the Future of Music Coalition (2002) argued that “format variety is not equivalent to true diversity in programming” (p. 4). Using data from Radio and Records and Billboard Airplay Monitor, its study found “considerable format homogeneity,” as the playlist overlap between presumably “distinct” formats was as much as 76 percent (p. 4). In two revealing cases, Urban and Contemporary Hit Radio Rhythmic shared 38 of their top 50 songs, while Active Rock and Alternative shared 29 of the top 50 songs. The study also found 561 cases nationwide in which radio firms operated two or more stations in the same geographic market with the same programming format (Future of Music Coalition, 2002). In the end, diversity is reduced to multiplicity and choices are limited.

To count the number of songs produced by local musicians that are played on commercial radio stations is an exercise in futility. Local artists are ignored by the corporate giants. The San Francisco Bay Guardian described the case of two radio stations that were in “a heated competitive battle” that “encouraged cutting-edge innovation—and gave local rappers abundant chances to get their music heard.” Once Clear Channel bought both stations, “The competition ended—and so did the innovation”
Additionally, with the rise of syndicated programming, such as “Delilah,” an evening romance programming that reaches 7 million people in over 200 radio markets, talk show gurus Don Imus and Bill O’Reilly, whose shows are also seen on cable, Michael Savage, the controversial author of *The Savage Nation*, and call-in programs like “Rockline,” as well as a proliferation of playlists designed at the corporate office, there is “a marked decrease in airplay for local talent and community tastes” (Huntemann, 1999, p. 400; “Popular,” 2003). There is no indication that television would not follow the same trajectory. Indeed, it is more cost efficient to produce one television program that would be seen on all owned and operated stations than it would be to produce television programming that meets the needs of individual communities. However, efficiency may benefit owners and stockholders, but it does not benefit citizens.

The FCC also announced in its 2002 review that it was seeking comment on how the NTSO rule “affects the ability of TV station group owners to compete against other video providers” (FCC 02-249, 2002, p. 45). Rather than be concerned with whether group owners compete with one another to provide programming that citizens need and consumers want, the FCC contended that the NTSO rule may hinder television station competition with other media outlets. This is quite contrary to the earlier FCC notions of competition and diversity. Rather than NBC competing with ABC, NBC and ABC are competing with Yahoo and Comcast. This does little to promote localism, diversity, and competition at the local level.

Additionally, by defining diversity as the number of media sources, such as the number of television stations or the number of “competing” media outlets, the FCC
seemingly ignored other conceptualizations of diversity, including diversity as many independent owners, minority and women owners, and divergent viewpoints. As Young (2000) asked, “[T]he question is not just ‘Is there a selection of programs on offer such as sports, news, and drama, but is there a diversity with regard to the way in which these types of programs are presented?’” (p. 30). Though “free market” advocates argue that diversity exists because 200 cable channels are available, this does not mean there is diversity, particularly when so few companies own those channels. Nor does this mean that the choice of programs available is “diverse.” Concentration and a reliance on advertising leads to a “recombinant culture”: To minimize risk and maximize profits, media companies repackage the same plots, form, and style “in slightly different combinations” (Jhally, 1989, p. 77). A glaring instance of recombinant culture is the proliferation of “reality” television, but the repackaging of old themes can also be seen in prime time television: Sitcoms in 2004 looked remarkable similar, not only to shows of the past, but also to each other. These shows also perpetuate the same stereotypes and messages, such as the working class “buffoon,” women as housewives, and the notion that consumerism will solve all problems.

The difference between multiplicity and diversity is not, as Young (2000) stated, “an issue easily incorporated into economic models that have primarily been concerned with the range of programs compatible with maximizing either consumer surplus or a more general welfare function. A concern with pluralism rather than just program choice requires an analysis of the diversity of source and probably some recourse to an analysis of program content” (p. 30). Abstract concepts such as diversity and competition are quite difficult to quantify numerically. For example, though one could count the number
of different owners and claim diversity, one must also take into account social diversity (Aufderheide, 1999) and viewpoint diversity (Huntemann, 1999), concepts that are much more difficult to calculate. Further, counting the number media outlets does not take into the account the fact that media corporations cooperate with one another, which makes quantifying competition specious.

**FCC Decision June 2003**

On June 2, 2003, the FCC released its Report and Order regarding the 2002 Biennial Review. It found that the national cap could not be justified at 35%, but it could be justified at 45%. The FCC argued that the NTSO rule had little effect on competition and diversity, but did have an effect on localism, a stance quite contrary to the arguments made in the 1984 Report and the 2002 Biennial Review Notice. Only one justification was given to maintain a cap: “the evidence demonstrates that a national TV ownership limit is necessary to promote localism by preserving the bargaining power of affiliates and ensuring their ability to select programming responsive to tastes and needs of their local communities,” but “35% is not necessary to preserve that balance” (FCC 03-127, 2003, p. 201). What the FCC actually balanced, however, were the concerns of the National Association of Broadcasters (NAB) and the concerns of Fox and Viacom. The NAB lobbied for limits; the networks lobbied for no limits. The compromise allowed Fox and Viacom to keep their stations that violated the rule at 35%, but the cap would continue to serve the needs of affiliates the NAB represents. The needs of the public were seemingly ignored, as the arguments of public policy groups and individuals were not represented.
Beginning with the assumptions that the rules must be modified and that the discrepancies between the 1984 Report and the 1998 Review had to be addressed, the FCC argued that the national cap did not promote competition nor diversity, two arguments also made in the 1984 Report, as discussed in chapter three. As for competition, the FCC argued that the ability to benefit from economic efficiencies was necessary to allow broadcasters to compete with cable and satellite, which was necessary in order for free over-the-air broadcasting to survive (FCC 03-127, 2003). What is left out of this argument, however, is the fact that the same companies that own broadcast networks also own cable networks as well as cable and satellite distribution, so in essence it can be argued that there is little to no competition to begin with, especially with the number of joint ventures among the big five media companies: General Electric, News Corporation, Time Warner, Viacom, and Disney. These conglomerates certainly benefit from vertical integration, taking advantage of synergies affiliate stations cannot afford. These companies could certainly invest monies from their perhaps more profitable divisions, such as movie studios, into keeping broadcasting alive. Instead, Fox argued that the acquisition of additional stations was necessary, for the NTSO rule “limits networks’ investment in innovative programming by ‘inhibiting economic efficiencies’ that come with a larger number of owned and operated stations” (FCC 03-127, 2003, p. 208). The FCC agreed that efficiencies are important considerations, which is why the cap should be raised, but non-network stations can be innovative as well, which is why the cap should remain.

As it did in the 1984 Report, the FCC argued that the NTSO rule did not advance viewpoint diversity, for consumers “use media outlets available in their local
communities as sources of information;” therefore, raising the cap would not affect diversity (FCC 03-127, 2003, p. 210). Instead, the Commission reasoned, the market would ensure diversity, which assumes that (a) there is competition, and (b) diversity is an externality of competition, two debatable premises. The Commission’s argument is in part discerning, for the cap certainly does not affect viewpoint diversity in the sense that programming in general is not diverse. But arguing that people use multiple sources of information assumes that (a) everyone has access to other media outlets, and (b) the other media outlets provide different viewpoints, two more debatable premises.

Contrary to the 1984 Report, the FCC argued that a national cap does in fact promote localism. The Commission reasoned that the 1984 FCC did not think that the NTSO rule affected localism because it did not consider the effects upon affiliated stations (FCC 03-127, 2003). The Commission concluded that “a national cap of 45% fairly balances the competing public interest values affected by this rule…we find that a cap is necessary to protect localism by preserving a balance of power between networks and affiliates” (p. 211). The evidence provided included anecdotal evidence of affiliates’ influence on network programming, such as affiliate concerns regarding the 8:00 p.m. time slot allocated for the CBS Victoria’s Secret Fashion Show in November 2002. Affiliates wanted the program to be moved to 10:00 p.m.; CBS’s response was to move the show to 9:00 p.m. Some affiliates still preempted the show as inappropriate for their communities. The “empirical” data “showed that affiliates preempted an average of 9.5 hours of prime time programming per year compared with 6.8 hours per year for network-owned stations” (p. 214). The networks, which provided this data, argued that the difference was “inconsequential;” in contrast, the FCC argued that this data “bolsters
our conclusion that affiliates act on their economic incentives to preempt network programming with measurable greater frequency than do network-owned stations” (p. 216). That is, affiliates have an “economic incentive” to meet the needs of their communities, and those needs can be fulfilled by preempting network programming. The Commission explained: “In our view, affiliates’ economic incentives to maximize local viewership works to promote localism” (p. 216). One may ask, however, why economic incentives are the only incentives that would challenge an affiliate to preempt programming when broadcast licenses are (theoretically) based on whether stations meet public interest standards for their communities. Further, when affiliates do preempt programming, it is often replaced with re-runs or game show syndicated programming, hardly what should be considered localism.  

Locally produced public affairs and entertainment programming would seem to meet localism standards, not re-runs that replace substandard network programming.  

As national caps increase, the NAB argued, the affiliates’ wherewithal to withstand network pressure to not preempt programming decreases. The FCC concluded, however, that while a cap is necessary for this reason, 35% is not necessary. The Commission argued that networks try to avoid preemption because it has “negative consequences,” so “the ability of an affiliate to preempt in the face of networks’ incentives to prevent preemption appears to be a reasonable measure of relative bargaining power between networks and affiliates” (FCC 03-127, 2003, p. 219; emphasis in original). The FCC argued against the NAB’s contention that each time the cap  

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21 The FCC noted that Disney data suggested that syndicated programming is the most likely programming to replace that which has been preempted. An NAB survey of non-network stations suggests that this is not the case: For example, 83% of respondents stated that they have preempted programming for local breaking news (FCC 03-127, 2003). While this may be so, this does not suggest that that local programming is the replacement 83% of the time.
increases, the power of affiliates to preempt programming decreases, stating that there were additional factors that can be attributed to declining preemptions, such as the repeal of the financial interest and syndication rules\textsuperscript{22} in the early 1990s and the network trend toward vertical integration. The FCC argued that these alternative explanations undercut the NAB’s argument that the national caps \textit{caused} the decrease in preemption. This argument is problematic in that it demonstrates that each time a rule that had been implemented in the name of diversity has been repealed, greater concentration occurs. Multinational conglomerates exploit vertical integration, which creates barriers to entry. This makes it difficult for independents to compete, and in all likelihood, as was the case for radio, increasing the cap would lead to greater concentration as independents would be financially forced to sell.

While the FCC agreed that a balance was needed to allow affiliates to counter network power, the Commission did not agree that affiliates provided more and better local news and public affairs programming than networks. In fact, the FCC’s own data suggested this was not the case. The Commission’s study defined quantity as the number of awards won for local news and the number of hours news and public affairs programming were broadcast, and it found that network news received more awards and provided more hours of news. The Commission defined quality as the number of awards won and ratings. It found little difference between network-owned stations and non-network-owned stations in terms of ratings, but it did find that network stations received

\textsuperscript{22} The 1970 Financial Interest and Syndication rules were designed to decrease network control of television programming. The rules “prohibited network participation in…the financial interest of the television programs they aired beyond first-run exhibition, and the creation of in-house syndication arms, especially in the domestic market” (McAllister, no date, http://www.museum.tv/archives/etv/F/htmlF/financialint/financialint.htm). For more information, see Bettig, 1999.
more awards. The FCC concluded, then, that the 35% rule could not be justified because the “record actually suggests that the national cap diminishes localism by restraining the most effective purveyors of local news from using their resources in additional markets” (FCC 03-127, 2003, p. 224). This conclusion is countered by Yan and Napoli (2004), who found that almost 60% of the commercial stations in their sample did not air any local affairs programming during their two-week sample of commercial programming, and the commercial stations that did have public affairs programming averaged less than 30 minutes a week of such programming, hardly evidence of localism. They also found that “network ownership…hampered the provision of local public affairs programming” (p. 16). That is, it was less likely that network-owned stations would provide local affairs programming than would affiliates or public stations.

Further, the question remains: How can quality be counted? That is, while the networks may have provided more hours of news, this does not mean they provided more quality news. Sensationalism, crime news, human interest stories, and the repetition of national network news do not suggest quality. Further, the same half hour local broadcast is often repeated several times a day. Defining quality as ratings and awards is specious, for the highest rated newscast does not necessarily equate with the highest quality newscast, and networks have more resources that allow them to apply for awards. Quality news could be defined as the promotion of diverse viewpoints and diverse sources and the production of more public affairs news such as political, economic, and education news and programming. If numbers are necessary, quality could even be defined by counting the types of news presented in newscasts. This is not to suggest that non-network stations provide more of such news; non-network station news may indeed
mimic the type of news presented by network owned stations, for advertisers care about ratings, not quality of news. What this does suggest is that the definitions of quality and quantity of news used by the FCC-commissioned studies and network studies are indeed problematic and dubious.

In the end, the FCC stated that, in accordance with section 202(h) of the Telecommunications Act of 1996 and the assumption that the rule must be modified, it would increase the national cap from 35% to 45% for three reasons: 1) A cap was necessary to maintain balance between networks and affiliates, but raising the cap 10 percentage points would not hinder that balance; 2) Because the 1996 Act increased the NTSO rule from 25% to 35%, the same incremental approach seemed appropriate; and 3) The 45% cap would “allow some, but not unconstrained, growth for each of the top four network owners,” thus allowing the network owners greater ability to achieve economies of scale and scope to compete in the marketplace and allowing terrestrial broadcasting to survive (FCC 03-127, 2003, p. 227). These arguments are quite problematic, especially as one looks at the history of regulation and the current political economy. The following section begins by examining the history of and regulation regarding the Viacom-CBS merger.

**Viacom-CBS: Historical Context**

A review of the historical context of the Viacom-CBS merger sheds light on the situation. Founded in 1927, The United Independent Broadcasters owned 16 radio stations in 11 states. The financially troubled chain was purchased by William Paley in 1928, and he renamed the network Columbia Broadcast System (CBS). CBS was one of the three radio networks formed in the 1920s, a time when government regulations
regarding chain broadcasting did not exist. Although there were some members of Congress who feared the power of these chain broadcasters, it was not until the late 1930s that Congress and the FCC began to seriously question their power. As noted in chapter three, as a result of the 1941 FCC Report on Chain Broadcasting, Radio Corporation of America was ordered to divest one of its two networks. In 1943, the divested network became American Broadcasting System (ABC). Not surprisingly, these three radio networks—CBS, NBC, and ABC—turned their attention to television in the mid-1940s, and by the 1960s, the big three networks had become powerful players in the world of television (Barnouw, 1966, 1968, 1970; Decision and Order, 1943; McChesney, 1993).

To limit the programming power of the networks, the FCC adopted the Financial Interest and Syndication (Fin-Syn) rule in 1970, a rule “designed to limit the participation of the Big Three television networks in the off-network syndication business and the degree to which the networks could have a financial interest in the programming they aired” (Napoli, 2001, p. 128). The networks had a financial and creative stranglehold on television program producers, using such practices as forcing producers to share their profits from their programs’ network runs, syndication sales, and merchandising and insisting on “regular series formats and program formulas” (Bettig, 1999, p. 137). In order to meet the Fin-Syn regulation, CBS divested its syndication and programming interests, and Viacom was thus born (Sutel, 1999).

Viacom became a major player in the media arena via cable, forming Showtime in 1978 and purchasing MTV networks in 1986. In 1987, Sumner Redstone, who owned a chain of movie theaters, bought Viacom out from under the company’s management, who had planned to purchase the corporation prior to Redstone’s takeover. Under his control,
Viacom purchased Blockbuster and Paramount Communications in 1994. In the meantime, in 1985, media mogul Ted Turner attempted to purchase CBS, which had a string of hit television shows in the mid-1970s, such as “All in the Family” and “The Waltons.” However, the Paley family retained control. William Paley died in 1990, and CBS, “a wizened version of its former self,” was bought by Westinghouse Electric in 1995 for $5.4 billion (Kuczynski, 1999a; Noll, 1999; Sutel, 1999; Warsh, 1995).

By 1998, Westinghouse had shed much of its electronic manufacturing business, bought Infinity Broadcasting (and with the deal came Mel Karmazin, founder of Infinity), The Nashville Network, and Country Music Television, outbid NBC for broadcast rights to the NFL, and officially changed its name to CBS. Karmazin, who was appointed to head the station division by Michael H. Jordan, chairman and chief executive of CBS, soon took over the company by forcing Jordan to resign and taking his position as chair and CEO in October 1998. In 1999, Karmazin “wooed” Redstone, and as a result, in a proverbial homecoming, Viacom purchased CBS with Redstone controlling the corporation and Karmazin overseeing its operations (Kuczynski, 1999a; Noll, 1999; Sutel, 1999).

**The American Dream and the Politics of Regulation**

The merger was celebrated as a triumph for capitalism, as the pursuit of profit and the ideology of the “American Dream” were the primary themes discussed in the print media at the time of the merger. For example, in a *New York Times* article, Kuczynski (1999a) told the tale of Karmazin:

Raised in a housing development on Long Island, Mr. Karmazin is the son of first-generation Americans. His father, now dead, drove a taxi and his mother,
with whom he is still very close, worked in a curtain-rod factory. After high school, Mr. Karmazin worked days at a tiny advertising agency and earned his undergraduate degree at Pace University by night. (p. 1)

As a budding entrepreneur, Karmazin managed radio stations in the 1970s, and then founded Infinity broadcasting in 1981. According to Don Imus, whose show is distributed by Infinity, “‘We call Mel the zen [sic] master…He is a Christ-like figure in our lives. He is the real deal’” (p. 1). Perhaps Imus would not have been so easy on the compliments if he was one of the people at CBS who lost their jobs as a result of Karmazin slashing CBS’s news division budget by 10 percent when he took over the division. Nonetheless, Karmazin’s abilities and upbringing were perceived as complementary to those of Redstone: “Mr. Redstone is an equally ambitious entrepreneur who is also from a less-than-wealthy background. His father, Max Rothstein, began a nightclub business by buying New York City’s Latin Quarter night club from Lou Walters, Barbara Walters’ father” (p. 1). Called an “eminence grise of the media world,” Redstone “grew up in a Boston tenement during the Depression” and “transformed a handful of bedraggled movie theaters into the country’s largest privately held theater chain.” But, unlike Karmazin, Redstone has a Harvard law degree (p. 1).

This perpetuation of the “American Dream,” or the notion that with hard work and determination, anyone can be a millionaire, works to transcend the realities of class, race, and gender struggles. As Mosco (1996) explained, “hegemony is the ongoing formation of both image and information to produce a map of common sense sufficiently persuasive to most people that it provides the social and cultural coordinates that define the ‘natural’ attitude of social life” (p. 242). Naturalized as common sense, the
“American Dream” negates the hierarchies of class, race and gender that exist in the United States, allowing people to dream that they too can become millionaires rather than seek social change. And if they do not achieve this dream, then it is because they did not work hard enough or were not determined enough, not because the capitalist class is elite, exclusive, and self-perpetuating with its social and political networks, Ivy League schools, and often inherited wealth (Collins, 1997; Zeitlin, 1989).

The activities surrounding the Viacom-CBS merger are prime examples of the type of political pressure that can be exerted by the capitalist class on the state. For example, immediately after the announcement that Viacom would buy CBS, the *Boston Globe* reported that, “CBS and Viacom officials were bullish that the merger will go through early next year. They said they will be in Washington today to lobby federal regulators to ease the rules that would require divestment of TV stations and UPN” (Howe, 1999, p. A1). Interestingly, the FCC’s relaxation of the one-to-a-market rule, a rule that prohibited any one company from owning two television stations in the same market, seemingly led to the talks between Karmazin and Redstone, as the Viacom-CBS merger would give the company dual stations in several large U.S. markets, including Boston, Dallas, Detroit, Miami, Philadelphia, and Pittsburgh, a prospect that would not have been viable under former FCC rules (Howe, 1999; Labaton, 1999a). With the relaxation of the rule, stations such as those held by Chris-Craft became high-stake commodities, as large conglomerates could now control larger shares in the biggest markets. In fact, Viacom-CBS were in talks with Chris-Craft, which not only owned half of UPN, but also 10 television stations. However, Viacom-CBS refused Chris-Craft’s buying price of $100 a share. Viacom later triggered a buy-sell provision of the contract.
between the two companies regarding their joint venture in UPN to force Chris-Craft to either sell or buy out its half of the struggling network for $5 million, a very low price considering the amount of money dumped into the network: $900 million (Hofmeister, 2000a, p. C1). Several days later, Chris-Craft filed suit to block the merger of Viacom and CBS, claiming that Viacom breached the provision of the 1997 contract between Viacom and Chris-Craft that prohibited either company from “owning ‘any interest, financial or otherwise,’ in ‘any competing network’” for a four year period (Hofmeister, 2000b, p. C13). The court rejected this suit, and Chris-Craft sold its partnership to Viacom. However, it did not sell its television stations to Viacom. Instead, News Corporation bought them in August 2000.

