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A Million Little Burrows: New Media and New Politics

Brian Lehrer

A MILLION LITTLE MURROWS: NEW MEDIA AND NEW POLITICS

by

Brian Lehrer^{*}

Maybe you remember the movie *Good Night, and Good Luck*¹ that came out a few years ago with David Strathairn as Edward R. Murrow and George Clooney, as his producer, Fred Friendly. They took on Senator Joe McCarthy and the powers that be at CBS who were reluctant to let Murrow go too far in his anti-McCarthy crusade, lest he offend too many fraidy-cat advertisers. In conjunction with the release of that film in 2005, I was invited to appear on a panel at Lincoln Center² to relate the lessons of Murrow's courageous 1950s act of speaking the truth to the power of today's media. Much of the discussion turned out to be a lament that there are no more Murrows, and that the media environment today could not produce another Murrow. Therefore the public is doomed to suffer from a kind of information deficiency disorder and not have enough real information to make informed choices in our democracy.

But on that panel, which included an all-time media hero of mine—White House correspondent Helen Thomas—among others, I found myself in the odd position of being the most sanguine person on the stage about today's media, which is funny for me, since I cherish the rare gift of intellectual freedom that public broadcasting affords me, and I consider most of radio and television news a kind of corporate sludge, the informational equivalent of industrial waste. The other panelists took the position that the media better served people in Murrow's day than it does today, an opinion I do not agree with.

The benchmark year for this discussion was 1954, the year in which most of the film takes place, but in 1954 we had just two major networks broadcasting news—ABC had not even started yet. Almost all that news was reported by white men whose beats were to hang around the halls of power.

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¹ *GOOD NIGHT, AND GOOD LUCK*. (Warner Independent Pictures 2005).

² Brian Lehrer, David Ansen, Nick Clooney, Loren Jenkins and Helen Thomas, *Speaking Truth to Power: Media, Politics, and Government* (2005), <http://www.filmlinc.com/archive/nyff/nyff05/nyffse/speaking.htm>.

Newspapers were much more numerous, but in most cities they were held closely by one powerful family or a corporate newspaper chain.

The panelists were mostly focused on the corporatization of network news today, a real and present danger to be sure, but the focus was too narrowly placed on old media. Today, in my opinion, technology has already produced a more democracy-friendly information media than we had in 1954. It is offering a historic opportunity to reinvent the information media in a way that is much better for a diverse, self-governing people than anything in America's history, but it's up to us to seize this chance lest we let it drift toward the corporate landfill as most of what has come before it has in recent decades.

Today, we have cable TV pushing past a thousand digital channels, and HDTV about to multiply channels many-fold compared to old-fashioned over-the-air television. Most important by far, we have the Internet, which *really is* changing everything. Even cell phones are now a factor in media democracy, more so even than when I began writing this speech in May, thanks to the release of the iPhone, which makes information-gathering on the fly more possible than ever. Who here owns an iPhone? Congratulations.

Of course, things are far from perfect. There is a serious digital divide between haves and have-nots. A new generation of corporate conglomeration is underway, including Google's acquisition of YouTube—the dominant search engine buying the dominant video platform. We are quickly learning that there really can be a thousand cable channels and almost nothing on. And while there is much more, I would argue that we are in far better shape for getting the information we need to function as citizens in a democracy (and not just consumers) than we were when we had little choice but to sit back on our couches, pet the dog and open the newspaper, or wait for an Edward R. Murrow to come along with enough power earned by being *part* of the system and enough courage to make life difficult for the hand that feeds him.

Compare that with today. The impact of the nightly irreverence of Jon Stewart³ and Stephen Colbert⁴ by themselves makes this a different time in

³ Jon Stewart is the host of *The Daily Show with John Stewart*, a popular comedic news program which covers all areas of the news for the television station Comedy Central.

⁴ Stephen Colbert is the host of *The Colbert Report*, a comedic news program for the television station Comedy Central that has a distinct focus on politics and the American political arena.

television. In the blogosphere,⁵ anyone who is sufficiently motivated can be an investigative reporter, actually publish her work, and forward it around with at least a reasonable chance that it will “go viral”⁶ if it is worthy. Whether the target is Dan Rather, Trent Lott or whomever, we are now seeing constant examples of citizen muckrakers monitoring the powerful when the establishment media gets too complacent. We are seeing dynamic information-sharing communities developing around everything, on issues ranging from the truly global to the hyper-local, a million little Murrows are already hard at work.