Nevertheless, Karmazin and Redstone had much to be bullish about. The Associated Press (1999) reported that FCC chairman William Kennard and other FCC officials “held court with the chief executives of the two companies, who were in town to sell the deal…The company officials also started to touch base with legislators on Capitol Hill to discuss the merger” (p. C5). It was also reported that one of the lawyers for the duo was former FCC chairman Richard Wiley (Associated Press, 1999). Former Deputy Treasury Secretary Roger C. Altman also served as “principal adviser” to CBS during the merger.23 The New York Times reported that Altman “worked his existing network of connections to become the lead advisor” to Westinghouse as it acquired CBS and had remained friendly with the company since then (Kuczynski, 1999b, p. 1). But it seemed

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23 This is a clear example of the revolving door between government and industry. Dunbar, Lathrop, and Morlino (2004) found that since 1998, at least “311 former top congressional aides and FCC officials…left government service and gone to work in the communications industry” (http://www.publicintegrity.com/telecom/printer-friendly.aspx?aid=405). For example, they reported that the eight FCC chairmen prior to Michael Powell went on to work for or represent communications corporations.
that the deal would go through as planned, for lawmakers showed little concern considering that the merger violated several ownership regulations. In fact, Labaton (1999b) stated:

While there will almost certainly be Congressional hearings on the Viacom-CBS merger, there has been far less hand-wringing among lawmakers about the recent information industry deals than there was even just a decade ago, when the trend of big media mergers began to take off. (p. 1)

Senator Paul Wellstone, “the only Senator to openly criticize” the merger “for its possible effects on public discourse,” reportedly said that “the politicians’ silence was a clear reflection of both Washington and media economics. There is no lobby these days for media populism.” He was quoted as saying, “When you look at the mix of money and politics, it’s all on one side. The political dialogue and political imagination is set within a narrow parameter” (in Labaton, 1999b, p. 1). Though the merger would violate two ownership regulations that were originally intended to promote competition and diversity and inhibit such massive mergers from occurring, a media policy analyst for Washington Analysis, George Reed Dellinger, stated: “I don’t think there are any issues significant enough to bust the deal” (in Sutel, 1999, p. 1), and Labaton (1999a) reported that there was a “widespread consensus that at the end of the day Washington will bless the acquisition” (p. 14). Because lawmakers were silent about the possible effects of the merger, for politicians fear the power of the media and at the same time need the media for campaigning and agenda-setting purposes, it was approved with little debate. The
“marriage” of Viacom and CBS was hailed as a success for business,\textsuperscript{24} though it violated more than merely ownership regulations.

**Economics and Regulation**

Proponents of the Viacom-CBS merger argued that in order for companies to compete in the “robust” and global media market, the elimination of ownership rules and the proliferation of media mergers would be crucial for survival. As FCC Chairman Kennard stated, “The media marketplace has become increasingly dynamic and competitive, with an expanding number of information outlets and media platforms, and more Americans than ever before are using these options” (in Labaton, 2000b, p. A1). Accordingly, ownership rules would hinder not only Viacom and CBS from merging but would inhibit competition and the ability for companies to realize their economic potential. Thus, Kennard reasoned, relaxation of ownership rules such as the dual network rule was necessary in order to balance “the public interest in diversity of ownership with the demands of a changing marketplace and the broadcast industries’ need to realize economic efficiencies and remain competitive” (p. A1). Karmazin also railed upon the NTSO rule, noting that to be “financially more successful,” the acquisition of more television stations would be necessary (“The Viacom Vision,” 1999, p. 32; S. Hrg. 106-974, 1999). One of the problems with this reasoning, however, is that although bigger could be better for media companies’ short term interests, in the long run, competition suffers.

Though companies posit that mergers are vital for “improv[ing] efficiency and entering new markets,” large scale mergers such as Viacom and CBS “are likely to beget

\textsuperscript{24} For additional discussion of the celebration of mega-mergers such as Viacom-CBS, see Bettig and Hall, 2003, chapter 2.
other big mergers, because companies will feel they need to grow to compete against larger rivals” (“Analysis,” 1999, p. B5). As Senator Ron Wyden stated, “I think the merger surge may be contagious” (p. B5). And, it would be, from a purely capitalist standpoint, logical for a company to do so. As McChesney (1999b) stated, “A less risky option for these firms, rather than venturing on entrepreneurial kamikaze missions into enemy territory, is to merge to get larger so they have much more armor as they enter competitive battle, or to protect themselves from outside attack” (pp. 139-140). However, this urge for media corporations to merge actually inhibits, rather than promotes, competition. Indeed, concentration is the predominant logic within capitalism (Bowles & Edwards, 1993).

Even a Boston Globe editorial stated, “Every big player wants a part of as many fields as possible for fear of being left behind by more aggressive, more diversified companies” (“Another Media Marriage,” 1999, p. A18). Though proponents of the merger argued that the Viacom-CBS combination was a necessary step in the progression of the communications industry, as new technologies threatened the viability of broadcasting, it can be argued that the more immediate fear for Karmazin and CBS was that the company was being left behind as it did not have cable outlets nor a studio to call its own. Now, the combined company would be able to benefit from vertical integration, as CBS would obtain production studios and Viacom would gain an assortment of advertising outlets to promote its movies and TV programs (Sutel, 1999). PaineWebber media analyst Chris Dixon stated: “It’s a good deal for everybody…You need to be big. You need to have a global presence” (in Sutel, 1999, p. 1). Redstone echoed these sentiments in a Senate hearing:
Undeniably, we are in the midst of an unparalleled technological revolution that is occurring on a global scale and promises to forever change the way entertainment and information options are chosen, delivered, and received…With respect to the effect of this new company and what it will be on competition in the United States, the short answer, and we can demonstrate it, is that it will do nothing but enhance it…Viacom and CBS clearly are not competitors intent upon cornering markets. Instead, they are two fundamentally different companies seeking to compliment [sic] their strengths. However, where limited overlap does exist, each of these markets has multiple, strong, healthy players that will ensure continued competitiveness. (S. Hrg. 106-974, 1999, pp. 7-8)

However, what Dixon and Redstone fail to mention is how vertical integration and the potential to exploit synergies and cross promotions inhibit competition and decrease diversity as well, for this reliance on synergistic practices creates barriers to entry.

When Viacom and CBS merged, the combination included “virtually the entire entertainment spectrum—all that is missing [was] a circus” (Knestout, 1999, p. 46). From production to distribution to exhibition, the combined company could exploit its holdings to the detriment of creativity and diversity. For example, Viacom would “own the shows and the movies, the studios that make them, the networks that broadcast them, the cable channels that rerun them, the video shops that rent them, the radio and TV stations that cross-promote them, the theme parks, videogames, toys and clothes that spin off from them” (Ostrow, 1999, p. A13). Synergy and cross promotions “involve financial and marketing advantages to the private firm, but no real cost reductions that would benefit society” (Herman, 1996, p. 10). Instead, synergistic practices are exclusionary by nature.
For instance, if a movie idea is presented to Paramount that does not have synergistic and/or cross promotion potential, that movie may not be made. Instead, movies with characters that can be made into action figures may have first priority, which leads to the same types of movies being made time and time again to the detriment of movies without such appeal.

The potential for synergies can also be seen with the repackaging of television shows. Because movies are high risk and need “a continuous flow of funds,” filmed entertainment companies “have always been driven to devise strategies that will limit their risk and maximize their revenues” (Aksoy & Robins, 1979, p. 12). As a large conglomerate, Viacom is able to limit risk and maximize profits by reusing plots from hit television shows that it owns and produces and then repackaging them as a feature length films. For example, the television show “Jackass,” produced by MTV Studios for its MTV cable channel, had been made into a Paramount film that was relatively cheap to make at $5 million but took in $22.7 million the first weekend (Mathews, 2002, p. C5). Knowing that the movie was a hit with the MTV crowd, a demographic with “disposable income” that would most likely spend cash to see the movie, Viacom took the risk out of producing such a movie and increased its chances that the movie would be profitable.

This practice can also be seen with the proliferation of sequels. A sequel to a hit movie is much less risky than taking a chance on a new movie idea. The set, the characters, the potential for cross promotions, and the mass appeal are already cultivated, resulting in less monetary output and more profit intake.

The use of synergy extends into the realm of news as well. For example, The Washington Post reported that CBS News, “in the mad media scrum to wangle the first
interview with former POW Jessica D. Lynch, dangled the prospect of goodies from other pockets of its corporate empire as part of its pitch” (“Sweet,” 2003, p. A26). The deal reportedly included a made-for-television movie, a two-hour documentary, publicity opportunities on “CBS Evening News,” “The Early Show,” and CBS’s radio news network, a book deal with Simon and Schuster, an MTV news special and appearances on MTV’s Total Request Live and MTV2, and a Country Music Television special in exchange for an interview (“Synergizing,” 2003, www.nytimes.com). Ethical issues regarding checkbook journalism notwithstanding, this instance demonstrates the power of conglomerates to utilize their holdings for an exclusive television interview, one that would profit them immensely. Even CBS Chairman Leslie Moonves was quoted as saying, “As these [media] companies become more and more vertically integrated, you know, sometimes you do go over the line” (Elber, 2003, http://ap.tbo.com). But less than a year later, accusations that CBS paid accused child molester and pop star Michael Jackson $1 million for a “60 Minutes” interview, “which happened in conjunction with a CBS entertainment show that was an uncritical retrospective of Jackson's career highlights,” surfaced (Jensen, 2004, p. D11). The Jackson interview increased the newsmagazine’s ratings as the show was the most watched network program the week that it aired in December 2003 (Jensen, 2004).

It is clear that media firms create and maintain barriers to entry to inhibit competition. It is not in media firms’ best interests (i.e., profits) to allow potential competitors an opportunity to gain any significant share of the market. Indeed, media ownership regulation advocates argue that the “free market” does not in fact cultivate competition or diversity. Instead, as McChensey (1999b) argued, “successful
capitalists...learn to avoid [competition] like the plague,” for the “less competition a firm has, the less risk it faces and the more profitable it tends to be” (p. 138). And as Litman (1998) stated, “The greater the difficulty of new firms in entering an industry as significant competitive forces, the higher are the ‘barriers,’ and the greater the tendency for current firms to maintain high profit-maximizing prices with accompanying excess profits and misallocation of society’s scarce resources” (p. 272). For potential entrants, the high costs of production and distribution are not only difficult to overcome, but formidable disincentives to even try to compete.

Concentrated markets and giant mergers such as Viacom-CBS thwart fair competition by removing “major rivals who were well-positioned to enter the niches filled by the merger itself” and weakening “the position of outsiders in selling programs, getting channels introduced, and entering the distribution field” (Herman, 1996, p. 12). These barriers inhibit diversity as few companies control access to the market:

For television viewers, the merger should result in an explosion of cross promotions. Don’t be surprised to see plugs for NFL football on MTV or specials about upcoming Paramount pictures airing on CBS. Hollywood producers fret that corporate priorities could distort programming decisions. ‘This can stifle creativity’ says Brad Grey, chairman of management firm BrillsteinGrey and producer of HBO’s ‘The Sopranos.’ ‘These large companies want to put their shows on the air first and foremost.’ (Greenfeld, 1999, p. 54)

Programming choices are thus limited, as concentration restrains the emergence of new, independent producers: As entertainment attorney Bob Myman stated, “It really stops the individual entrepreneur who can build a company, get leverage and creatively give us
shows that we otherwise might not see” (in Lowry, 1999, p. 2). When companies can use their in-house production companies and proven producers, it increases the likelihood that alternative voices and novel ideas will not be developed, as was the case prior to the enactment of the Fin-Syn regulations previously discussed. Independents have been all but frozen out of prime-time production. And, as Mifflin (1999) proposed: “When a hit Paramount film like this summer’s ‘Runaway Bride’ gets auctioned for future showing on television, will CBS have a nepotistic edge over rival bidders?” Though CBS executives said no, Mifflin suggested that “getting cute with such Viacom partners as Spelling, MTV or Nickelodeon Studios has to be tempting” (p. 1).

The combined Viacom-CBS could also exploit new avenues of advertising. As Aucoin (1999) noted, “[T]he merger illustrates the financial clout that a media company can build nowadays if it targets and captures the right niche audience, and if it knows how to operate in the cable universe” (p. D1). And Viacom certainly knows how to operate in this universe, for, as Jon Mandel, co-managing director of Mediacom, stated: “As a company, Viacom can now compete for any budget in just about any medium for just about any demographic…from the 2 year-olds who watch Nickelodeon to the 90 year-olds who watch ‘Touched by an Angel’ on CBS” (in Elliot, 1999, p. 8). The combined company can sell advertising on its billboards, radio stations, networks, cable stations, Internet sites, and “just about anything and everything that can carry or broadcast an advertisement” (Greenfeld, 1999, p. 48). Jessica Reif Cohen, an analyst for

Merrill Lynch, stated, “It’s just perfect. [The merger] gives them all the key assets they need” (in Greenfeld, 1999, p. 48). However, the ability to control the advertising market also creates barriers to entry, as emergent commercial media outlets struggle to find advertising dollars to support their new outlet. Viacom’s ability to give advertisers various outlets for plying their wares excludes others, especially single-owned media outlets, from entering the market, reducing competition and diversity.

In sum, while proponents of the merger insisted that a combined company was necessary in order to compete in the media marketplace, such mergers actually reduce competition, and diversity of ideas suffers. As Wellstone (2000) succinctly stated:

A proliferation of new media outlets does not guarantee any greater diversity of viewpoint. After all, one corporate conglomerate can still exercise control over the content of media that reaches citizens through many different outlets. The safest and best way to ensure diversity of viewpoint is through diverse ownership.

(p. 552)

Mergers and Concentration: Consequences and Challenges

When Ben Bagdikian first published his seminal book, The Media Monopoly, in 1983, fifty mega-firms dominated the media industry. By 1990, this number had decreased to twenty-three (Herman & Chomsky, 1988). By 2000, “the country’s most widespread news, commentary, and daily entertainment [were] controlled by six firms that are among the world’s largest corporations” (Bagdikian, 2000, p. x). In his 2004 updated text, The New Media Monopoly, Bagdikian (2004) contends that this number has dwindled to five. In the past five years, mega-mergers such as Viacom/ CBS, and News Corporation/DirecTV have raised questions regarding the devastating effects of media
concentration and conglomeration, both of which, as discussed, are due in part to regulatory policies that allow such mergers to occur. Indeed, since the logic of capitalism encourages concentration, enforced and enforceable regulation are necessary to prevent mega-mergers.

Perhaps most insidious about the effects of media mergers are the consequences for journalism and democracy. As media critic Jerry Landay stated: “We’re not dealing here with rubber tires or candy bars. We’re dealing with the control of the voices of a democratic society that are now in fewer and fewer hands. That raises concerns bordering on horror” (in Marks, 1999, p. 1).

Though Sumner Redstone (2000) purported that the Viacom-CBS merger would increase competition, he also noted that Viacom would have a hand in almost all aspects of entertainment media:

Infinite choice—and infinite competition. It might sound like a recipe for disaster—as more and more media outlets divide up the entertainment pie. But that’s not the case at all. On the contrary, my vision for Viacom is one of continued expansion as far as the eye can see and beyond. In fact, this industry has never been more exciting, and potentially more profitable for the companies whose products today are competitively superior—and for the companies that also have a vision for the future. (p. 187)

What is noticeably missing from Redstone’s comments is how journalism would be affected by the merger. As media critic Ken Auletta suggested, Viacom and CBS executives were more concerned with financial details than how journalism could benefit from the merger:
Did they sit down and talk about quality—ask, ‘How are we going to make the evening news better? Can we open more foreign bureaus if we do this?’ Do you think they asked that question? If you do, I have a bridge I want to sell you. (in Marks, 1999, p. 1)

Unfortunately, in Redstone’s “entertainment pie,” news “suddenly becomes a very small slice” (in Barringer, 1999, p. 8; see also Project for Excellence in Journalism, 2005).

Redstone’s comments raise another significant concern. In this age of mega-conglomerates controlling multiple media outlets, news divisions become caught up in the need to produce a profit. Unfortunately, as McChesney (1999a) noted, the watchdog role of the media has “ceased to exist,” for “Good journalism is bad business, and bad journalism can be very, very good for business” (p. 22). Though investigative reporting and foreign news bureaus are important aspects of good journalism, they are also expensive prospects. Thus, to create profitable news divisions, media companies tend to cut funding for such necessary elements of journalism. Instead of promoting journalistic practices that inform the citizenry so that its members can make wise political decisions, there is a “new emphasis” on “the prime-time news magazine genre of journalism,” and “a disinclination to underwrite the expensive infrastructure of foreign bureaus and full-time investigative or documentary news units that once were centers of prestige, if not profit.” In particular, CBS had “at least two painful bouts of layoffs” (Barringer, 1999, p. 8). An example of cuts in news and public affairs programming after the Viacom-CBS merger includes Black Entertainment Television (BET), one of Viacom’s cable stations, which announced in December 2002 that it was eliminating most of the public affairs programming and replacing it with entertainment programming because it “couldn’t find
enough advertisers to support” the shows or cover costs. The cuts would result in the layoff of 12% of BET’s staff and fewer minority voices (Farhi, 2002, p. C1).

Additionally, sensationalistic stories are more profitable than investigative or international stories because crime, disaster, and sex scandals attract audiences but generally do not upset advertisers or politicians. News divisions need advertisers for profits and politicians as sources, and as a result, stories that threaten either most likely do not appear. This censorship need not be overt, though. As Miller (1999) stated:

With its wealth of interests all around the world, the distended Viacom…will have so many boats at sea that its most scrupulous reporters may well run the fatal risk of rocking some of them. Others will be less adventurous. Thus does the chill of censorship have less to do with outright interference by the parent company (although it happens) than with editors and reporters learning what it takes to get ahead. Such censorship starts seeming natural, as if automatic—like the cost-cutting that such mergers always mean for journalists. (p. 50)

As such, reporters tend to avoid controversial topics, for their careers are on the line. This has detrimental effects for the public, as citizens remain largely unaware of social and political issues that could affect them but are too contentious to report. For example, Bagdikian (2000) noted that the fact that people do not rail against media monopoly is not simply because they do not care, but because they are unaware of the problem. When members of the citizenry are left unaware, many political decisions, including those made regarding the issue of media concentration, can be made behind closed doors, often without consideration of the consequences of such decisions for the public at large.
Proponents of mega mergers argue that such mergers are actually beneficial for journalism. Farhi (1999) posited that “alarmists” such as Miller “have yet to assemble a convincing case that bigness is inherently bad” (p. 30). He argued that the “counter-argument is more compelling—that bigness might be beneficial, at least in upholding and defending traditional standards of journalism” and that mergers reflect “a corporate class struggling to keep up with a media and cultural landscape that grows more disheveled, more competitive and more anarchic by the month” (p. 30).

One of the problems with Farhi’s analysis, however, is that he proposed no evidence to suggest that media mergers in fact promote good journalism. Though large and profitable companies have the potential and the capital to reinvest their revenues into their news divisions, there is little evidence that they do so as foreign news bureaus close and workforces are cut. The Project for Excellence in Journalism (2005) found that of the three nightly newscasts, CBS had the fewest correspondents, and these individuals had to produce more stories: “30% more stories than for ABC correspondents and 18% more than for NBC” (http://www.stateofthemedia.org/2005). And to keep up with what Farhi (1999) called a competitive and anarchic media landscape, massive media conglomerates are in fact creating barriers to entry so that competition does not thrive. With the relaxation of the NTSO rule, the major networks would likely gobble up television stations to the detriment of minority and small group owners, creating greater barriers to access as stations become even more expensive to purchase, for they become hot, and pricy, commodities, as owned and operated stations are much more profitable than affiliates (Frank & Flint, 2002).
Further, mainstream news organizations (and their corporate parents) perpetuate the political economic status quo because the ties between the capitalist class and the political elite are quite strong despite the perpetuation of the ideological “textbook version of capitalism:” The notion that independent businesses compete against one another in a “fierce struggle for business” and that the government should have little say in the economic marketplace (Carlson, 2001, p. 18). The reality is that these businesses are linked in many ways, including through interlocking directorates. Media corporation boards include ex-politicians as well as leaders from non-media companies, who are often major advertisers (Carlson, 2001). For example, as of April 2002, the Viacom board of directors included William H. Gray III, who had been on the board of directors for CBS until the merger. Gray’s resume includes: a) President and CEO of The College Fund, UNCF, since 1991; b) Congressman, Chairman of the Budget Committee, and House Majority Whip from 1979-1991; and c) Director of Dell Corporation, Electronic Data Systems Corporation, Ezgov.com, J. P. Morgan Chase & Company, MBIA, Inc., Pfizer Inc., Prudential Financial Company, Rockwell International Corporation, and Visteon Corporation. Additional directors included Ivan Seidenberg, President and CEO of Verizon Communications, Inc. and Frederic V. Salerno, the Vice Chairman and CFO of Verizon. Two of Sumner Redstone’s children also served on the board (Notice of 2002 Annual Meeting, 2002). Further, the capitalist class meets at off-the-record sites, such as the yearly retreat to an exclusive Idaho resort, held by media banker Herbert Allen, Jr., which, in 1996, brought together “130 of America's most powerful media moguls and corporate giants,” including Rupert Murdoch, Sumner Redstone, Michael Eisner, and Gerald Levin, who are supposed to be competitors in the media world (Helmore, 1996, p.
Those invited to the retreat are “are sworn to secrecy. Anyone who dares breathe a word will not be invited back” (p. 7).

Interlocking directorates and off-the-record site meetings allow for tacit collusion, limit and impede competition, allow for preferential treatment regarding distribution or credit, and creates a community of interest that gives the capitalist class power against threats, for example, from environmental groups or meddling governmental officials, creating a “web of relationships among the group of large firms that dominate much of the American economy” (Fusfeld, 1988, p. 417). Indeed, Helmore (1996) reported that a “chance meeting” between “Eisner and Berkshire Hathaway's Warren Buffett in the woods that surround the tiny resort [in Idaho in 1995] produced the $19bn (pounds 12m) Disney Capital Cities/ABC deal” (p. 7). And in 2000, Viacom’s Redstone and BET Holdings’ Robert Johnson, “in between white-water rafting, fly-fishing and golfing breaks, sat down in Idaho…and talked business;” a few months later, Viacom announced that it would purchase BET (Levy, 2001, p. C1). Additionally, the members of the business and political elite often belong to the same clubs, eat at the same restaurants, live in the same neighborhoods, attend the same political fundraising dinners, and go to the same schools (Collins, 1997; Zeitlin, 1989). Many politicians and appointed government officials are also members of the capitalist class, and thus have the same interest: self-preservation. And businesses rely on the government to adopt or rescind regulations in order to perpetuate their economic well-being, as the business elite and politicians share common interests that include and transcend media stakes.

For example, mega-media firms promote the causes of the political elite and marginalize or ignore dissent in order to gain favor from the state. News Corporation’s
Fox was accused of tailoring its war coverage to gain favor from the Bush administration and in particular Republican FCC Chairman Michael Powell (Lawson, 2003). The hard-line pro-war, pro-Bush administration stance Fox News had taken coincided with the FCC’s review of the remaining broadcast ownership rules, including the NTSO rule, which, if modified, would benefit News Corporation. Concurrently, Murdoch announced that he was purchasing DirecTV from General Motors for $6.6 billion in cash and stock, an acquisition that would fulfill Murdoch’s dream of owning a distribution system in the United States. With DirecTV in his control, Murdoch would no longer need to rely on cable and satellite providers to deliver his programming, and as such, the benefits of vertical integration would be enormous. Not only would Murdoch profit from the rising satellite television business and DirecTV’s 11 million subscribers, he would also have the power and means for distributing new News Corporation programming and raising the price of his existing networks, for if a cable or satellite provider refused to purchase Fox programming for top dollar, Murdoch could undercut their prices or give away satellite dishes in order to drive customers to DirecTV (Ahrens, 2003a; Lawson, 2003; Lieberman, 2003).

Furthermore, programmers such as networks and cable channels worried that Murdoch would drop their channels unless they agreed to sell their programming to DirecTV for reduced rates. With EchoStar as DirecTV’s only rival in satellite distribution in the United States, Murdoch would be able to not only control content but also create strong barriers to entry and competition, placing a further stranglehold on diversity of viewpoints. At that time, the FCC and the Justice Department had yet to approve the acquisition, but many observers suggested that the deal would not be challenged, for “Mr.
Murdoch barely let the ink dry on the contract before he jumped on a plane to Washington to consult the FCC” (Gumbel, 2003, http://news.independent.co.uk). He also met with other government officials, including the chairman of the House Energy and Commerce Committee, Representative W.J. “Billy” Tauzin (Ahrens, 2003a). The symbiotic relationship between big government and big media-as-big business is detrimental for a democratic society that needs diversity of viewpoints to make informed political decisions and a media system that serves as a watchdog on government and business.

Big media not only have the power to influence public policy and public opinion, they also have the power to keep issues off of the public agenda. For example, in February 2003, when the FCC ownership rules “debate” was “in full flower,” a Pew Research Center for the People & the Press survey “found that 72 percent of Americans had heard ‘nothing at all’ about it. Only 4 percent said they had heard ‘a lot’” (Layton, 2003, http://ajr.org/). By mid-May 2003, the print media could no longer ignore the issue when columnists such as William Safire of The New York Times and Brian Lowry of The Los Angeles Times began to speak out against the potential modifications to the ownership rules and corporate control of the media and when “organizations with serious political clout” such as the National Organization for Women and the National Rifle Association became involved in the struggle (Layton, 2003). However, broadcast media were virtually silent on the issue until just a few days before the June 2, 2003 decision, and even then the stories were often very short segments and/or framed as business news. Only ABC’s coverage of the issue was somewhat more extensive; on a May 28 “Nightline,” Ted Koppel stated that “the FCC’s impending action was ‘a big step that has
received relatively little attention and almost no national debate’ and that now ‘it appears to be a done deal’” (Layton, 2003, http://ajr.org).

Flak is another strategy used by the government and business to influence media content (Herman & Chomsky, 1988). For example, Republican and conservative groups began a campaign to force CBS to cancel its miniseries, “The Reagans.” Carter (2003) reported that former Republican Congressional staff member Michael Paranzino began a website called BoycottCBS.com, calling for “a viewer boycott of CBS and all the sponsors of the mini-series,” and Paranzino appeared on several conservative cable news shows. Conservative group Media Research Center “wrote a letter to a list of 100 top television sponsors urging them to ‘refuse to associate your products with this movie’” (www.nytimes.com). The chairman of the Republican National Committee also called for CBS “to appoint a team of historians and associates of Mr. Reagan to review the film for accuracy” or, at the least, to “run a scroll on the bottom of the screen…reminding viewers that ‘The Reagans’ is a fictional account” (www.nytimes.com). CBS bowed to the pressure, canceling the series and relegating a sanitized version of the program to Showtime, also owned by Viacom. CBS released a statement that read: “We believe [the miniseries] does not present a balanced portrayal of the Reagans for CBS and its audience” (in Hofmeister & Braxton, 2003, www.latimes.com). But critics such as Wasserman (2003) argued that much more was at stake:

The instruments of suppression here—the Republican National Committee and a coven of political hacks and journalistic mouth-breathers allied with the party’s rightmost wing—are only a quarter-step removed from the White House and from the full might of the state…They were obeyed because of the withering regulatory
scrutiny, antitrust hamstringing and legislative lunacy that the government could inflict on Viacom…But had the Reagan distortions been flattering, we wouldn’t have heard a peep. The beef wasn’t with accuracy. It was with the network’s gall in raising doubts about our reigning state religion and its most revered prophet. (www.miami.com)

Indeed, Viacom may have succumbed to the pressure due to the regulatory gridlock the GOP could inflict. The company was very interested in the outcome of the pending regulations regarding ownership rules, and it needed GOP Congressional and White House support for favorable results. The decision could also be due in part to the fact that Viacom is a conglomerate, which leaves its other holdings equally open to advertiser threats and viewer boycotts. This case, and the case of MoveOn.org’s attempt to buy commercial time during the 2004 Super Bowl, demonstrates the power of the ruling elite to pressure the media to suppress dissenting ideas, a dangerous practice in any democratic society.

Further, media owners and executives generally hire employees who have similar worldviews or can be socialized into the system and fire those who do not tow the corporate line. Journalists, for example, learn to internalize the organization’s preconceptions, requirements, and constraints (Herman & Chomsky, 1988). A Pew Research Center and Columbia Journalism Review survey of approximately 300 journalists and news executives found that approximately “one-quarter of the local and national journalists say they have purposely avoided newsworthy stories, while nearly as many acknowledge they have softened the tone of stories to benefit the interests of their

26 Saying the advertisement violated its advocacy policy, CBS rejected MoveOn.org’s ad that criticized the federal deficit. However, during the 2003 Super Bowl, an anti-drug ad that equated drug sales to international terrorism aired, which could be considered advocacy (Rutenberg, 2004).
news organizations. Fully four-in-ten (41%) admit they have engaged in either or both of these practices” (“Self Censorship,” 2000, http://people-press.org). While social desirability may have halted some respondents from admitting to such practices, these results should make one pause to consider how many stories are untold due to overt or covert corporate pressure.

Another example of flak includes the labeling of the news media as “liberal,” which McChesney (1997a) calls a fatally flawed notion. For one, the definition of liberalism is “shifting and elusive,” for conservatives often “point to liberals’ positions on ‘social issues’ such as women’s rights, gay rights, and civil liberties as the litmus test for whether one is liberal or conservative” (p. 55). But, as McChesney points out, journalists tend to hold conservative positions on class and economic issues. Furthermore, traditional notions of conservativism, once defined as opposition to state intervention in individuals’ private affairs, have been replaced with the notion that the state can intervene in any aspect of private and public life as long as the state does not interfere “with the prerogatives of business and the wealthy, nor use monies in ways that benefit primarily the poor and the working class” (p. 56). To believe otherwise is heretical. Moreover, despite the fact that conservatives have collapsed liberal and radicals into the same group, the “liberalism” held by journalists is indeed devoted to capitalism and reproduces existing power relations, certainly not the ideals of the radical or progressive left. Indeed, the range of opinions presented in the news is narrowly defined and fails to challenge the system, and alternative voices are noticeably absent from the debate. As such, any criticism of “favored conservative politicians or anything insufficiently harsh toward the liberal enemy” is attacked by conservatives as “journalistic bias” (p. 57). The pressure for
news organizations to move to the center of right is strong, for to criticize the conservative position is seen as a “bias,” while the conservative view becomes “objective.”

What is also missing from the conservative criticism of the “liberal” media is the fact that editors and journalists do not have absolute control over the dissemination of information. Within the commercial media system, journalism is not an autonomous entity; in fact, as one considers institutional factors such as corporate ownership, profit-maximization, and advertiser influence, it is clear that “The notion that journalism can regularly produce a product that violates the fundamental interests of media owners and advertisers and do so with impunity simply has no evidence behind it.” In fact, the notion is “absurd” (McChesney, 1997a, p. 60).

In sum, the media’s political economic power is accentuated when few companies control access to information. Mainstream media reinforce dominant capitalist values, legitimate the current power structure, influence politics, and promote causes that meet the needs of the capitalist class and big government. The ties that bind media with the corporate class and politicians are strong, for the relationships between and among these factions are essential for maintaining and reinforcing the status quo, as well as crucial for higher profit margins. This is not to say that business interests and political interests are always equivalent. But in total, the transnational capitalist class interests are thus:

27 For example, Fox News’ Brit Hume was quoted in a *Houston Chronicle* article:
“We’re very mindful…of avoiding the standard biases that tend to creep into a lot of other coverage…I know how my colleagues look at the world and I know how they think. The truth of the matter is, there is a prevailing bias. Many of my colleagues—in fact, most—won’t admit it. Our coverage, which I believe is much more neutral than theirs, looks biased to them, as inevitably it would, wouldn’t it? If we’re gaining, and they claim we’re biased, then they must think the audience is biased” (in McDaniel, 2001, p. 4). This reasoning demonstrates not only the reproduction of conservative “values,” but it also works to ward off criticism of the news channel, for to criticize the practices of Fox News is to criticize what it means to be fair and balanced, and, of course, further reveals the liberal biases critics hold.
minimize risk and maximize profit. The state tends to support these goals, and media conglomerates benefit from profit maximization and government regulations that allow them to grow even bigger, which in turn gives not only media owners but also the capitalist class as a whole the power to set and control public policy and public opinion. As such, elite voices either squash or dominate public debate, a notion contrary to the First Amendment, as discussed in the next chapter.
Chapter 5

THE FIRST AMENDMENT CASE FOR REGULATION

Jhally (1989) argued that for democracies to survive, robust and diverse debate is a must, for without open public debate, “it is all too easy to lapse into a homogenizing authoritarianism” (p. 65). In fact, he noted, the First Amendment to the U.S. Constitution guarantees freedom of speech for this very reason. Indeed, the courts and the Federal Communications Commission (FCC) in earlier days defended regulation of broadcast media in the name of the First Amendment right to speech (see chapter three; 10 FCC 212, 1943). However, as Jhally (1989) asserted, freedom of expression and press has traditionally been defined as a negative freedom; that is, “freedom from control by government” (p. 65; emphasis in original). This definition of freedom disregards the fact that freedom of speech can be hampered by factors other than the government, including corporate control of the means of disseminating information. As such, corporations can censor speech and marginalize dissenting voices and alternative viewpoints and at the same time claim that it is their First Amendment right to do so.

Several First Amendment scholars, including Owen Fiss, Alexander Meiklejohn, and Cass Sunstein, support the notion that government intervention via regulation is not only constitutional, but can also work to promote the FCC’s goals of diversity, competition, and localism, ideals necessary in a democratic society that depends on the media for information and entertainment. This chapter will define and examine two arguments that justify the preferred position of freedom of speech—the “marketplace of ideas” and democratic self-governance—and discuss how government regulations of
media ownership, specifically the National Television Station Ownership rule (NTSO), promote these ideals rather than hinder them.

**Free Speech Arguments**

The thing that I think is often overlooked is the minute you talk about media concentration, you’re talking about another cherished American value that gets implicated, and that’s the First Amendment to the Constitution.

--Michael Powell, Chairman of the Federal Communications Commission, August 2001

Media conglomerates often argue that media ownership regulations violate their First Amendment rights, such as in the case of *Fox Television Stations, Inc. v. Federal Communications Commission*. Though the Court of Appeals did not agree that the National Television Station Ownership rule (NTSO) violated the plaintiffs’ First Amendment rights in the *Fox et al* case, the First Amendment is often used by media conglomerates as a defense against regulatory challenges. As several First Amendment scholars argue, government intervention in the “marketplace of ideas” is constitutional and essential for democratic society. Further, the First Amendment should protect the public rather than multinational corporations that restrict access to the means of communication. The idealistic “marketplace of ideas” and democratic self-governance are threatened when massive conglomerates use the First Amendment as a shield to marginalize dissent and gain higher profit margins.

**The “Marketplace of Ideas,” Self-governance, and Access**

The “marketplace of ideas” rationale posits that “humankind’s search for truth is best advanced by a free trade in ideas” (Smolla, 1992, p. 6). In theory, when a diversity of viewpoints and ideas are presented into the “marketplace,” truth will inevitably emerge.
Conversely, censorship would prevent truth from emerging. As Justice Oliver Wendell Holmes (1919) succinctly explained:

[W]hen men have realized that time has upset many fighting faiths, they may come to believe even more than they believe the very foundations of their own conduct that the ultimate good desired is better reached by free trade in ideas—that the best test of truth is the power of the thought to get itself accepted in the competition of the market… (Abrams et al v. United States, 1919, p. 630)

However, the marketplace image is “tempered by experience…The marketplace of ideas is a marketplace, and like all markets, it may experience positive and negative cycles” (Smolla, 1992, p. 6). The promise of the “marketplace of ideas,” an ideal grounded in laissez-faire economic presumptions and libertarian notions of the press, could theoretically work; that is, when ideas compete in a “free market,” the search for truth can be waged, and rational decisions can be made (see for example Siebert, Peterson, & Schramm, 1963). However, as Smolla (1992) argued, “The marketplace of ideas, no less than the marketplace of commerce, will inevitably be biased in favor of those with the resources to ply their wares” (p. 6). Because the wealthy and powerful have greater access to the means of disseminating ideas, their ideas are predominantly heard. As Fiss (1986) noted:

The market—even one that operates smoothly and efficiently—does not assure that all relevant views will be heard, but only those that are advocated by the rich, by those who can borrow from others, or by those who can put together a product that will attract sufficient advertisers or subscribers to sustain the enterprise. (p. 1413)
To promote a vibrant and open theoretical “marketplace of ideas,” citizens must have access to the means of producing and disseminating information. In today’s media climate, though, in which a few companies own the means of communication, access is a serious problem. Even the Internet, hailed by many scholars as a “true” “marketplace of ideas,” has been overrun by corporations that are using copyright protection as a strategy for eliminating access to voices, particularly critical voices, in the marketplace (Lessig, 2001). Further, as Bailey (1996) succinctly argued, “The modern marketplace of ideas is a commercial, mass-media pandemonium where the role of the ordinary citizen is little better than that of a consumer in a supermarket” (p. 122). Without access to diversity of voices and ideas, reasoned decision-making is hampered, as people make decisions based on what they have learned through the media (e.g., consumption makes us happy) rather than based on access to essential political, economic, social, and cultural information and accessible public forums that allow citizens the opportunity to debate ideas and positions. As such, the status quo remains largely uncontested and the dominant hegemony is generally left unquestioned.

Additionally, Smolla (1992) posited, “The hope that the marketplace will lead to truth is further eroded by the infiltration of emotional distortions into the realm of ideas” (pp. 6-7). Although irrational appeals have often beleaguered tolerance and understanding, this may occur, in part, because other voices were eliminated or silenced. For people to stand up to hate speech, for example, hate needs to be transparent and understood. In order to teach tolerance, one needs to know why intolerance exists (Smolla, 1992). As Holmes (1919) stated, truth is always provisional, and the benefit of the “marketplace of ideas” is the process rather than end.
However, the coverage of the Bush Administration’s case for the 2003 war in Iraq, for example, demonstrated that the process can be usurped, for dissent and critique became marginalized and ridiculed. For instance, while Fox News propagated its pro-war position throughout its newscasts and talk shows, it still maintained its “fair and balanced” mantra, even as one of its correspondents called war protesters “the great unwashed,” and anchor Neal Cavuto declared to those who “opposed the war in Iraq” that “You were sickening then, you are sickening now” (in Rutenberg, 2003, B9). In another instance, after a Fox reporter in Jordan suggested that Arabs may still regard Americans as aggressors rather than liberators, anchor David Asman stated, “There is a certain ridiculousness to that point of view” (in Rosenberg, 2003, p. E1). When Princeton’s Peter Singer equated the lives of slain Iraqi citizens to those of American military personnel fighting in Iraq, Bill O'Reilly stated: “I believe you are on the wrong side of this politically and morally, but I’m going to give you the last word.” O'Reilly, however, had the last word, stating: “You’re doing a great disservice to your country, sir” (p. E1). Dissenters were also described as “ignorant” by Fox’s O'Reilly. During one of his “Talking Points,” he pointed out that an ABC News/Washington Post poll found that 71% of Americans felt that Colin Powell’s speech to the U.N. was a “convincing case for war.” He continued:

The dissenting 30 percent are an interesting group. As Talking Points has pointed out, some of them simply hate their country and/or President Bush…Now, I'm getting real tired of ignorant Americans blasting their country when they're clueless about history and geopolitics. Many of the loudest voices of dissent are also the dumbest voices. (http://www.foxnews.com/story/0,2933,77875,00.html)
Questioning the current power relations and economic factors motivating the war in Iraq became equated with ignorance and was dismissed with distain.

Public discourse is also stifled when “the Murdoch way of conducting a debate is to yell treason or something very close to that” (Cohen, 2003, p. A19). This brand of journalism had become so successful that imitators such as MSNBC jumped on the protester-bashing bandwagon. For example, MSNBC’s newly hired Michael Savage accused protesters of “absolutely committing sedition, or treason.” His partner, Joe Scarbourough, a former Republican congressman, replied, “These leftist stooges for anti-American causes are always given a free pass. Isn’t it time to make them stand up and be counted for their views?” (in Rutenberg, 2003, p. B9). Thus, access can be defined not only as access to the means of communication, but also as access to a diversity of ideas and uninhibited public debate of political, economic, social, and cultural issues, which was clearly missing from mainstream coverage of the war in Iraq.

Smolla (1992) did note, however, that it is “possible to be both a realist and an optimist” when it comes to the “marketplace of ideas” ideal. He stated that although the truth can be illusive, and humanity may be fallible, truth can still prevail, as “it gets rediscovered and rejuvenated, until it finally flourishes” (p. 7). Therefore, any doubts about the “purity of the marketplace” should lead the government and citizens to be even more protective of the First Amendment (p. 7). To promote the promise of a “marketplace of ideas,” the press and speech must be protected. And so must access.