The historic challenge for policy-makers now is to create the conditions that will maximize the potential for this new media expansiveness to contribute to a real expansion of democracy, while avoiding pressures that would serve to squelch it. The media policy decisions facing the next President and Congress will be of a new and different type than those that the Government has been faced with before. Eventually, it will be less important to figure out the Government’s relationship to the news you receive on your television than that for the news you receive on your iPhone.

Not to say that television is not still vitally important, even today more Americans get their world news from the three major networks and their local news from the networks’ local affiliates than any other sources. Stewart and Colbert, not to mention Olbermann⁷ and O’Reilly,⁸ wish they had the audience of *ABC World News Tonight*. But, in the near future, ABC and almost everything else in the old media will reach you via the new media, and the definition of which is which will become a blur. Just this spring, I was a guest on a program called *ABC News Now*. While some people with digital cable saw this on TV, much of the channel’s distribution is through video news packages delivered directly to people’s cell phones or computers.

From May 2006 to May 2007, CNN added eight million page views to

⁵ A term used to refer to the universe of blogs for which users create independent news content. See generally Editorial, *Measuring the Blogosphere*, N.Y. TIMES, Aug. 5, 2005, at Editorial Desk; A14.

⁶ A term used to refer to the exponential spread and upsurge in viewers of a popular piece of online content.

⁷ Keith Olbermann is the host of *Countdown with Keith Olbermann*, a commentary program for MSNBC on which Olbermann discusses and gives political commentary for selected news stories.

⁸ Bill O’Reilly is the host of *The O’Reilly Factor*, a commentary program for the Fox News Channel on which guests of different political views are invited to discuss current political issues.

its website.⁹ NBC/MSNBC added four million.¹⁰ During the last eighteen months, ABC's *World News with Charles Gibson* has been downloaded seventy-six million times.¹¹ *Meet The Press* is streamed online 125,000 times a week¹² and *The NewsHour with Jim Lehrer* (no relation) 600,000 video streams a month plus another 300,000 podcasts.¹³ One of the hottest podcasts on iTunes is *The NewsHour's* weekly political analysis segment, *Shields and Brooks*.¹⁴

This does not even begin to describe all of the liberal, conservative and other websites out there, from Huffington Post¹⁵ and DailyKos¹⁶ on the left, to Instapundit¹⁷ and the Drudge Report¹⁸ on the right. In June, Drudge took a sound bite of John Kerry on my radio show, promoting the Fairness Doctrine, added a still photo of Kerry to it and turned it into a 30 second YouTube video.¹⁹ This 30 seconds of my radio show with a still photo of Kerry as the only visual, was viewed 200,000 times in the first three days on YouTube. Luckily, Drudge did credit us. And it was spread not just by people going to Drudge, but by thousands of people who saw it and decided to share it with a friend. That is why YouTube's motto is "Broadcast Yourself." It does not just mean make a video of you clipping your toenails or ranting against the president, it means after viewing content you consider important, you can broadcast it yourself if you have enough e-mail addresses in your contacts file, you do not have to depend on ABC or NPR or whomever to broadcast it for you. Remember who TIME Magazine's "Person of the Year" was last year? It was You,²⁰ the "you" in YouTube and blogs and other user-generated electronic media.

⁹ David Zurawik, *TV News Attempts an Online Comeback; Networks' On-Air Loss Offset on Web*, THE BALTIMORE SUN, July 8, 2007 at 1A.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ The Huffington Post, <http://www.huffingtonpost.com> (last visited Apr. 17, 2008).

¹⁶ Daily Kos, <http://www.dailykos.com> (last visited Apr. 17, 2008).

¹⁷ Instapundit, <http://www.instapundit.com> (last visited Apr. 17, 2008).

¹⁸ The Drudge Report, <http://www.drudgereport.com> (last visited Apr. 17, 2008).

¹⁹ The video clip, with the title "KERRY FOR FAIRNESS DOCTRINE; CORRECT 'IMBALANCE'" and the description "Former Democratic presidential contender John Kerry announces he is for the return of the 'Fairness Doctrine' and 'Equal Time' provisions to correct what he sees an imbalance of opinion on the nation's airwaves! Kerry's comments aired on the Brian Lehrer show on WNYC" was removed from YouTube by the poster who added it, MDRUDGE.