Although we cannot “empirically test the proposition that truth will triumph over error, because that would itself require some objective measure of what ideas are true and what ideas are false,” the leap of faith required by the marketplace ideal is “its deepest
strength, for it spurs us to accept the noblest challenge of the life of the mind: never to stop searching” (Smolla, 1992, p. 8). But without access to a diversity of viewpoints, the search for truth, for many people, is unproductive, as the same voices and messages found in the mainstream media are persistently and loudly heard. Government intervention can help to insure diversity of ideas. As Sunstein (1993b) noted, government regulations created the “free market” state of the media with laws regarding such issues as property rights, contracts, and torts. Thus, the government can also intervene to change the rules of the marketplace in order to provide greater access to the means of communication and to promote true diversity. However, in the current “free” media market, variety rather than diversity is advanced, as the same news, for example, can be found on network and cable news programs, as well as in print and online newspapers and on radio, with little variation other than the medium. In a democratic society, it is imperative that a wide array of viewpoints, ideas, and information is available for citizens to self-govern.

According to Smolla (1992), freedom of speech is related to self-governance in at least five ways:

(1) Speech is a means of participation, the vehicle through which individuals debate the issues of the day, cast their votes, and actively join in the processes of decision-making that shape the polity; (2) The self-governance interest served by free speech is the pursuit of political truth; (3) Free speech emphasizes the importance of speech as a means of ensuring that collective policy-making represents, to the greatest degree possible, the collective will; (4) Free speech also works to restrain tyranny, corruption, and ineptitude; and (5) Free speech
contributes to stability; a society will be both more stable and more free in the long run if openness values prevail. (pp. 12-13)

For citizens to participate in politics, information must be available and accessible. For a few conglomerations to own the means of communication and implement their will through these outlets, though, the collective will of the citizenry becomes the collective will of big business and the power elite.

Rather than narrowly interpreting the First Amendment as merely protection from the government, Sunstein (1993a) argued the state should use regulation to perpetuate and cultivate political diversity of ideas. In practice, though, it appears that liberalist interpretations of the First Amendment instead protect the autonomy of media outlets whose primary goal of profit maximization does not necessarily contribute to political discourse and participation. Without access to a diversity of viewpoints, it is difficult for citizens to take part in rigorous political debate, which, if one agrees that democracy should include citizen access, participation, and deliberative decision-making, is detrimental in a democratic society. And while media conglomerates want the few remaining ownership regulations abolished, they are more than willing to accept regulations that protect and/or increase their profit margins and please their stockholders.

**Profitable News**

Citizens remain uninformed when news divisions are forced to be more profitable with fewer resources. While the commodification of the press largely took place in the nineteenth century (Baldasty, 1992), the earliest forms of pre-printing press newssheets were developed and contained content to support the commercial interests of early merchant capitalists (Altschull, 1984). Like the early handwritten newssheets, post-
printing press newspapers and journals were primarily produced to disseminate information about commerce. In fact, “The traffic in news,” Habermas posited, “developed not only in connection with the needs of commerce; the news itself became a commodity” (Habermas, 2001, p. 21). That is, within capitalist logic, the news became a commodity, a product to be bought and sold in the market, for as the cost of printing news increased, publishers expected a return on their investment—the cost of the printing press, paper, ink, and labor, for example. Indeed, in the eighteenth century in the United States, Benjamin Franklin, while “accorded the position of a hero of the first rank among the statuary of the Press Hall of Fame,” conducted his press for commercial profit (Altschull, 1984, p. 24). Unfortunately, as Altschull (1984) argued, in a commercial media system, the truth, hailed as one of the primary rationales for First Amendment protections for free speech, is “assigned a position inferior to that of financial gain” (p. 25).

Indeed, a tension exists between ideological/mythological notions of the press’ importance in democracy and the praxis of journalism in the United States. To argue that the news media are “indispensable to the survival of democracy” is problematic because this assumption presumes that the press is free. In fact, Altschull (1984) argued, the press is not free, for the Western press has always been in part controlled by commercialized interests, albeit to varying extents.28 Habermas (2001) and Baldasty (1992) both lament the passing of the partisan press, a press that disseminated diverse political arguments and facilitated public debate about political issues. From this perspective, it could be argued that for the partisan press, the transmission of political information overshadowed

28 It can also be argued that the press has also been controlled by the interests of the government to legitimate its power, for dissent has been prosecuted, or at least tempered, in the United States under sedition and libel laws.
commercial interests. In fact, the early U.S. press is hailed as an agent of change, one that was central to the U.S. Revolution and enlightenment thinking. However, one might argue that Habermas and Baldasty are simply nostalgic for a utopian ideal of a partisan press that in fact was quite concerned with producing a profit, careful about criticizing those in power, and geared toward the wealthy elite. Further, the “folklore” of the independent press fails “to recognize that the news media are agencies of someone else’s power” (Altschull, 1984, p. 19). Whether the partisan press indeed existed as Habermas and Baldasty suggest or is instead an idealistic conception of what the press should be, it can be argued that in today’s political economy, mainstream news media are the agents of big business.

Under the logic of capitalism, business interests eclipsed the need to inform the public of political issues and events. Baldasty (1992) argued that “changes in society and the press” in the nineteenth century, including the industrialization of the press and the rise of mass advertising as the primary revenue source for newspapers, “gave rise to news values that exalted profit-making at the expense of older notions of news as political information or persuasion,” leading to a “de-emphasis” on political news and advocacy (p. 4). While earlier papers were supported by political parties and organizations as well as reader subscriptions, the price of producing a newspaper increased with industrialization, and advertising emerged as the replacement revenue source. With a “new” emphasis on profit maximization and advertising “subsidies,” newspaper content aimed “to assemble the largest ‘quality’ audience” and “to attract advertisers who would pay high advertising rates to reach those quality readers” (p. 138). As such, news was often reduced to entertainment, which would attract mass audiences and in turn more advertising dollars.
Newspapers that focused primarily on political news would not attract enough readers, it was assumed, so newspapers “diversified” content, adding sports, women’s pages, crossword puzzles, comics, gossip, and the like to attract larger audiences for advertisers. Partisan papers were marginalized, and the need to produce large profits overshadowed the need to provide the political news necessary for “an enlightened electorate” (p. 143).

Further, content aimed toward women increased during this time period, for such content would potentially lure women, who were considered to be the primary shoppers, to read newspapers and see the ads. Puffs, or articles that would promote advertisers, also became prevalent, as well as the use of demographic information to attract affluent subscribers, a process that neglects the information needs of the poor and the elderly. Publishers also began to use such devices as patent insides, or pre-printed news and advertisements, and wire stories, a product of the introduction of the telegraph, to reduce the cost of news production (Baldasty, 1992). The transformation of news from political advocate to a profitable entertainer was beneficial for both publisher and advertiser, but detrimental for a society that relies on the news media for information necessary to make informed political decisions. If the normative goals of a media protected by the First Amendment are to inform the citizenry, to provide diversity of viewpoints, and to serve as a watchdog on government and big business, then the decrease of political news and an increase in advertising reveals the central flaws in the libertarian theory of the press.

In fact, mass advertising, Bagdikian (2000) argued, is an “affliction” that has been killing off newspapers since at least the mid-1900s, leaving many towns with only one newspaper, if they have a paper at all. Newspapers receive up to 80% of their revenues from advertising; thus, catering to advertising has become central in newspaper
economics. Because advertisers are concerned with circulation and ratings rather than quality journalism, the papers with the lowest cost per thousand are more profitable investments for corporations’ advertising spending. Thus, when advertisers allocate advertising budgets to news outlets that have the lowest cost per thousand and that reach the “right” audience (i.e., an affluent audience), we see a rise in one newspaper towns, chain newspapers, and finally large group, and increasingly network-owned, television stations. What concentration of the media leaves us with, however, are fewer voices and alternatives, and more news that sells in the media marketplace.

Newspaper chains, such as Gannett and Knight Ridder, and media conglomerates that own newspapers, such as Rupert Murdoch’s News Corporation, are primarily concerned with the bottom line. Serious news is expensive; it requires time and labor to provide in-depth coverage of political issues. Thus, we find more “soft” news, such as human interest stories, wire reports, syndicated columns, and sensational stories about crime, violence, and sex in our local newspapers because they are relatively inexpensive and require less staff. Local newspapers that are part of chains (and increasingly this is the case) are expected to provide higher and higher profit rates, at the expense of news. For example, a Gannett paper in Salem, Oregon, was “told to double its previous profits. Or else” (Bagdikian, 2000, p. 79). What should also be of concern is that these profit-driven directives come from the main office in Rochester, New York. These administrators have no idea what the people of Salem, Oregon, need or want from their local newspaper, which ties the hands of editors and publishers: reach the profit quota or else. Often, reaching the profit quota means more advertising, staff layoffs, and cuts in news and news production.
Broadcasting in the United States followed the trajectory of newspapers, adopting the advertising revenue model and a need to produce a profit. As Postman (1984) contended, “[I]n saying that the television news show entertains but does not inform, I am saying something far more serious than that we are being deprived of authentic information. I am saying we are losing our sense of what it means to be well informed,” for we are “amusing ourselves to death” (pp. 107-108).

**The First Amendment as a Shield**

Meiklejohn (1965) argued that the principle of free speech “springs from the necessities of the program of self-government” (p. 26). This is not to say that the First Amendment protects “unregulated talkativeness,” but that it protects ideas, even “unwise, unfair, [or] un-American” ideas in the name of the public good (pp. 26-27). For Meiklejohn (1965), public debate is imperative in order for the public to make wise, informed decisions, and thus, freedom of speech is essential to promote such debate. He argued that prior to the solidification of radio as a commercial enterprise, radio had the potential to contribute to community-building, for enriching the public debate, but commercial radio failed to do so in its pursuit of profits. Commercial radio was not entitled to First Amendment protection, he argued, because radio was in the business of making money, not sharing ideas, and thus not contributing to democratic self-government (Meiklejohn, 1965). In short, “Private profit is not the goal of free speech” (Calvert, 1998, p. 42; emphasis in original). But media conglomerates do use the First Amendment as a shield in order to gain a larger market share and higher profits.

For example, when Fox News was launched in 1996 with a budget of more than $100 million, it would have access to 17 million homes. Fox News entered the “cable-
news sweepstakes” against Time Warner’s CNN, which reached nearly 70 million homes and had a $300 million annual budget, and the fledgling MSNBC, a joint venture between Microsoft and General Electric’s NBC that reached 22 million homes and relied on NBC news resources (Johnson, 2003). Rupert Murdoch created Fox News with the belief that “there [was] a huge potential market for ‘really objective’ TV news” (Whitelaw, 1996, p. 51), a market niche to which Fox News planned to cater. However, without a distribution service, Murdoch resorted to “buying his way onto cable systems,” offering a reported $11 per subscriber to cable operators to carry Fox News Channel (Hall, 1996, p. 1; later reports suggested that the price was $10 per subscriber). But Ted Turner, who would become vice chairman of Time Warner after the merger between Turner Broadcasting and Time Warner, refused to carry Fox News Channel on Time Warner Cable in New York City, a political battle that sacrificed the First Amendment for profit motives.

According to Grossman (1997), Murdoch first offered Time Warner a financial stake in Fox News to induce Time Warner to carry his new channel, a practice Grossman noted is “a typical pay-off to major cable operators, which shamelessly favor the cable services in which they hold a financial interest” (p. 19). Time Warner instead chose to carry MSNBC, a move that Fox contended occurred because of Turner’s hatred for Murdoch. Roger Ailes, chairman of Fox News, after learning that Time Warner would not carry Fox News, “asked his friend Mayor Giuliani to intervene” (p. 19). In fact, Murdoch “and his minions” called in favors from various Republican politicians, including the Governor of New York, George Pataki, and Attorney General Dennis Vacco. And intervene they did. Attorney General Vacco began antitrust proceedings against the Time Warner merger (after the FTC had already approved the merger), and
Mayor Giuliani threatened to revoke Time Warner’s cable franchise. Furthermore, Deputy Mayor Fran Reiter suggested that Time Warner “simply bounce” either the Discovery Channel or the History Channel to the public service channels (PEG) reserved for public, educational, or government use, arguing that these channels are indeed educational. Time Warner refused, and the city then “took the position that under the First Amendment, it could do anything it wished with its PEG channels, including putting Fox News on without commercials, or even with commercials, whether Time Warner liked it or not” (p. 20). The city announced that it would do so, and in the process bumped thirty other cable programming services that were in line for those precious channel spaces. But Time Warner rebutted with its own First Amendment claims, arguing that it had a First Amendment right to carry whatever programming it wished and that the government did not have the authority to force it to carry Fox News. Fox News countered that Time Warner infringed on its First Amendment rights by refusing to carry it. Federal Judge Denise Cote sided with Time Warner, stating: “This case concerns the power of a city to influence, control, and even coerce the programming decisions of an operator of a cable television system…It therefore goes to the heart of First Amendment concerns” (in Grossman, 1997, p. 20). She also chided Giuliani for “his brazen efforts to help a political supporter and for abusing his power” (p. 20).

While Judge Cote’s rebuke is certainly perceptive, this case ignores the fact that the First Amendment is not a pawn for corporations to battle for territory and profit; instead, as Grossman (1997) argued, “It’s time to stop using the First Amendment as a fig leaf for the rich and powerful and restore it to its proper role as protector of unpopular speech” (p. 20). The fear that arose from the judge’s decision was that her ruling would
open the doors to cable and satellite systems refusing to carry the “unprofitable” public access stations reserved for educational and government programming (Shapiro, 1996). With both sides “invoking the First Amendment like soapbox radicals being clubbed by constables” (p. 5), the larger issues of media concentration, diminishing public access to the airwaves, and proliferation of a narrowly defined range of ideas became lost in mainstream coverage of the battle of the media moguls and their political supporters.

Corporations have indeed been granted free speech rights. In First National Bank of Boston et al. v. Bellotti, Attorney General of Massachusetts (1978), the Supreme Court stated:

If the speakers here were not corporations, no one would suggest that the State could silence their proposed speech. It is the type of speech indispensable to decisionmaking in a democracy, and this is no less true because the speech comes from a corporation rather than an individual. The inherent worth of the speech in terms of its capacity for informing the public does not depend upon the identity of its source, whether corporation, association, union, or individual. (p. 777)

Although, as Fiss (1986) argued, businesses do have viewpoints that can enrich public debate, “when CBS adds something to public debate, something is also taken away. What is said determines what is not said,” and thus, the richness of the public debate is diminished (p. 1411). The corporation and the individual are not equal, except perhaps very wealthy capitalists who can pay for access to the media or who own media outlets to promote their own agendas and the agendas of the capitalist class. As such, Meiklejohn would suggest that, “Congress may create legislation designed to ‘enlarge and enrich’ free speech on public issues and to facilitate ‘the unhindered flow of accurate
information,’ so long as such legislation does not take away from the presentation of
diverse perspectives” (in Calvert, 1999, p. 43). The First Amendment, then, should not
only discourage government restraint on speech, but also “affirmatively
encourage…Americans to speak, to take stands, to demand to be heard, to demand to
participate” (Smolla, 1992, p. 11). However, when the means of communication are
owned by a few corporations, access is limited and participation is difficult to achieve, as
the “marketplace of ideas” is actually an oligopoly of ideas. Media ownership regulations,
such as the NTSO rule, aim not to restrain speech but to encourage robust debate.
Competition among voices should, in theory, result in diversity of ideas.

It should be noted, however, that several dichotomies, or conflicting values, arise
when the First Amendment is used as a justification for “free” speech. These dialectics
are not mutually exclusive, but they are beneficial for describing values and concerns
surrounding First Amendment debates and decisions.

**First Amendment Dichotomies**

First, one must consider whose rights the First Amendment protects: audience’s
rights or speaker’s rights. As Fiss (1996) explained, the courts have traditionally upheld
speaker’s rights, as they attempted to protect the street corner speaker from being
silenced by the government. Thus, the state could not silence a speaker or regulate
content because it did not like what was being said, but it could regulate time, place, and
manner of speech. As such, “the freedom of speech guaranteed by the first amendment
amounts to a protection of autonomy—it is the shield around the speaker” (Fiss, 1986, p.
1409). However, as prescribed by the self-governance theory, speech should be protected
when it enriches the public debate, “not because it is an exercise of autonomy;” in fact,
Fiss (1986) argued, “autonomy adds nothing [to the public debate] and if need be, might have to be sacrificed, to make certain that public debate is sufficiently rich to permit true collective self-determination” (p. 1411). However, media corporations are often bestowed the same rights of those afforded the street corner speaker, but unlike the street corner speaker, media companies can reach a much larger audience. And as speakers, these corporations can shield themselves with the First Amendment, arguing that they have the right to exclude voices to the detriment of alternative or dissenting viewpoints. Further, unlike the street corner speaker, media corporations have the power to set the national agenda. They also can and do provide entertainment-driven rather than information-driven news in attempts to attract advertisers and gain higher profit margins. In this case, the news media are not necessarily enriching the public debate, as information such as local, national, and international news is imperative for self-governing decision-making. Thus, they should not be afforded protection just because they are labeled autonomous entities. Rather, the First Amendment should also vehemently protect audience rights to access a diversity of ideas and viewpoints and to have their voices heard.

To these ends, Fiss (1986) hailed the fairness doctrine as a regulation that promoted audience rights. The fairness doctrine required that “public issues be presented by broadcasters and that each side of those issues be given fair coverage” (Red Lion, 1969, p. 367). This regulation promoted the public interest rather than the rights of the corporation as speaker: As the court noted, “the ‘public interest’ in broadcasting clearly encompasses the presentation of vigorous debate of controversial issues of importance and concern to the public” (p. 385). However, the fairness doctrine has been abandoned, and in the last few years, U.S. Court of Appeals for the District of Columbia has appeared
to be more sympathetic to the rights of the corporate speaker than the rights of the audience and is “more skeptical of the role of government in promoting diversity in the mass media” (Labaton, 2001, p. A1). As Labaton (2002) noted, the court “imposed a heavy legal burden” on the FCC to justify media ownership regulation, “leading some to conclude that it may, in the end, be legally impossible for the agency to adopt any standards” (p. C2). Although the Court of Appeals reiterated that ownership rules were constitutional, it also noted that “Section 202(h) carries with it a presumption in favor of repealing or modifying the ownership rules” (Fox v. FCC, 2002, p. 1048). By mandating such a burden on the FCC, audience rights seemingly become secondary to speaker rights, i.e., the rights of media conglomerates.

This dialectic of speaker’s rights versus audience’s rights also leads to the dichotomies of private rights versus public rights and government censorship versus private censorship. CBS, for example, is not a government entity nor is it a private citizen; rather, it is “something of both” (Fiss, 1986, p. 1414). CBS is privately owned, but it is also licensed by the government. CBS benefits from other government regulations, such as taxation, but at the same time, it is supposed to act in the “public interest.” Fiss (1986) argued that we need to reevaluate this dichotomy, which is based on the notion that autonomy means freedom from government interference, an argument advanced by corporations trying to make a profit, and instead consider that the government can help to enrich public debate. He stated:

A shift from the street corner to CBS compels us to recognize the hybrid character of major social institutions; it begins to break down some of the dichotomies between public and private presupposed by classical liberalism...The state of
affairs protected by the first amendment can just as easily be threatened by a private citizen as by an agency of the state. A corporation operating on private capital can be as much a threat to the richness of public debate as a government agency, for each is subject to constraints that limit what it says or what it will allow others to say. (p. 1414)

The constraints produced by the market dictate that profit is the end, and thus, the decisions made regarding what the public sees, hears, and reads are reliant upon what will sell in the economic marketplace rather than what citizens need to know to make political and daily decisions. We can no longer think of the state as the instrument of censorship; private corporations can and do censor information as well. Although Smolla (1992) put forth the argument that censorship is the nature of the state, Fiss (1986) argued that government regulations can help promote the public debate, starting with more funding for public media systems. However, government intervention is necessary only if it contributes to public debate:

Autonomy will be sacrificed, and content regulation sometimes allowed, but only on the assumption that the public debate might be enriched and our capacity for collective self-determination enhanced. The risks of this approach cannot be ignored, and at moments they seem alarming, but we can only begin to evaluate them when we weigh in the balance the hidden costs of an unrestricted regime of autonomy. (Fiss, 1986, p. 1415)

The notion of content regulation limitations leads to the debate regarding content-based versus content-neutral regulations.
Traditionally, content-based regulations have been frowned upon by the courts. A law is content-based, according to Chemerinsky (2000), “if its application depends on either the subject matter or the viewpoint expressed” (p. 51). Content-based regulations are put to the strict scrutiny test, which requires that there is a compelling interest of the highest order and that the regulation does not restrict any more speech than what is necessary to serve the compelling interest. Debates surrounding obscenity, for example, include content-based regulations. Viewpoint-based regulations, on the other hand, are not constitutional. Content-neutral regulations, or regulations of speech that are both viewpoint and subject neutral, are subject to intermediate scrutiny, which requires that there are substantial or important government interests, that the regulations do not totally preclude speech, and that there are reasonable fits between the means and the ends. Although content-based regulations are often regarded as detrimental to speakers’ rights, content-neutral structural regulations are more likely to be passed and/or upheld by the courts, as they do not affect content directly. The NTSO rule, for example, does not specifically regulate that any one company must propagate certain information or ideas or content. The 2002 Court of Appeals agreed, as they rendered the NTSO rule content-neutral and constitutional.

Another dichotomy in First Amendment debates includes economic markets versus speech markets. Sullivan (1995) argued that economic markets are quite different from speech markets: Government attempts at regulating economic markets tend to be permissible while government attempts at regulating speech are generally unacceptable.
For example, she noted that in the “marketplace of ideas,” the Court tends to protect speech unlike the way it protects tangible property\(^2\):  

While economic arrangements are remitted to politics, first amendment default rules leave speech presumptively to the private order. Content-based laws are virtually per se invalid, and even content-neutral laws face stricter tests of rationality than do general regulations of the economic market. (p. 950)

Thus, the Court generally “places far greater burdens on government to defend such laws than it does in the realm of economic regulations” (p. 951). This is evidenced in the 2002 Court of Appeals mandate that the FCC review and unambiguously justify the NTSO rule. However, this is divergent from previous court rulings: From the 1940s through the 1970s, the Supreme Court “gave broad deference to the FCC to take measures to promote diversity even though the justices acknowledged the difficulty of finding clear empirical evidence that the regulations achieved such ends” (Labaton, 2001, p. A1). On the contrary, the 2002 appeals court decisions have not given the FCC such latitude, demanding “a far greater level of evidence to justify the regulations” (p. A1). FCC Chairman Michael Powell’s reaction to the Court’s decision reiterated this stand: “It’s a tough environment...The judges have raised barriers significantly, and are making it much tougher to justify some of the rules. They are skeptical of theoretical justifications for rules, without more empirical support and greater analytical rigor” (in Labaton, 2002,

\(^2\) Sullivan (1995) compared Justice Oliver Wendell Holmes’ dissent in *Lochner v. New York* (1905) to his dissent in *Abrams v. United States* (1919). Holmes argued in the first case that the Constitution did not protect the economic realm from regulation (the majority of the Court had decided that the government could not intervene in labor contracts). In the second case, he argued that the Constitution does protect speech from regulation (the majority of the Court had upheld convictions against a group of Russian immigrants who passed out leaflets critical of U.S. policy against the Bolshevik regime).
p. C2). This ignores the fact that abstract concepts such as diversity, access, localism, and competition are difficult to quantify numerically.

Sunstein (1993b) also presented the dialectic of positive rights, or freedom for speech (or access) versus negative rights, or freedom from government intervention. He argued that the conventional view of the First Amendment contends that “the Constitution does not create positive rights and should not be understood to do so” (p. 209). For example, many free speech cases involve proposed regulations that impose limitations on “who can speak and where they can do so” (p. 209). However, the First Amendment is also a positive right, and as such, the government can “take steps to ensure that the system of free expression is not violated by legal rules giving too much authority to private persons” (p. 210) or, it should be added, corporations. Structural regulations such as the NTSO rule aim to promote greater access to the media, an access that is currently denied as a few large conglomerations own the means of production and dissemination. Although (almost) anyone could technically apply for a broadcasting license, not everyone can afford to purchase the resources necessary, and, certainly, large corporations create barriers to entry that make it difficult for new outlets to successfully operate and compete in the current marketplace. Various consumer groups have argued that further deregulation “will further concentrate media power in many markets with limited competition, sharply reducing the diversity of viewpoints on the airwaves and diminishing the number of companies distributing such services” (Labaton, 2001, p. A1). Viewing the First Amendment as a negative right is detrimental to the notion that access is essential in the “marketplace of ideas” and for self-governance.
Another dichotomy involving free speech and government regulation is abridgment of speech versus the promotion of speech. Opponents of regulation argue: (1) The government is an enemy of free speech; (2) “The First Amendment should be understood as embodying a commitment to a certain form of neutrality;” (3) Free speech extends to all speech; and (4) Restrictions on speech “have a sinister and nearly inevitable tendency to expand” (Sunstein, 1993b, pp. 199-200). Proponents of government regulation argue that government intervention, rather than hinder speech, can promote speech. In what Sunstein (1993b) called the New Deal for speech, an approach that parallels the 1930s New Deal, he posited that “many imaginable democratic interferences with the autonomy of broadcasters or newspapers are not ‘abridgments’ of free speech at all. It would also argue that such autonomy, created and guaranteed as it is by law, may sometimes be an abridgment” (p. 202), an argument similar to that proposed by Fiss (1986). The laws of the market are not natural occurrences; rather, they were created by the same government that created property and copyright laws, both of which can abridge free speech. And, instead of primarily protecting the First Amendment rights of the speaker, i.e., media conglomerates, the audience’s rights should be promoted, and access to a diversity of viewpoints and to the means of communication should be insured to promote public debate and enrich democratic political decision-making.

A Means to an End: A Need to Create Access

To insure that diversity and competition survive, audience access must be considered, and the intentions of the media conglomerates must be scrutinized. As many First Amendment scholars argue, the “marketplace of ideas” and democratic self-governance are reason enough to propose and implement regulations that attempt to
protect audience access and needs, as the public must be informed by a diversity of competing voices in order for self-governance to effectively occur. The current state of media ownership and the possibility of more conglomeration and concentration if broadcast ownership regulations continue to be modified hinder the right of access to the means of communication as well as access to a diversity of ideas. With fewer and fewer corporations owning the means of production and dissemination, fewer and fewer voices are heard. To meet the needs of citizens, uses of the First Amendment should be redefined, from protector of corporate speech to promoter for citizen access, for as media consultant Horowitz (2000) rightfully suggested, “Our nation could speak with many voices, but regrettably, it doesn’t. Scary, isn’t it?” As discussed in the next chapter, one of the primary goals of the media reform movement is to create and maintain opportunities that allow the nation to speak with many and diverse voices.
Chapter 6

RESISTANCE AND REFORM: MEDIA REFORM MOVEMENT MOBILIZATION AND CHALLENGES

As media corporations become wealthier and more powerful, and as journalism succumbs to profit gain, it can be argued that notions of the public sphere are unheeded and unfeasible. To counteract the destructive nature of commercialism and concentration in a democratic society, structural reform of the current media system is an alternative. As discussed in chapter five, governmental regulation of the media can meet the needs of citizens and in fact advance First Amendment ideas, for the neoliberal approach to media endangers political discourse and deliberation as the news media as commercial enterprises are not necessarily contributing to democratic self-governance (Sunstein, 1993). For example, advertisers influence programming content, as viewers are defined as consumers rather than citizens. As a result, programming is produced to appease advertisers to the detriment of diversity of ideas and sources of information, and local news is often inattentive to public issues and instead promotes sensationalism and human interest stories. Further, as news divisions have suffered budget cuts in the last two decades, “canned” video news releases, created by the public relations industry on behalf of corporations such as pharmaceutical companies, have become commonplace.  

30 Thus, by interpreting free speech as a protection of the speaker, i.e., media conglomerates, and not the listener, i.e., multiple publics, the courts are perpetrating a great injustice. Government regulation that protects both the speaker and the listener, Sunstein (1993) contended, is necessary to alleviate market dangers to political discourse.

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In a January 2002 article titled, “The Making of a Movement,” Professor Robert McChesney and journalist John Nichols called for “a broader, bolder and more politically engaged movement to reform American media” to challenge the mainstream press and its power to “narrow” and “warp” public discourse (p. 11). While media watchdog organizations such as Fairness and Accuracy in Reporting (FAIR) and the Institute for Public Accuracy as well as Media Channel, Media Alliance, and the Media Education Foundation have been crucial in raising “awareness that any democratic reform in the United States must include media reform,” McChesney and Nichols (2002b) argued that the time had come for “a national media reform coalition that can play quarterback for the media reform movement” (pp. 11, 16).

Ó Baoill (2003) suggested that Free Press, an organization commenced in December 2002 and founded by McChesney and Nichols, along with campaign finance reform advocate Josh Silver, is grounded in the arguments set forth in the “Making of a Movement” article. As explained on the Free Press website, www.freepress.net:

Free Press is a national organization working to increase informed public participation in crucial media policy debates. The ultimate aim of Free Press is to generate a range of policies that will produce a more competitive and public interest-oriented media system with a strong nonprofit and noncommercial sector. While their focus expands to issues such as commercialism in education and Internet issues, Free Press became heavily involved in the fight against modification to ownership regulations.

This chapter analyzes the 2003 mobilization of the U.S. media reform movement. It first briefly explores the history of broadcast media reform in the United States,
particularly in light of the commercialization of radio in the 1920s and 1930s. To do so allows us to learn from the accomplishments, the goals, and the pitfalls of previous reform attempts. Further, it attempts to define the movement within the context of new social movement theories, examining the movement’s achievements in light of the Free Press agenda and the challenges the movement faces.

The U.S. Media Reform Movement

As media markets are becoming globalized, as the public service ethos is displaced by hyper-commercialism, and as media ownership falls into the hands of fewer and fewer multinational conglomerates, the prospects for the media system supporting a progressive and democratic political culture are becoming dimmer. (Hackett & Adam, 1999, p. 125)

As discussed in chapter four, in compliance with the court’s remand of the National Television Station Ownership (NTSO) rule and the conditions of the Telecommunications Act of 1996, the Federal Communications Commission (FCC) released its Notice of Proposed Rulemaking in fall 2002. The NTSO rule was not the only rule being considered; in total, six remaining media ownership rules needed to be reviewed. The public had the opportunity to comment on the Notice, and though the FCC’s public comment procedure does not seem to encourage participation from the public (Hart & Coen, 2003), in part because the comment procedure is online and rarely publicized, the overwhelming majority of respondents were in favor of retaining the ownership limits. In fact, approximately 750,000 people commented, an unprecedented number of responses, and 99% of these responses were in favor of keeping the rules (see Statement of Commissioner Michael J. Copps, 2003). The main problem regarding mobilization, however, was that the issue was not covered in the mainstream broadcast media until a few days before the FCC announced its decision, which is not surprising
because the four major broadcast networks are owned by massive conglomerates that would benefit from the demise of media ownership rules—debate of the issue is not in their best interest. FCC decisions are presumably made in the name of the public interest, yet the public is rarely included in the debate: As Aufderheide (1999) stated, “The public is endlessly invoked in communications policy, but rarely is it consulted or even defined” (p. 5). Indeed, it was rare to see the issues that the 1996 Act raised addressed in broadcast news, even though the Act made sweeping changes to the communications industry. In turn, public debate was negligible.

Despite issues of access, a grassroots campaign mobilized citizens to contact the FCC and their legislators and note their support for the retention of the rules. The pressure exerted on the FCC also resulted in public forums across the nation that debated the rules and media concentration. While the two Democrat commissioners attended most of these forums, unfortunately, only one of these forums was designated “official” by Republican FCC Chairman Michael Powell, and it was clear that the three Republican commissioners would vote for modification of the ownership rules. Notwithstanding hundreds of thousands of postcards and emails to the FCC, petitions from various organizations, protests, and requests for a delay on the decision by a bipartisan group of Senators and by House Democrats, in June 2003, the FCC voted 3-2 to modify the rules, including increasing the NTSO rule from 35% to 45%.

What was somewhat surprising about the mobilization to stop what Thane Peterson (2003) of Business Week called “the FCC’s covert operation” was the diversity of opposition to the FCC’s vote: Neil Diamond, the National Rifle Association, The Consumers Union, Senator Trent Lott, media moguls Ted Turner and Barry Diller, the
National Organization of Women, conservative *New York Times* columnist William Safire, Code Pink, and the African American/Asian American/Hispanic Caucus of Congress, to name a few. Though these groups and individuals had diverse motives for supporting the retention of the rules, their unification helped to keep media reform on the public agenda, for Congress then debated rolling back the FCC’s modifications. What is also significant about the movement is the use of the Internet to mobilize this grassroots campaign, for access to the public through the mainstream media is a challenge when a handful of companies own the means of communication. Challenging the commercial broadcast system is not a new phenomenon, as educators and marginalized groups called for media reform throughout the 20th century and into the 21st century.

**Efforts for Reform**

As noted in chapter three, the commercialization of broadcasting was due in large part to the reallocation of spectrum space by the Federal Radio Commission (FRC), predecessor to the FCC, as a result of the Radio Act of 1927. Large commercial owners were privileged because, unlike amateurs or educational groups, wealthy owners presumably had the capital necessary to serve the public’s broadcasting needs (McChesney, 1993).

Although organizations such as The National Committee on Education by Radio and the *Ventura Free Press* “attempted to enlist newspaper publishers and the general public to the cause of broadcast reform,” commercial broadcasting emerged the victor, as “the contours of the network-dominated, advertising-supported broadcasting system fell into place with astonishing speed” (McChesney, 1993, p. 38). One reason for the unsuccessful attempts for broadcast reform is that unlike the commercial broadcast lobby,
“broadcast reformers had difficulty working in unison,” for they “disagreed about alternatives to the status quo” (p. 92). Nonetheless, the reformers, consisting of educational and religious groups, did agree on several core issues. First, commercial broadcasting was seen as inimical to the communication needs of a democratic society, including the right of citizens to have access to the means of communication and information necessary to make informed political decisions. Second, they argued that concentration had detrimental effects for democracy, including the power of owners to set the agenda and marginalize dissenting voices and ideas contrary to the corporate worldview. And third, as advertising became the primary revenue source for commercial broadcasters, media content was generally geared toward attracting a mass audience to “sell” to advertisers. As a result, content became trivialized, as discussion of political and social issues was seen by media owners and advertisers as antithetical to consumerism (McChesney, 1993).

Reform was seemingly the only way to change the media system, for the power of the commercial broadcasters and the liberalist notions of private property rights and non-governmental interference in the business of business were so entrenched that overhauling the commercial broadcast system was not viewed as an option. Adding a public broadcasting element to the commercial system seemed a more promising way to meet the needs of a democratic society. The primary question became how to fund such a system, a question that deeply divided broadcast reformers; some reformers believed that “commercial advertising was despised unconditionally and there were no circumstances that would permit its utilization by nonprofit broadcasters,” while others “not only accepted advertising, they also defended their right to do so” (McChesney, 1993, pp. 101-
Further, the radio lobby characterized the proposals of the reformers as “efforts to eliminate private, commercial broadcasting in its entirety,” efforts again antithetical to the liberalist ideal of freedom from government interference and absolutist definitions of the First Amendment (McChesney, 1993, p. 105). As McChesney (1993) noted, “That the broadcast reformers had such difficulty countering the commercial broadcasters…underlines the general lack of coherence in their movement. As a group, the reformers revealed a remarkable lack of political savvy” (pp. 106-107). Further, a “lack of a greater labor or organized left-wing presence in the reform movement” hindered the movement, for not only were these groups interested in media reform, they also had the political savvy and organizational skills the reform movement seemed to lack (p. 107). Moreover, once the Communication Act of 1934 institutionalized commercial broadcasting and legislators sympathetic to the goals of the reform movement lost their seats in Congress in the early 1930s, the broadcast reform movement lost steam (McChesney, 1993).

This does not mean, however, that the movement wholly “failed.” McChesney (1993) noted that the broadcasting industry did take the reform movement threat seriously; however, the reformers’ challenge was undercut by the ability of the commercial broadcasters to frame the issues presented by the reformists, the institutionalization of regulation that favored commercial broadcasting, and regulators’ neglect of the public’s role in the policy-making process. According to Branscomb and Savage (1978), it was not until a 1966 Court of Appeals decision that the public was represented in broadcast licensing proceedings. Unfortunately, the same problems early
reformists met plagued later reform actions, including the broadcast reform mobilization in the 1970s.

As Rowland (1982) succinctly stated:

It is said that the generals and admirals are always well prepared to fight a war—the previous one. So it may have been with the leaders of the reform movement in American broadcasting by the late 1970s. Preparations had been made for battles with the established broadcast industry and the federal communications policymakers. Substantial agendas for change had been drawn up and pursued. Yet a careful analysis of the overall trends in public policy for broadcasting and telecommunications suggests that, like the generals, the reform movement may have been preparing for a war that had already been decided. (p. 1)

The primary dilemma for the broadcast reform movement of the 1970s was that its challenge to media concentration was routinized and institutionalized, as reform groups worked within the regulatory framework set forth by Congress and the FCC, a framework that fundamentally favored commercial interests over public interest initiatives (Rowland, 1982). In particular, the groups involved in the movement, including the American Council for Better Broadcasts, National Citizens Committee for Broadcasting, Action for Children’s Television, and the Office of Communications of the United Church of Christ (UCC), were, like the 1930s radio broadcasting movement, not as cohesive as the broadcast lobby (Branscomb & Savage, 1978; Rowland, 1982). The interrelationships among the reform groups that sprang forth in the late 1960s and early 1970s remained “largely informal,” and while the aim of these groups—broadcast reform—was similar, coordination of resources and strategies seemed largely inconsistent (Branscomb &
Savage, 1978). Further, these groups lacked necessary funding to battle the commercial broadcasters and their ability to control the regulatory debate (Branscomb & Savage, 1978; Rowland, 1982). As Rowland (1982) argued, “the difficultly for the reformers has always been that…the prior public policy commitment to an essentially private, commercial, network-oriented industry remains, and the range of possible redefinitions of broadcasting purpose is therefore severely constrained” (p. 10). Though reformers continued to challenge media concentration and regulation that benefited the commercial broadcasters and continued to propose regulation that would attempt to benefit the public interest, such as an increase in children’s television, “the process established a pattern of continuing reform compromise in which, on point after point, the major affected industries seemed to be emerging relatively unscathed” (p. 27).

Throughout the history of media reform, demands have been made to compel broadcasters to reduce violence in the media and commercialism in children’s television and to increase public affairs and children’s educational programming, but courts have been hesitant to do so, for content-based regulation has often been interpreted as a violation of the First Amendment (see for example Hawthorne, 1999). For this reason, reformists often focused on structural regulations, such as media ownership rules, under the assumption that diversity of ownership leads to diversity of viewpoints. However, reformers were unable to successfully challenge the neoliberal rhetoric of free-market competition so readily accepted by a majority of regulators and legislators in the late 1970s and continues into the twenty-first century. That is, deregulation has become a mantra for commercial broadcasters and their supporters, for they claimed that new technologies, such as cable and home taping, challenged their ability to compete in the
marketplace. Thus, regulations, such as ownership limits and public interest regulations such as the Fairness Doctrine, which required stations to give equal time to “both” sides of a controversial issue, were seen as hindrances to broadcasters’ capacity to meet the needs and wants of the public. Further, the “reform rhetoric and energy” was absorbed, or co-opted, by policy-makers, “yet reflect[ed] little of the substantive change implied in the seriousness of the reform critique” (Rowland, 1982, p. 34).

While the history of broadcast reform presented here is certainly not exhaustive, it does suggest a trend in terms of the challenges such a movement faces. As Rowland (1982) concluded:

As in the experience of their predecessors, the reformers have generated no clear, broadbased national constituency nor any form of organization consistently capable of helping translate their criticisms into comprehensive political action…At most the reform movement has succeeded to date in nudging the policymaking and regulatory process only a degree or two off course. (p. 36)

Thus, the question remains, how can such a broad-based, organized constituency be formed and be effective? What goals should such a project entail? To answer these questions, one may look to new social movement theories.

**Defining a Movement**

Social movements can be generally defined as “collective challenges, based on common purposes and social solidarities, in sustained interaction with elites, opponents, and authorities” (Tarrow, 1998, p. 4). What makes new social movements new, however, is that these collective challenges “have presumably displaced the old social movement proletarian revolution associated with classical Marxism” (Buechler, 1995, p. 442). That
is, new social movements spotlight “problems of quality of life, equality, individual self-realization, participation, and human rights,” rather than primarily focusing upon class-based struggles and resistance (Habermas, 1981, p. 33). However, this should not suggest that economic justice is dismissed as a key objective for new social movements. As Buechler (1995) explained, while class has become “much less important in determining the base, interests or ideology” of movements, new social movements do have “economic relevance” for differing social and/or economic classes (p. 453). So although new social movements “can no longer be reduced to class, neither can they be understood apart from class.” As such, class becomes “one among several salient structures and identities in contemporary forms of collective action,” for new social movements generally “draw on a socially diffuse base of popular support rather than any specific class or ethnic base” (p. 453). In any case, central to definitions of social movements is “desire for change” (Burstein, 1999, p. 7).

Recognizing that new social movement theorists differ in their approach to studying movements, della Porta and Diani (1999) suggested four common characteristics of social movements: informal interaction networks, shared beliefs and solidarity, collective action focusing on conflicts, and use of protest. First, movements are often “conceived of as informal interaction networks between a plurality of individuals, groups and/or organizations.” These networks “contribute both to creating the preconditions for mobilization and to providing the proper setting for the elaboration of specific world views and lifestyles” (p. 14). This includes organizing, sharing scarce resources, and framing the goals of the movement in terms that a coalition would support, such as democratization of institutions, including the media. This leads to the second
component, shared beliefs and solidarity: “To be considered a social movement, an interacting collectivity requires a shared set of beliefs and a sense of belonging” (p. 14). This is a necessary element for any social movement, for if members or potential members of a movement or coalition feel alienated from the group or the agenda, the movement would essentially collapse or at least be rendered ineffective. As well, Tarrow (1998) suggested, “sustaining collective action against antagonists” is essential for social movements. However, while collective identities, common goals, and identifiable challenges are essential for collective action, unless social movements “can maintain their challenge, they will either evaporate into…individualistic resentment…or retreat into isolation” (pp. 6-7).

Third, “social movement actors are engaged in political and/or cultural conflicts, meant to promote or oppose social change at either the systemic or non-systemic level” (della Porta & Diani, 1999, p. 15). For example, the media reform movement is in conflict with both the state in terms of regulation and corporate media in terms of access and representation. The promotion of social change is at the core of the movement, for the status quo has detrimental political effects (e.g., political debate has been reduced to “horse race” coverage of political actors) and cultural effects (e.g., marginalizing dissent, propagating stereotypes of women and people of color, and limiting minority access to mainstream media).

Fourth, the use of protest as resistance to the status quo is generally defined as “unusual” or “unconventional” behavior, such as the use of violence. However, many new social movements use conventional “styles of political participation” such as lobbying, as well as “public protest,” such as demonstrations and marches. While
violence is often linked to movements in terms of both definitions of movements and media coverage of protests, della Porta and Diani (1999) noted that the use of violence is not “a distinctive trait of movements taken as a whole” (p. 15). Burstein (1999), for example, focuses upon the non-violent impact of movements on the opinion formation and policy-making processes, such as framing issues so that they become salient in the public mind and thus influence citizens to become involved by pressuring legislators for change.

Further, as Tilly (1999) argued, a social movement “consists of a sustained challenge to power holders in the name of a population living under the jurisdiction of those power holders by means of repeated public displays of that population’s worthiness, unity, numbers, and commitment” (p. 257). That is, in terms of the media reform movement, the movement must continue to challenge both the state and corporate media in the name of the public, particularly those persons and groups who lack access to the means of communication and information. But the movement must also let citizens speak for themselves.

Additionally, repeated public displays, such as public meetings and demonstrations, “nicely encapsulate the distinctive features of social movement displays: occupation of public spaces; engagements with authorities or their representatives; projection of collective identities; expressions of support for shared demands; and performances validating worthiness, unity, numbers, and commitment” (Tilly, 1999, p. 260). While activists spend much time and energy “planning joint actions, building alliances, struggling with competitors, mobilizing supporters, building collective identities, searching for resources, lobbying, and pursuing other activities to sustain
collective challenges” (as the media reform movement has been doing since 2002), Tilly (1999) contended that these actions do not distinguish social movements from other forms of contentious politics, such as war (p. 260). Instead, he argued, demonstration of worthiness, unity, numbers, and commitment is a key distinguishing factor, for the strength of a movement can be determined through the stated worthiness of the movement (e.g., “evidence of previous undeserved suffering”), the unity of its members (e.g., “direct affirmation of a common program or identity”), the number of people involved (e.g., “filling of public space, presentation of petitions, representations of multiple units”) and commitment to the movement agenda (e.g., persistence and perseverance) (p. 261). While it is somewhat unclear how these factors are indeed different from what other forms of contentious politics attempt to achieve, worthiness, unity, numbers, and commitment are essential for not only building coalitions but also for challenging the state and private interests. The media reform movement recognized this, as the first National Conference for Media Reform met in Madison, Wisconsin, in November 2003.

While social movements are often analyzed in terms of success and failure, Amenta and Young (1999) suggested examining the “potential beneficial impacts” of mobilization in terms of “collective benefits” (p. 23). For this reason, the following section defines the 2003 mobilization of the media reform movement in terms of the movement’s agenda and the collective benefits set forth by the Free Press, an organization that has been instrumental in attempts to build a coalition to challenge, in the short-term, modifications to the ownership rules that would benefit corporate media rather than the public interest.
Free Press Agenda

Free press co-founders McChesney and Nichols recognized that to counteract the detrimental and depoliticizing effects of the narrowly defined range of viewpoints propagated by the corporate-owned news media on critical public pedagogy and vibrant democratic discourse, such a movement would need an “immense” organizing effort, one that necessitates efficient use of scarce resources as well as strategic cooperation. Further, the movement must “launch a massive outreach effort to popularize” the media reform issue (McChesney & Nichols, 2002b, p. 16). Such a movement, they argued,

Will only happen if a concerted campaign organized around core democratic values takes the message of media reform to every college and university, every union hall, every convention and every church, synagogue and mosque in the land. To build a mass movement, the new coalition must link up with organized groups that currently engage in little activity in the way of media reform but that are seriously hampered by the current media system. (p. 16)

In fact, as McChesney and Nichols (2002a) noted, when people are aware of the problems concentration of the media creates and the wheeling-and-dealing of the policy-planning process that allows corporations to dominate the airwaves, newspapers, and, increasingly, cyberspace, they are enthusiastically willing to work for change.

Unlike the earlier movements for broadcast reform in the 1930s and the 1970s, McChesney and Nichols (2002b) acknowledged the need to engage organized labor as well as “educators, progressive religious groups, journalists, artists, feminists, environmental organizations and civil rights groups,” among others, in the struggle for media reform (p. 16). What these groups have in common is the fact that their voices are
rarely heard in mainstream media discourse, and when their voices are heard, they are often marginalized. However, the authors also recognized that “these groups will not simply fall into place as coalition partners,” for the media conglomerates lobby not only legislators but also many of the groups mentioned (p. 16). In addition, they argued, these corporations often either fund such organizations through foundation contributions or have convinced such groups that maintenance of the status quo is in their best interest. Thus, “[b]uilding a broad coalition will require a tremendous amount of education and old-fashioned organizing that will inevitably involve pressure from the grassroots on major institutions and unions in order to get the national leadership of those organizations to engage” (p. 16).

The reform movement must work to achieve a sense of solidarity and direction. As McChesney and Nichols (2002a) argued:

Media reform needs its equivalents of the Voting Rights Act or the Equal Rights Amendment—simple, basic reforms that everyone can understand, embrace, and advocate in union halls, church basements, and school assemblies. And there has to be legislation, in order to give activism a sense of focus and possibility. (p. 132)

But at the same time, such a movement must take into account the pluralism and diversity of those involved, strategizing together “to work proactively in ways that cross-support a diverse array of approaches, networks, and campaigns—in and out of the beltway, online, in the reservations, and in the streets” (pp. 125-26). To regain a sense of the social and political, which have been lost in the attack on the welfare state and the equating of
capitalism with democracy, we need a new language of community, of agency, and of change, all of which the media reform movement should provide and advance.

Further, McChesney and Nichols (2002b) recognized that while coalition-building is a key component to a media reform movement, “All the organizing in the world won’t amount to a hill of beans…unless there is something tangible to fight for, and to win.” This includes “reform proposals that can be advocated, promoted and discussed,” including “legislation to give the activism a sense of focus and possibility” (p.16). Such an agenda, they suggested, should include proposals such as: (1) applying existing antitrust regulations to the media and expanding such laws to restrict the number of newspapers, radio stations, and television stations an entity can own, for while antitrust laws are generally applied to national monopolies, media monopolies are often found at the local level; (2) establishing and maintaining a full tier public media system that would include low-power, noncommercial radio and television stations as well as reinvestment in the public broadcasting system (e.g., PBS and NPR) “to eliminate commercial pressures, reduce immediate political pressures and serve communities without significant disposable incomes”; (3) providing a tax credit for taxpayers who support alternative media; (4) challenging current policies regarding political advertising and instead requiring free ad time for candidates; and (5) decommercializing children’s television and local television news (p.17). It is clear, the authors suggested, that “Until reformers come together, until we create a formal campaign to democratize our communications policy-making and to blast open our media system,” media conglomerates will continue to grow while democracy continues to be threatened (p.17).
Free Press, along with such groups as Media Access Project, MoveOn.org, Common Cause, and The Consumers Union, began email and letter-writing campaigns in early 2003, urging citizens to contact the FCC and Congress and express their concerns about media concentration. For example, from the Free Press website, one could sign a petition sponsored by MoveOn.org. One could also reach the Consumers Union website, which had set up an email forwarding system that allowed citizens to become involved in the policy-making process. After the FCC published its June 2003 modifications to the rules, these groups added a phone-in campaign to urge legislators to pass regulations that would roll back the changes.

As of this writing, the Free Press website includes a database of organizations involved in media reform and an “Action Center” page that includes links to initiatives citizens can support, such as petitions and boycotts. By providing the database, Free Press demonstrates the notion that the reform movement must include, as well as combine the resources of, various organizations working toward media reform. By providing opportunities for citizens to become actively involved in the policy-making process, Free Press seems to also be providing occasions for citizens to become involved in and identify with the media reform movement, keys element for the success of new social movements.

As noted previously, the Free Press-sponsored National Conference on Media Reform, held in November 2003 in Madison, Wisconsin, was another attempt to build a coalition and encourage citizen participation. Though the conference was not publicized in the mainstream media, approximately 1800 people attended the conference, and the list of speakers included media reform activists, representatives from various organizations
involved in the coalition, including groups discussed previously, legislators, union
leaders, journalists, FCC Commissioners Michael Copps and Jonathan Adelstein, NPR’s
Amy Goodman and PBS’ Bill Moyers, Al Franken, Ralph Nader, representatives from
environmental groups, civil rights groups, and women’s rights groups, social justice
organizations such as Jobs with Justice, global media organizations, academics, and
artists. As stated on the Free Press website, the conference was “a groundbreaking forum
to democratize the debate over media policymaking,” and the goals set forth by the
conference planners and attendees included:

- Mobilize new constituencies;
- Strengthen coalitions working in Washington and at
  the grassroots;
- Develop plans for immediate and long-term reforms;
- and Generate policies and strategies that will structurally improve the media system.

(National Conference on Media Reform, 2003,
http://www.mediareform.net/conference.php)

While the movement continues to work toward coalition-building and mobilization,
several additional challenges remain.

**Challenges Faced, Challenges to Come**

One of the first goals of any movement is to get the issue on the political and
public agenda (Burstein, 1999). The media reform movement is no different, as one of
the Free Press goals included “making media a bona fide issue in America”
(http://www.mediareform.net/about.php). It can be argued that this has occurred based on
the response the FCC received: Chairman Powell had noted that over three million
Americans contacted the FCC and Congress to demand that the media ownership rules
remain intact (McChesney & Nichols, 2003). However, one of the first challenges the
reform movement had to face was opposition from Chairman Powell. As Labaton (2003b) reported, Powell suggested that the normal FCC rulemaking process had been disrupted by a “concerted grass-roots effort to attack the commission from the outside in” (p. C1). “Basically,” he said, “people ran an outside political campaign against the commission,” and he argued that he bore the brunt of “attacks” by the people and the press (p. C1). What is most disconcerting about this comment is the rhetoric suggesting that the public “attacked” the FCC when the FCC should be held accountable to the people, for the airwaves are publicly owned.31 The FCC, as a regulatory agency, was created so that it would oversee communications industries in the public interest, not in the interest of the broadcast industry. However, the industry certainly has the upper hand (see “Well Connected,” 2003; Williams, 2003).

Not surprisingly, the media industry fought against reversal of the June 2003 decisions, and it indeed has the resources and lobbying power to do so. This should continue to be a concern, for as Burstein (1999) noted, “some groups are especially powerful and can get what they want even when the public is opposed” (p. 6), as demonstrated by the FCC’s modifications to ownership rules despite public outcry. Further, News Corporations’ Rupert Murdoch was quite confident that the Bush administration would veto Congressional attempts to roll back the rule changes. As Newsday reported:

“If there's any chance at all of the presidential veto being upheld by either the Senate or Congress, I think you'll find that Bush will veto it and the new rules put out by the FCC will stand,” Murdoch said. “I give that a 60-40 chance.”

(“Murdoch,” 2003, p. A59)

The Bush administration was placed in a precarious position, though. If President George W. Bush were to veto efforts to roll back the rules, which critics contended would be motivated in part by his positive relationship with big media that have supported his campaigns, including the war on Iraq, then he would have looked like an “opportunist more concerned with aiding the bank accounts of his billionaire benefactors than representing the interests of the American majority” (McChesney & Nichols, 2003, p. 13).

Big media have the resources and the power to influence politicians, and, at the same time, are able to keep the reform movement off of the front page and the network news. When Big Media do cover themselves, they excuse media concentration and delegitimize criticism with “sexy” metaphors that equate media mergers with mating rituals (see Bettig & Hall, 2003). Mainstream media coverage will continue to be a challenge that media reformists must face if the coalition is not held together, for the pressure from a diverse group of political actors and a large number of citizens could keep media reform on the public agenda.

Another goal of Free Press was to increase advocacy efforts in Washington (http://www.mediareform.net/about.php), and this has seemingly been met, as Free Press and the other organizations involved in the protest against FCC modifications of the ownership rules advocated write-in and email campaigns to the FCC, and then a call-in campaign to appeal to legislators to roll back the FCC’s rule changes. However, the 39% compromise, included in a spending bill approved in January 2004, doused further discussion of the NTSO rule. Activists, such as Gene Kimmelman of the Consumers Union, saw the compromise as “a backroom deal” (in Ahrens, 2003, p. A19). Josh Silver (2003), in an email to the Free Press activist listserv, stated in relation to the 39%
compromise: “During the last two days, powerbrokers in Congress once again went behind closed doors, ignored the public interest, and acted on behalf of giant media conglomerates instead of democracy and the public interest.” Senator Ernest F. Hollings was quoted as stating, “The Republicans went into a closet, met with themselves and announced a ‘compromise’” (in Sanders, 2003, p. C1). One problem with such a compromise is that the rhetoric surrounding discussions of the new provision suggested that in the end, the compromise would benefit, or at least pacify, all parties, when in fact it is the network owners, News Corporation (Fox), Viacom (CBS), General Electric (NBC), and Disney (ABC) that ultimately benefit, though not as much as they had planned when the cap was 45%. The movement should continue to advocate for limits on media ownership and to spread the word that such compromises are not beneficial for democracy or the public interest goals of diversity, competition, and localism when so few multinational conglomerates control the majority of news and entertainment media outlets.

Further, it could be argued that the legislators involved in pre-decision petitions were not motivated by public outrage, but by their own concerns—media concentration makes it much harder for politicians to gain access to the media, especially if their agendas do not match the agenda of corporate owners. Thus, it would be difficult, and even undesirable, to wholly credit the movement with motivating legislators to petition the FCC, for as Amenta and Young (1999) stated, it is problematic to assign causal relationships between a movement and regulatory change because “events that happen during or after a challenge may be due to forces other than the challenge” (p. 23). Instead,
it is important for the movement to make use of politicians’ fear of media coverage marginalization and retribution to advance the cause of regulatory reform.

For the most part, the advocacy efforts and grassroots mobilization of the media reform movement in 2003 had largely occurred through the Internet, for as stated previously, media monopoly is not an issue big media wants on the public agenda. The Internet indeed holds the potential to be a democratizing force. For example, Poster (2001) asked whether the Internet can or should be viewed as a public sphere. It can, he argued, but “the question of democracy must henceforth take into account new forms of electronically mediated discourse,” for the public sphere as interpersonal relations gives way to a mediated public sphere in the electronic age (p. 105). Furthermore, he argued that the Internet “radically decentralizes…the apparatuses of cultural production” (p. 108). Different power relations exist within the realm of the Internet than with traditional broadcast media; for example, questions of who gets to speak and when differ when it comes to the Internet. Poster seems to argue that Internet communities are not only less hierarchical, for more people are able to speak and create, but also “function as places of difference from, and resistance to, modern society” (p. 111; see also Compaine & Gomery, 2000, chapter 10).

While Poster’s arguments are engaging, for it can be argued that the Internet holds the potential for resistance to mainstream commercial media and for more vibrant public debate, his dismissal of questions of access and commodification of the Internet as restricting and limiting is worrisome. While the Internet has been an effective tool for many new social movements of the 1990s and today, access issues remain a problem the movement must address. A Pew Internet & American Life Project study (2003a) found
that in 2002, approximately 41% of adults in the United States did not have access to the Internet. Another Pew (2003c) study found that “several demographic factors are strong predictors of Internet use: having a college degree, being a student, being white, being employed, and having a comfortable household income” (www.pewinternet.org/reports/reports.asp?Report=88). As McChesney and Nichols (2003) recognize, the media reform movement is in part about the lack of access to the mainstream media; thus, the movement must continue to be concerned about access to computers and the Internet, not just as an issue for the movement to tackle, but as a concern for the progression of the movement. The movement must reach those people who, as they stated, “have long felt shut out of the mainstream of American media,” including workers and people of color (p. 12). The Internet campaign may not be reaching those persons who have indeed been shut out for much too long. That is why activists must continue to hold town meetings in local communities. As McChesney and Nichols (2002a) found:

We already know that when citizens begin to entertain the notion that media can be an issue—rather than something that simply happens to us, and to our democracy—they get excited. When the political imagination is freed, the supposed apathy of the electorate can be replaced with a level of engagement that suggests the promise of U.S. democracy might yet be realized. (p. 117)

Commodification of the Internet must also be a concern, for news sites tend to not only include the same information available in print or televised form, but also include a wide variety of commercials, pop ups included. Again, mainstream Internet news media, like traditional news media, become commodities and at the same time are vehicles for
selling products. And as McChesney (1999b) argued: “Corporate dominance and commercialization of the Internet have become the undebated, undebatable, and thoroughly internalized truths of our cyber-times” (p. 136). So while the Internet has been used quite effectively for media reform mobilization and advocacy, we must continue to ask who is left out of the discussion.

Concentrating on structural reform through governmental regulation is not enough, though, for the problems created by corporate control of the means of communication remain. Though focusing on attainable legislation is a worthy goal, it does not necessarily contest the status quo, for even pre-modification rules were beneficial for corporate media owners, not the public. Though structural reform may be necessary to retain the current structure of the media, as long as the media are part of the capitalist commercial system, profit will continue to be the primary motive, and incentives for risk-taking and non-commercially viable programming, such as public affairs programming, will continue to decline. A revitalization of public broadcasting would help, but the creation of a vibrant noncommercial, nonprofit system that allows for greater citizen access and that is unencumbered by commercial and narrowly defined political interests must continue be a central goal as well.

Perhaps one reason why this need is not on the public agenda at this time is because, as McChesney and Nichols (2002b) stated, the movement needs to begin with (perceived) attainable goals, defined at this point in the movement as challenging structural regulations that benefit the corporate good but not the collective good. For example, Grossman (1997) suggested that legislation should: (a) stop the vertical integration that gives corporations the power to serve as gatekeepers and delimit
alternative viewpoints; (b) require that a portion of the franchise fees paid by cable and satellite operators be reserved to support public broadcasting; and (c) instead of granting corporations spectrum space for free, require that owners lease the airwaves and use the proceeds to fund vital public services that the marketplace does not provide. Further reforms should include the strengthening and enforcement of antitrust laws and media ownership regulation intended to protect diversity, competition, and localism. In addition, citizens need to be made aware of the ways they can become involved in the process, such as challenging broadcast licenses, as reformers in the late 1960s and early 1970s set out to do once the public was legally sanctioned to have a voice in such proceedings.

The media reform coalition that has been proposed needs to be solidified, for such a change is going to need much support, financially as well as ideologically. For example, commercial media and the business elite fear public broadcasting, for its independence can pose a challenge to the status quo (see for example Beatty, 2002). Thus, for a reform movement to achieve such a collective benefit, there is a strong need to involve many and diverse groups of people who are affected by the global capitalist media and their practices.

**Future Possibilities for Democratizing the Media**

While the media reform movement’s 2003 mobilization to stop further concentration in the media is a worthy start, much more needs to be done to democratize the media. As Herman (1992) suggested, a democratic media would: (a) “be organized and controlled by ordinary citizens or their grass-roots organizations”; (b) “aim first and foremost at serving the informational, cultural, and communications needs of the members of the public which the media institutions comprise or represent”; (c)
“recognize and encourage diversity”; and (d) “encourage people to know and understand
their neighbors, nearby and at a distance, and to act and participate in social and political
democratizing the media means sustaining a vibrant alternative media
This entails more than revitalizing the public broadcasting system, a system that
held the promise of an independent public space but has been rendered ineffective by a
“short financial leash.” Instead, Herman (1992) argued that “for real progress in
democratizing the media a much larger place must be carved out for the civic sector” (p.
27). While there are currently viable and vibrant alternative newspapers, radio, and
these media are often financially starved and reach a small audience. Activists
need to pursue ways to fund and expand alternative media, not only in the sense of more
alternatives, but also in the sense that these alternatives reach a wider and more diverse
audience. As Herman (1992) stated, activists “seeking democratization of the media
should seek first to enlarge the civic sphere by every possible avenue, to strengthen the
public sector by increasing its autonomy and funding, and lastly to contain or shrink the
commercial sector and try to tap it for revenue” (p. 30).

Thus, to achieve democratic goals, especially citizen participation in political
decision-making and citizen access to diverse information and the means of
communication, a noncommercial media sector must be established and sustained. While
this may sound promising on paper, such a system would be difficult to realize in today’s
political economy. Two obstacles immediately come to mind: How will this system be
funded, and who would control it? These questions can also be viewed in light of the
cutting of funding for the current public broadcasting system throughout the last few
decades (see Brennan, 1996). At the same time, an increase in corporate funding and commercialization threatens the autonomy of public broadcasting (see Beatty, 2002).\textsuperscript{32}

McChesney (1999b) provided several suggestions as to how a pluralistic (in terms of both multi-media platforms and in terms of diversity) noncommercial, non-profit system could be funded. One such suggestion would be to give tax cuts to citizens who donate to non-profit media, as suggested by Dean Baker of the Economic Policy Institute. Another suggestion that would be met with much resistance from the broadcasting industry would be to fund public service programming by renting the spectrum to broadcasters. In fact, in the mid-1990s, Senators Bob Dole and John McCain argued for auctioning the digital spectrum to broadcasters rather than giving away the spectrum, worth $70 billion, to commercial broadcasters. Their pleas were left unheeded, however, as the digital spectrum was handed over to the incumbents (see “No Free TV,” 2000).

This does not mean, however, that activists should give up on the idea, for if broadcasters are not meeting the public interest as a condition of their free licenses, citizens should continue to demand that the public interest be met or that the media industry should “pay” for a noncommercial system to do so. Another suggestion McChesney (1999b) recommended is a tax on advertising. Since at least the late 1990s, advertisers spend well over $100 billion a year on advertising; thus, “A very small sales tax on this or even only on that portion that goes to radio and television could generate several billion dollars” (p. 309). The problem with this suggestion, however, is that the public would end up paying

\textsuperscript{32} McChesney (1999b) argued that public broadcasting in the United States has been handicapped from its inception, as the Public Broadcasting Act of 1967 failed to provide a stable funding mechanism that allowed for public broadcasting autonomy. “In short,” he argued, “public broadcasting was set up in such a way as to ensure that it was feeble, dependent, and marginal” (p. 248). The politicization of funding as an ideological control mechanism began from the outset, as the Act required the Corporation for Public Broadcasting to answer to Congress and present annual budgets for approval.
the tax, as advertisers would charge higher prices to offset the additional cost of business. As such, this regressive tax would hit the poorest the hardest.

A concern often raised regarding funding such a system is how the system would be implemented. That is, “How can public broadcasting be structured to make the system accountable and prevent a bureaucracy impervious to popular tastes and wishes, but to give the public broadcasters enough institutional strength to prevent implicit and explicit attempts at censorship by political authorities?” (McChesney, 1999b, p. 306). This question is difficult to answer, for if one believes that such a system should be democratic, any prescriptive blueprint negates public debate over how such a system should work. Nonetheless, while “There is no one way to resolve the organizational problem, and perhaps an ideal solution can never be found,” McChesney (1999b) suggestions that “there are better ways.” For example, directors could be elected by the public rather than appointed as are FCC commissioners, and by establishing “a pluralistic system, with national networks, local stations, community and public access stations, all controlled independently,” the problems of “bureaucratic ossification” and “government meddling” could be avoided (p. 306).

One such model for public access to noncommercial programming is Cape Cod Community Television, a public access channel in Cape Cod, Massachusetts. King and Mele’s (1999) ethnographic study of this public access channel provides evidence of a vibrant and viable alternative to commercial media. King and Mele (1999) focused not on the content of the public access channel, but rather on how production “reveals the critical potential of public access to counter the hegemony of mainstream television” (p. 605). One could add to this the critical potential to counter the effects of the
commodification of news, for public access allows for non-commercially viable media products and access that advertising suppresses. What the authors want to counter as well is the notion that the public sphere should only include discourse about political issues or the common good—the process of production allows for people to critically question what they see on television and allows the audience and participants in the project to view alternative programming and viewpoints, which may lead to greater tolerance for multiple viewpoints and collective change as people feel more connected to the community. The authors suggest that the public sphere should include “meaningful action on the part of local citizens from various backgrounds in a medium otherwise dominated by commercial and corporate interests” (p. 605).

Unfortunately, such projects are quite rare in today’s political economy, for purchasing and maintaining the equipment can be quite expensive. This particular project was funded through a deal the municipality made with the cable company: In exchange for a cable license, TCI Cablevision agreed to fund the non-profit public access center for a ten year period (King & Mele, 1999). This provides hope for those activists interested in media reform: If it would be possible to obtain funding for such access centers from either cable companies, broadcasters, or some other source, a noncommercial media system that involves citizens as producers of media content that is beneficial to their needs is feasible. That way, neither the market nor the government would necessarily regulate this media system; rather, the community would, ideally, collectively decide how to regulate the system to meet the community’s needs. While the problem of access to reliable information may persist, public access would more likely meet the needs of the community. Furthermore, it seems that if citizens are motivated to create and produce
their own news programs, it is likely that they will be motivated to take the time necessary to seek out and investigate issues and events that interest them. The persistent problem, however, is having enough time and resources to do so, which again demonstrates the need for stable funding of a noncommercial system.

This is not to suggest that the media reform movement is not concerned with advancing the civic sphere and alternative media; to the contrary, as previously mentioned, McChesney and Nichols (2002b) suggested tax credits for those persons who support alternative media. However, they also argue that structural reform “is mandatory if we are serious about addressing the crisis of democracy in the United States” (p. 133). With such a strong reliance on government intervention, the movement takes the risk of losing sight of the need to promote alternative media as an alternative to commercial media. The movement should encourage citizens to not only support alternative media financially, but also to become involved in creating such media. As Adams and Goldbard (1989) argued, media literacy is essential for “transforming the media from threats to democracy into tools for democratic change” (p. 36). Media literacy includes knowledge of how media is made and how to make media, which would demystify media production and allow citizens to become participants in the media system rather than primarily consumers of media products. The teaching of media literacy should start as early as elementary school and remain a life-long project. Time to participate in media making is an issue that needs to be considered, though, for participation requires time and commitment (see for example Alperovitz, 2004).

Further, the focus on structural regulation, while seemingly attainable, does not confront the negative effects, utopian rhetoric, and continuous spread of neoliberal global
capitalism, often equated with democracy. While media reform is an essential element for social change and citizen access to the policy-making process, the movement must also fight for social and economic justice in the long-term. Media reform can bring groups and organizations together to engage a common purpose, but the larger issue at stake is a neoliberal global capitalism that places profits above people and the environment; that creates “rapidly increasing social inequalities” that “obscenely demonstrate the truth of Marx’s contention that freedoms of the market inevitably produce ‘accumulation of wealth at one pole’ and ‘accumulation of misery, agony of toil, slavery, ignorance, brutality, mental degradation, at the opposite pole’”; that “Instead of humanity…offers us stock market value indexes, instead of dignity it offers us globalization of misery, instead of hope, it offers us emptiness, instead of life it offers us the international of terror” (see Harvey, 1999, pp. xv-xvi).

Reform and Beyond

While a movement is clearly more than one organization, Free Press continued to serve as an organizing and mobilizing force for the media reform movement with a 2005 meeting in St. Louis, Missouri. Over 2,000 people registered for the 2005 National Conference for Media Reform; in fact, the conference sold out, and hundreds of people were, unfortunately, turned away as the conference facility could not accommodate any more participants (see Sorkin, 2005). The organization seeks continued engagement with other organizations working toward media reform, as well as groups and organizations affected by the current state of the mainstream media, including labor, environmental, civil rights, and women’s rights groups, to build a strong coalition to attempt to challenge the power and wealth of the few transnational conglomerates using policy as its primary
tool. These corporations have the power and wealth to lobby Congress and regulatory agencies such as the FCC while the groups listed above struggle in competition for recognition and redistribution. Media reform, however, can serve as a platform that combines the energies and resources of a diverse array of individuals and groups affected by a media system dominated by corporate interests. As McChesney and Nichols (2002a) argued:

> Even in these days of right-wing Congressional hegemony, it is important to remember that progressive religious denominations, consumer groups, student organizations, civil rights and women’s rights coalitions, the labor movement, farm groups, prison-industrial complex activists, and foreign policy critics together provide a powerful grassroots base from which to pressure for change. (pp. 129-130)

Such a coalition is crucial, for the challenges the media reform movement faces, now and in the future, require a solid coalition to contest corporate welfare and to demand democratization of the media.

However, attempting to open up space for vibrant democratic discourse within the confines of the commercial media system through state regulation is a start, but clearly not enough, in part because the state as a site of struggle is a field tilted toward elite interests. An alternative media system that allows for public access and vigorous debate must be a primary goal for the media reform movement as well. Moreover, let activists not forget the broader picture: The global capitalist media system contributes to greater inequalities than media reform through government regulation can attempt to begin to address, for even access to alternative media cannot lead to democratization of public
spaces if survival is a constant challenge for a large portion of the U.S. population and an even greater proportion of the global population.
While I recognize that structural regulation may be necessary in the short-term, democracy needs to be redefined before the media can truly become democratized. The current U.S. political structure is based primarily on liberalist notions of democracy, or “the assumption that individuals are mostly motivated by self interest rather than any conception of the common good, and that they themselves are the best judges of what this self-interest entails” (Dryzek, 2000, p. 9). In general, liberal politics, according to Dryzek, is “mostly and properly about the reconciliation and aggregation of predetermined interests under the auspices of a neutral set of rules: that is, a constitution” (p. 9). For Young (2000), this “aggregation model of democracy” is rife with problems, as individual preferences are stressed to the detriment of “political co-ordination and co-operation.” As such, the aggregation model “lacks any distinct idea of a public formed from the interaction of democratic citizens and their motivation to reach some decision” (p. 20). To advance public participation in political decision-making, democracy must move beyond tallying votes to promoting public discourse that allows citizens to explore, discuss, question, and debate political and social issues that affect them and solutions to the problems they define as significant. To create such a system, political equality and inclusion must become the norm rather than the ideal. In this chapter, I attempt to begin to redefine participatory democracy by revisiting and rethinking Jürgen Habermas’s notion of the public sphere.
Further, the short-term goals of media ownership reform via the state, while seemingly necessary to either decrease concentration or stabilize the current media structure, should be matched with long-term goals of social and economic justice. For genuine change, we must consider the need for alternative economic models that focus on social justice and are rooted in a radical participatory democracy. Indeed, capitalistic practices and effects are antithetical to the goal of participatory democracy: collective decision-making in the interest of the collective good.

**Redefining Democracy: The Public Sphere**

Not only does neoliberalism empty the public treasury, hollow out public services, limit the vocabulary and imagery available to recognize anti-democratic forms of power, and narrow models of individual agency, it also undermines the critical functions of any viable democracy by undercutting the ability of individuals to engage in the continuous translation between public considerations and private interests by collapsing the public into the realm of the private. (Giroux, 2004, “Cultural studies”)

The notion that democracy is merely the aggregation of votes is obviously problematic, particularly when commercial interests have captured the policy-making process and when political, economic, cultural, and social issues have become privatized. One way to conceptualize participatory democracy is through a revitalization of the notion of the public sphere. In his text, *The Structural Transformation of the Public Sphere*, Habermas (1962) described the public sphere as a realm where “private people come together as a public” (p. 26). He idealized a bourgeois public sphere that criticized and challenged the state and sought to “engage [public authorities] in a debate over the general rules governing relations in the basically privatized but publicly relevant sphere of commodity exchange social labor” (p. 26). This sphere, realized in the coffee houses and salons of the eighteenth century, critically debated political and economic issues and
disputes. This public sphere included a sense of “equality;” that is, the public sphere “preserved a kind of social intercourse that, far from presupposing the equality of status, disregarded status altogether” (p. 36). In these debates, the “laws of the market were suspended as were laws of the state” (p. 36). Thus, the public sphere was viewed as autonomous, presumably free from political and economic pressure. A public sphere can be realized when citizens “confer in an unrestricted fashion—that is, with the guarantee of freedom of assembly and association and the freedom to express and publish their opinions—about matters of general interest” (Habermas, 1964/1979, p. 198). In sum, the public sphere can be viewed as a mediating force between the state and civil society.

Habermas (1962) also argued that the public sphere relies on universal access: “A public sphere from which specific groups would be eo ipso excluded was less than merely incomplete; it was not a public sphere at all” (p. 85). Historically, however, to gain access to this sphere, education and ownership of property was necessary. Even more restrictions occurred with the rise of commercial media. The media are businesses, and with advertising as their primary focus and source of revenue, information became homogenized and commodified. Advertising most especially changed the way people view the public sphere, giving authority to commodities as if this were natural. In fact, Habermas (1962) posited: “Because private enterprises evoke in their customers the idea that in their consumption decisions they act in their capacity as citizens, the state has to ‘address’ its citizens like consumers” (p. 185). The commercial media and their advertisers are not only businesses that treat citizens as customers, but also ideological forces that naturalize the commodification process (see Horkheimer and Adorno, 1944/2000).
Summarizing Habermas’ ideal public sphere, Fraser (1997) succinctly explained: [A]t one level, the idea of the public sphere designated an institutional mechanism for ‘rationalizing’ political domination by rendering states accountable to (some of) the citizenry. At another level, it designated a specific kind of discursive interaction. Here the public sphere connoted an ideal of unrestricted rational discussion of public matters. The discussion was to be open and accessible to all; merely private interests were to be inadmissible; inequalities of status were to be bracketed; power was to be excluded; and discussants were to deliberate as peers. The result of such discussion would be ‘public opinion’ in the strong sense of a rational consensus about the common good. (p. 72)

It should be noted that Habermas admitted that the “full utopian potential of the liberal model of the bourgeois public sphere was never realized in practice” (in Fraser, 1997, p. 72). As Fraser (1997) pointed out, access was limited, as women and people of color were excluded from the deliberations. The “sharp distinction” Habermas presumed existed between the state and the market economy was also problematic, for they became intertwined once the bourgeoisie entered the state as public officials. And, Habermas suggested, once a “nonbourgeois strata gained access to the public sphere” society became “polarized by class struggle” and thus too fragmented to achieve a common good through reasoned debate (Fraser, 1997, p. 72). Furthermore, with the rise of the “welfare state mass democracy” the state and society “became intertwined; publicity in the sense of critical scrutiny of the state gave way to public relations, mass-mediated staged displays, and the manufacture and manipulation of public opinion” (p. 73). Under such
conditions, the public sphere lost its purpose and power to criticize the state and influence political decision-making.

As Fraser (1997) explained, Habermas’ idealized and perhaps mythological public sphere is problematic for several reasons and needs to be redefined. First, it assumes that “social equality is not a necessary condition for political democracy” (p. 76). Habermas contended that participants within the public sphere would bracket “inequalities of status,” such as birth and wealth, and “speak to one another as if they were social and economic peers” (in Fraser, 1997, p. 77; emphasis added). Thus, he viewed equality as unnecessary in the public sphere, for members could “transcend,” at least during deliberations, economic inequalities. Obviously, within a capitalist economic structure, members of society are not equal in power or wealth. But economic inequality functions as a barrier, restricting access to the debate and contributions to the discussion as well as time to participate. This includes access to the commercial media “that constitute the material support for the circulation of views” (p. 79). Marginalized social groups clearly lack access to a media system that is privately owned and motivated by profit.

Fraser (1997) also argued that structural elements of discursive interaction within the bourgeois public sphere are exclusionary. Even when all members of society are invited to participate, the style, decorum, and privileging of certain forms of argument, such as “rational” argumentation that favors white males, perpetuate social and political inequality (p. 78). For example, Young (2000) asserted that contributions within the public sphere can be dismissed simply by how something is said. Instead, the public sphere should incorporate not only rational argument but also additional modes of communication that are often utilized by women and minorities, such as greeting, or
public acknowledgement, rhetoric, and narrative. Further, as Dryzek (2000) noted, for deliberation to succeed, members of the public sphere must not be coerced or threatened. If they are, then political equality is rendered null, as some members of the public have unequal power that can be used to usurp participation and deliberation in the public sphere.

Second, Habermas’ public sphere assumes that “the proliferation of a multiplicity of competing publics” is undesirable in a democracy (Fraser, 1997, p. 77). Rather, a “single, comprehensive public sphere” was seen as always more desirable than “a nexus of multiple publics” (p. 77). While Habermas contended that the fragmentation of the public sphere is detrimental to democracy, Fraser (1997) argued that quite the opposite view is true. For marginalized groups, “subaltern counterpublics” encourage the discussion of issues important to the group but is generally ignored by the mainstream media and politicians. Within these counterpublics, marginalized groups can voice their concerns and proposals for solutions to the problems that they face. The proliferation of such publics “means a widening of discursive contestation, and that is a good thing in stratified societies” (p. 82). These publics bring to the debate various perspectives, experiences, and ways of viewing the world that allow citizens to not only criticize the state and offer solutions to social problems, but also challenge others to reflect upon their own presuppositions and arguments. On the other hand, Laclau and Mouffe (1985/2001) argued that though marginalized groups should be recognized and autonomous, a project or goal or unifying force or, in Laclau and Mouffe’s words, chain of equivalence, or, in Hall/Gramsci (see Hall, 1986a) terms, alliance, that could bind these groups should include the twin goals of contesting the dominant neoliberal-neoconservative discourse
and redefining democracy in such a way that it is open to negotiation and participation. This project also needs to contest the hegemonic “common sense” articulated by the right through a war of position—rearticulating and delimiting the meanings of concepts such as liberty, justice, equality—and, at the same time, reject the notion of the “masses” by promoting pluralism in terms of a radical democracy.

Third, Habermas’ notion of the public sphere assumes that discourse within the public sphere “should be restricted to deliberation about the common good” (Fraser, 1997, p. 77). As Young (2000) explained, understanding deliberation as “seeking a common interest or common good regards differences of identity, culture, interests, social position, or privilege as something to be bracketed and transcended in public discourse and decision-making” (p. 42). The notion of a common good can be exclusionary, particularly under conditions of social inequality (Young, 2000). Under such conditions, the dominant group has the power to define the common interest to the detriment of other voices and concerns. But, as Young (2000) argued, privileging a common good “in the sense of values and interests we all agree we share…is liable to narrow the possible agenda for deliberation and thereby effectively silence some points of view” (p. 43). Furthermore, debates over difficult issues would be avoided “for the sake of agreement and preservation of the common good” (p. 44). Thus, rather than advancing participatory democracy, the proliferation of a consensus can hinder discourse and limit the number of voices participating in the public sphere. And, as Dryzek (2000) noted, “In a pluralistic world, consensus is unattainable, unnecessary, and undesirable” (p. 170). This does not mean, however, that agreement is disadvantageous when public spheres include the normative ideals of inclusion and political equality and political decision-making is made
with the collective in mind rather than the aggregation of “self-interested” individuals. Under such conditions, debate over solutions to problems could lead to resolutions that all members of the society support.

Finally, Habermas’ explanation of the public sphere assumes that for such a sphere to properly function, “a sharp separation between civil society and the state” is required (Fraser, 1997, p. 77). Fraser (1997) argued that this separation promotes “weak publics,” or “publics whose deliberative practice consists exclusively in opinion formation and does not also encompass decision-making” (p. 90). While opinion formation is an important end in itself, it cannot influence decision-making within the state unless its power is legitimized. When the state is a site of struggle but the field is tilted, change is difficult to achieve. Dryzek (2000), on the other hand, argued that the civil society sphere must be established, developed, and sustained to affect change because once the state co-opts groups struggling for change, such as the workers’ rights movements, the movement becomes benign. Furthermore, once a group “leaves the oppositional sphere to enter the state then dominant classes and public officials have less to fear in the way of public protest” (p. 87). Thus, the public sphere should challenge the state from the outside rather than from within. This is a worthy goal, but it cannot come to fruition without changes to the state as well. As Young (2000) succinctly explained:

Though civil society stands in tension with state institutions, a strengthening of both is necessary to deepen democracy and undermine injustice, especially that deriving from private economic power. Each social aspect—state, economy, and civil society—can both limit and support the others. Thus, social movements
seeking greater justice and well-being should work on both these fronts, and aim to multiply the links between civil societies and states. (p. 156)

In this sense, the public sphere should function not only as an oppositional force that criticizes and challenges the state, but also as a mediator between citizens and the state. That is, citizens should deliberate and debate collective problems and their possible solutions with an eye toward influencing the state and its policies (Young, 2000).

However, if the public sphere (or spheres) is not acknowledged by the state, change becomes very difficult to achieve.

For democracy to function productively, a vibrant, inclusive public sphere, or spheres, as Fraser (1997) suggested, should be developed and maintained. However, these authors seem to overlook the importance of the news media in democracy and how commercialization of the news contributes to the deterioration of utopian notions of public spheres. Indeed, as a Pew Internet & American Life Project (2003b) found, “most voters still look to television as a principal source of campaign news: two-thirds did so in the 2002 elections, down only slightly from 2000, when 70% cited television” (www.pewinternet.org). Thirty-three percent of the respondents listed newspapers as a primary source, and 7% cited the Internet as their primary source of campaign news. However, if people rely on the broadcast news media for information about their local, state, and national government, but the news media and their owners regard the public as consumers rather than citizens, a public sphere that is inclusive and encourages political equality cannot be met, for while people are being entertained by the news media, political decisions are being made behind closed doors (see chapter three).
Further, those persons with wealth have greater access to politicians and political debate; in fact, as previously discussed, mega-media firms have infiltrated and corrupted the policy-making process (Bagdikian, 2000). So while Dryzek, Fraser, Habermas, and Young recognize, in differing degrees, the need for inclusion in the public sphere, one must also consider that citizens are barred access to the means of communication, and furthermore, what is included in the news—that is, how the news is packaged or framed and which stories, facts, and quotes are incorporated into the news—is decided upon by a small number of people in proportion to the number of American citizens. As well, even if modes of expression in addition to rational argument are accepted into the public sphere, people who are uninformed due to the lack of comprehensive news about political issues in mainstream media will still have a difficult time participating in public debate. Indeed, as Horwitz (1989) suggested, broadcasting is a “monologue,” a mode of communication in which the audience has little say and, because of the great costs associated with broadcasting, the audience has little access, while the public sphere and the idealistic “marketplace of ideas” suggest “dialogue.” To critique or challenge the state, as Dryzek and Habermas contend is an important element of the public sphere, citizens need to be informed about the issues and have forums by which to discuss and debate issues and solutions. But when political debates are framed as “he said, she said” or simplified through political advertisements, and when elections are reported like horse races in mainstream media, the public strategically remains largely unaware of pertinent social, political, and economic issues and political debate remains largely a function of the power elite.
When the news includes entertainment or fluff rather than critique or even discussion of important political, social, economic, and cultural issues, such as the decline of the social welfare state and the proliferation of racism, sexism, classism, and homophobia, deliberation or debate succumbs to superficial or superfluous discussion of celebrity, sex, and violence (as does the politics that follow from such discussion). For example, rather than present the arguments of the antiglobalization protestors in Seattle in 1999 and in Miami in 2003, the news media focus on the “specter of violence.” Conflict sells papers and news programs; antiglobalization discussions are viewed as boring and thus not commercially worthy of presentation in newspapers or broadcast news, and at the same time, are seen as detrimental to capitalist interests (see Bettig & Hall, 2003).

Participatory decision-making, which requires in part the diffusion of political and economic power, is difficult to achieve when the means of communication are in the hands of a few large corporations that aim to minimize risk and maximize profit. Minimizing risk includes avoiding critique of the media monopoly and the devastating social, cultural, and environmental effects of capitalism and the perpetuation of neoliberalism. And with concentration in the news media, the common good becomes defined by a small number of people, and public debate is often marginalized or ridiculed, as was often the case with mainstream broadcast media coverage of the war in Iraq, for example.

**The Role of the Media in a Democracy**

To advance radical participatory democracy, a dynamic, all-embracing public sphere, and a critical pedagogy that treats citizens as political agents rather than passive consumers, the media should fulfill three normative roles: They must attend to a diverse
range of ideas and perspectives, inform the citizenry, and serve as a watchdog on
government and big business.

_Diversity_. An ideal public sphere is pluralistic, as its members are diverse in terms
of perspectives, experiences, interests, needs, and goals. The media must be accessible to
the many publics so that the voices of marginalized groups can be heard by all members
of society. In turn, it should be the media’s responsibility to be sure that a diverse range
of viewpoints are expressed. As it is now, the media tend to dichotomize social and
political issues, pitting two narrowly defined points of view against one another,
providing conflict that mainly entertains rather than fully informs. Instead, the media
must actively search out various discourses so that members of the citizenry become
aware of social, political, and economic issues and can choose to become active speakers
or listeners in these debates.

Furthermore, the media must allow the many publics to speak for themselves.
Currently, the structure of the media is such that those with power and wealth have
greater access the media and can publicize their interests. This can create the illusion that
all citizens share the same “common goal,” which, as discussed, is deceptively erroneous,
particularly when the message is one of individualism and self-interest rather than
collective decision-making and problem-solving. The media also tend to rely on
“experts” to disseminate ideas and “solutions” to social and political problems, and these
sources tend to be neoliberals whose goals are to deconstruct the welfare state and to
privatize everything. By cultivating the sense that only experts are capable of discourse,
the media tend to foster the silence of the majority, and citizens may feel alienated from
the democratic process.
**Informing the Citizenry.** Another tenet of the classical libertarian theory of the press is that the media’s primary responsibility should be to inform the public so that its members have the information necessary to participate in the democratic decision-making process. However, media owners have found that entertainment is much cheaper than public affairs programming, and thus news has become “infotainment,” filled with sensationalistic stories that may make readers or viewers pause but does little to advance knowledge of events and their consequences. Even when citizens attend to the news, they are still largely left unaware of multiple perspectives regarding the many political and social issues that affect them, their neighbors, and the populace. If the media attend to and actively seek out various points of view, however, they come closer to informing the public about the needs, interests and issues that are being, or should be, deliberated. Consequently, the concerns of marginalized groups would be added to the political agenda.

Additionally, with their attention to “objective” news writing, journalists systematically avoid interpretation and in-depth analysis of political and social concerns and the consequences of the proposals that are advanced to solve problems citizens confront daily. The media should be open to not only various perspectives from diverse sources, they should also develop and maintain vibrant debates. Editorial pages should be filled with the voices of the many, and the broadcast media should solicit viewer comments on issues defined by public deliberations and participation. Ideally, citizens would be the creators of media rather than transnational conglomerates.

**Serve as a Watchdog.** *Questioning Power Relations.* The media must be free from pressure from the government, but now also big business, so that they can critically
challenge and evaluate U.S. political and economic systems and the relationships between them. Their autonomy is crucial so that citizens, including journalists, have a place to voice their concerns without fear of retribution or suppression. Rather than perpetuate the status quo, the media should critically question the dominant capitalist ideology and power structure. And rather than only catering to the needs of the dominant political and business elite, the media should serve the needs of the public, giving its members access to the means of disseminating their deliberations. By promoting and encouraging a vibrant public sphere and a public pedagogy that stresses critique, agency, and possibilities for resistance, the media could also help marginalized groups gain access to the policy-making process and diminish the power of “corporate culture” (Giroux, 2002, p. 429).

In sum, mass media, particularly the news media, are crucial components for the progression toward a social structure based on participatory democratic ideals and public spaces that allow “individuals and groups” to “affirm and act on the values of critical engagement and civic responsibility to deepen and expand the values and practices of a substantive democratic society” (Giroux, 2002, p. 432). The media should be accessible to all citizens so that their voices can be heard and so that they can contribute to the policy-making process. The media should also serve the informational needs of the U.S. public so that they are aware of the deliberations that are occurring not only in Washington, but also locally and globally. And ideally, political and economic decisions would be made at the local level. As noted in the article, “Ten Principles for Sustainable Societies,” “The time has come to create healthy, sustainable societies that work for all” (p. 50). One essential element of sustainability is localization, for “[g]reater local
ownership, political authority, and self-reliance means less external dependence and vulnerability to exploitation” (p. 52).

Once citizens are invited to participate in the debates, deliberating the issues that affect them and how they are affected, they then have the opportunity to decide to participate in the debates as active speakers and/or listeners, for as it is now, citizens are often treated as merely passive receivers and consumers. As Hall (1986b) stated, “The silent majorities do think; if they do not speak, it may be because we have taken their speech away from them, deprived them of the means of enunciation, not because they have nothing to say” (p. 53). As such, we see a “growing sense of insecurity, cynicism, and political retreat on the part of the general public” (Giroux, 2004, “Cultural studies”), for citizens are not invoked in the policy-making process or decision-making deliberations. Further, the media should function as watchdogs, questioning and criticizing state and, today, corporate authority without the fear of flak. Ideally then, the media should engage citizens to “push against the oppressive boundaries of gender, class, race, and age domination” and “critically engage knowledge as an ideology deeply implicated in issues and struggles concerning the production of identities, culture, power and history” (Giroux, 2000, p. 50). Radical changes to the media must be made in order for the media to fulfill these normative roles, for the commercial media system will continue to perpetuate profit over public interest.

**The Need for Democratization and Economic/Social Justice**

If radical social change is the goal, activists should not only promote an alternative media system, as discussed in chapter six, and a democratic political system, but also seriously consider the need for alternative economic models that focus on social
justice and are rooted in participatory democracy. For example, in their 1991 texts, *The Political Economy of Participatory Economics* and *Looking Forward: Participatory Economics for the Twenty First Century*, Michael Albert and Robin Hahnel propose an alternative to capitalism, called Participatory Economics, or Parecon for short. While I hesitate to prescribe a blueprint for change, as it would be contradictory to the ideals of a participatory democracy, the Parecon Project provides hope for the possibilities of an alternative economic system—alternative to the economic models in place and alternative to those models that have failed—that is democratic at its core. For economists that doubt the efficacy of the participatory economic model, Albert and Hahnel (1991b) provided detailed mathematical formulas in their text, *The Political Economy of Participatory Economics*, that present a cost/benefit analysis of their model in terms an economist can grapple with. For this study, cursory descriptions of their model and the benefits of a participatory economic system are presented to encourage dialogue among not only economists but also the many grassroots organizations and formal organizations that are struggling for social and economic justice. It is imperative that media scholars join the struggle, for the communications system not only contributes to the devastating inequalities found in capitalist societies, but can also be used to usher in a transition to a participatory democratic political economic system.

**Looking Forward**

Albert and Hahnel (1991a) began by addressing those politicians and economists who argue that the fall of the Soviet Union demonstrated that socialism does not work and therefore capitalism is the only viable economic model. This is problematic, for if we define socialist values as “egalitarian and participatory values,” such terms certainly do
not describe the so-called “socialist” economies of China, the former Soviet Union, and Eastern Europe. Albert and Hahnel (1991a) labeled such economies “coordinatorism,” for rather than capitalists determining the production, consumption, and allocation of resources, “managers, planners, engineers, and other intellectuals define work, using either central planning or markets for allocation” (p. 5). Workers in both capitalism and coordinatorism do not manage their own lives—they “carry out tasks defined by others” (p. 5). Indeed, “Economic pundits claim that hierarchy, inequality, and markets or central planning are inevitable,” for most people are seen as followers incapable of making political and economic decisions (p. 11). On the contrary, Albert and Hahnel (1991a) argued that “people can quite effectively manage their own economic affairs, and that they can do so equitably, humanely, and efficiently” (p. 11; emphasis in original). This is the basis of their participatory economic model, an assumption that certainly challenges the myths elites perpetuate to maintain a status quo that benefits them at the expense of the larger population. For example, the Horatio Alger myth works to defuse resistance to the current U.S. economic system, but the reality is a gaping class inequality that has only increased since at least the 1970s (Krugman, 2004).

The United States is the richest country in the world, yet poverty and hunger remain. As Armas (2004b) reported, a Working Poor Families Project study found that there are 39 million working poor: “One in every five U.S. jobs pays less than a poverty-level wage for a family of four” (p. A7). With such a wage, the working poor can barely put food on the table or maintain housing. According to the Agriculture Department, in 2003, 12 million families worried about whether they could afford food, and about 4 million of those families experienced hunger (Gersema, 2003). As for housing, the
National Low Income Housing Coalition found that, “In only four of the nation’s 3,066 counties can someone working full-time and earning federal minimum wage afford to pay rent and utilities on a one-bedroom apartment” (Armas, 2004c, p. A9). In many of these counties, a person would have to work 80 hours a week to afford rent and utilities for a two-bedroom apartment.

The Census Bureau reported that the number of people in the United States “living in poverty and without health insurance rose for the third straight year in 2003” (Armas, 2004a, p. A9). It found that in 2003, almost 36 million people lived in poverty and 45 million lacked health insurance. In 2002, the Census Bureau found that the top 20 percent of households accounted for 50 percent of total U.S. income while the bottom 20 percent accounted for just 3.5 percent (Strope, 2004). In 2002, the mean household income for the top 20 percent was $143,743 while the mean household income for the bottom twenty percent was $9,990. Compare this to 1967, when the top 20 percent averaged $81,883 and the bottom 20 percent averaged $7,419 (Strope, 2004). If we look wealth distribution by race, the Pew Hispanic Center found that in 2002, the median net worth of white households ($88,000) was 11 times more than the median net worth of Hispanics and more than 14 times more than the median net worth of blacks (“Wealth Gap,” 2004). In 2003, the pay gap between CEOs and employees was 301:1 (“Highest-paid Execs,” 2004). These statistics certainly demonstrate that the gap between the haves and the have-nots has grown exponentially.

CEOs are also being compensated for outsourcing jobs. A study by the Institute for Policy Studies and United for a Fair Economy found that the average compensation for CEOs of the 50 companies that outsourced the most service jobs rose 46 percent in
2003 as compared to the 9 percent increase for the CEOs of the biggest 365 businesses. The average CEO pay for the 50 top outsourcing companies was 10.4 million dollars, over 2 million more dollars than the average pay for CEOs of the biggest 365 companies (“Highest-paid Execs,” 2004). While 39 million workers can barely put food on the table, CEOs are benefiting from domestic unemployment and global exploitation. The combined net worth of the members of the 2004 Forbes 400 list was $1 trillion, while millions of Americans worry about hunger. This state of affairs is preposterous in a society that claims to be the best and only way for humans to live.

The participatory economic model puts forth the possibility of “an economic system that is efficient, equitable, and ecologically sound based on the self-organization and collective self-management of workers and consumers” (Albert & Hahnel, 1991a, p. 8). The model begins with the individual workplace to demonstrate the need for the decentralization of economic decision-making. Using a hypothetical publishing house as an example of a participatory workplace, Albert and Hahnel (1991a) proposed implementing workers’ councils that would eliminate hierarchy by insuring that workers are involved in democratic decision-making at all levels. Unlike capitalist corporations, each worker would have an equal voice and vote in decisions that affect him or her, workers would be involved in economic decision-making, such as annual budgets and output goals, and members of different social groups would be allowed to express their needs and interests. Second, balanced job complexes are necessary to eliminate job inequalities. Real workplace democracy “require[s] that each worker has a job complex composed of comparably fulfilling responsibilities” (p. 19). Rather than some people doing the rote work and others doing creative and empowering work, all workers would
do both the rote work and the empowering work. In the hypothetical publishing house, the editor would also answer phones and sweep, and so on. This does not mean that everyone does everything, but that my empowering tasks should be roughly equal to your empowering tasks: “Everyone does a unique bundle of things that add up to an equitable assignment. Instead of secretaries answering phones and taking dictation, some workers answer phones and do calculations while others take dictation and design products” (p. 20; emphasis in original). To prevent class stratifications, there would need to be balance not only within a workplace but also between workplaces. If working in a publishing house is more desirable than working in a factory, then workers from the publishing house would spend time working in the factory while factory workers would work in the publishing house. Technology would be used to eliminate as much of the rote work as possible, leaving more time for workers to focus on the empowering work and much more free time. And as Alperovitz (2004) argued, time is essential to allow citizens to participate in “authentic democratic processes” (p. 28).

This does not mean that people are uniform with the same interests and tastes and talents. Rather, Albert and Hahnel (1991a) suggested that all people “are quite able to participate in making decisions and managing [their] lives” (p. 23). This necessitates implementing an education system that stresses the skills and knowledge necessary for “playing a creative, self-managing role in society and in the special fields of their choice” (p. 30; emphasis in original). Assignments, then, would be designated with individual skills and tastes in mind and balanced job complexes. They recognize that people do not all do things equally well, but they do need to learn “how to make plans, coordinate activities, and weigh alternatives” (p. 24). The arguments that some people are just “too
dumb” to participate in decision-making and that more people are meant to be followers than leaders “rationalize an economic structure that forces most people to fill debilitating roles so others can rule” (p. 25).

Further, diversity in the workplace is encouraged and celebrated, and representation essential. Albert and Hahnel (1991a) affirmed that employees in a participatory workplace “recognize that the cultural diversity that members of different social groups bring to work should be allowed to express itself in the context of job complexes balanced for empowerment and agreeableness” (p. 310). Optional caucus meetings could be initiated to ensure that minority interests are expressed, heard, and acted upon, for workplace caucuses would “have autonomous rights to challenge arrangements they believe are sexually or racially oppressive” (p. 31).

Some basic criticisms of this model include charges that there would be too much fragmentation, too much time would be taken training people in multiple positions, and too many people are unmotivated. To answer the first change, Albert and Hahnel (1991a) argued that “having many responsibilities makes work life richer and more diverse and is therefore positive, not negative” (p. 34). Rather than many people doing rote, boring jobs and fewer people doing exciting, challenging work, balanced job complexes allow everyone to share in the empowering work while taking his/her turn doing the debilitating work. Further, the time taken to train people would be beneficial in the end, as “the mutually enforcing benefits of knowing more about each type of work, the enrichment that comes from having diverse responsibilities, and the increase in morale that accompanies understanding the whole [job] process will more than offset these additional training costs” (p. 35). Reaching one’s potential is motivating as well: “the desire to do a
good job worth doing, and, when necessary, peer pressure and the desire to keep one’s job will more than adequately ensure that people work hard” (p. 36). When we work toward the collective good rather than individual self-interest, what motivates people naturally changes.

**Concluding Remarks**

While this discussion has focused on production (Albert and Hahnel do also examine consumption and allocation, both of which are based on the same principles), any alternative economic system should democratically ask and answer what should be produced, how, where, by whom, and why it should be produced (see for example Sale, 1990). The model presented here is not the only model, and in the spirit of radical participatory democracy, its potentials should be affirmed and its possible implementation should be questioned, debated, challenged, and acknowledged. Because capitalism obviously does not insure that all citizens’ basic human needs, including informational and cultural needs, are met, a transition to a more equitable economic system is essential for achieving our full human potential. Before we can ask people to work toward changing the media system, we need to first be sure that they have their basic needs met. Before we can insist people become informed in order to make political decisions, we need to first be sure that they are educated in a system that is based on equality and encourages creativity rather than forcing teachers and students to focus on “objective” measurements. As Mosco (1996) stated, political economy has “maintained that the discipline should be firmly rooted in an analysis of the wider social totality” (p. 29). Media are one institution in this totality, and its connections to the political, economic, and educational institutions must be examined to affect genuine radical change.
The notion that there can be alternatives that attempt to eliminate the alienation and exploitation of global capitalism should continue to be explored in the name of social and economic justice. Without serious changes to the political and economic systems, corporate control of the media and the negative effects associated with such control will continue with or without changes to the structure of the media via government intervention, for media will continue to be treated, rhetorically and practically, as any other commodity. Just listen to those who control the culture industry: Alan Horn, President and Chief Operating Officer of Warner Bros., stated: “Our job is to make movies that make money for our shareholders…I like to think we are producing entertainment. These are not teaching tools. We’re providing mass entertainment for mass consumption” (in Holson & Lyman, 2002, p. C4). In the words of Horkheimer and Adorno (1941/2000), the social utility of the mainstream media is removed when the ideology of capitalism justifies the reduction of politics and art to a mere product.
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215


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