²⁰ Lev Grossman, *Person of the Year: You*, TIME, Dec. 25, 2006, at 38.

Clearly, people have different opinions about what this means for democracy. *NBC News* anchor Brian Williams explains in his essays for the TIME Person of the Year package, that he sees Web 2.0 (as the user-generated web has come to be known) as a threat to democracy.²¹ I could not disagree with Williams more, but he does give three reasons for his belief: (1) he says Web 2.0 celebrates the self at the expense of the community, (2) it encourages getting your news only from people who you agree with and (3) it chops news consumption into smaller audiences in general, meaning something like his *NBC Nightly News* is not the national glue that it once was for framing the issues and images of our time.²² While I acknowledge the dangers in all three of his points, my opinion of the big picture tends the other way. For example, I think Web 2.0 contains infinite new possibilities for people to get out of themselves and build communities, to find an engaging two-way street in the sharing of news and views, and not just rely on a menu of TV pundits from whom to receive information passively. In this environment, people argue, sometimes smartly, sometimes stupidly, but they interact much more overall with the communities they belong to, continually being redefined by their curiosities and life circumstances. I do not think these views are static and paralyzing. I think the social cohesion argument for the three dominant nightly newscasts is overrated. Yes, America as one watched the Kennedy assassination, the moon landing and the Murrow-McCarthy smack-down, but these things would break through as universal images in today's media too, even without the hyper-centralized control of the past era.

As an example of old media morphing into new, I will use my own show. We are currently in the process of reinventing my WNYC show as a Web 2.0 talk show to the greatest extent possible, in the name of expanding democracy. We solicit suggestions for topics, guests and series on a "You Produce" page that we promote on the air.²³ We solicit facts, questions and links to videos the listeners think should be more widely disseminated. We have begun to engage in "crowdsourcing"²⁴ projects that enlist the listeners in acts of "pro-am journalism", as NYU's Jay Rosen calls it.²⁵ For example,

²¹ Brian Williams, *Enough About You*, TIME, Dec. 25, 2006, at 78.

²² *Id.*

²³ WNYC - YOU PRODUCE, The Brian Lehrer Show, <http://www.wnyc.org/shows/bl/youproduce.html> (last visited Apr. 17, 2008).

²⁴ See generally Daren C. Brabham, *Crowdsourcing as a Model for Problem Solving*, 14 CONVERGENCE: INT'L J. OF RES. INTO NEW MEDIA TECH., 75-90 (2008); Don Tapscott and Anthony D. Williams, *Innovation in the Age of Mass Collaboration (Wikinomics Series)*, BUSINESSWEEK, Feb. 1, 2007, available at http://www.businessweek.com/innovate/content/feb2007/id20070201_774736.htm (last visited Apr. 17, 2008).

²⁵ Press Think by Jay Rosen, The Era of Networked Journalism Begins,

more than 400 listeners this summer counted the percentage of SUV's parked on their blocks.²⁶ We then had two days of discussion on the air and online about what the results meant. We have a public comments page attached to every segment, and do a follow-up segment at least once a week based on listener responses to prior segments. We are now soliciting ideas from listeners for the next "crowdsourcing" project we might engage in together. Our next steps might include reaching out to online communities that are underrepresented in our listening audience to solicit a wider variety of democratic expression and interaction. This is not your grandfather's model of talk radio. Today's technology allows for so much more, but it is up to us and other stations to realize the democratic potential of new technology to provide better information, community-building and inclusive and compelling deliberation and debate.

But why is any of this important to media law? Well, for one thing, the debates we traditionally think of under the Communications Act of 1934 apply inconsistently or not at all to cable or the web.²⁷ Issues that get the left and right all inflamed – the Fairness Doctrine, concentration of broadcast license ownership, regulation of hate speech or obscenity, requirements for children's programming – need to be redefined in light of new technology. This is something Congress has barely begun to do.

Here is an example of how much of a dinosaur some of the old push and pull has become. A producer for NPR's *On The Media* told me that they always bleep obscenities from their broadcasts, even newsworthy obscenities, which could conceivably be defended against an FCC challenge. The obscenities are then un-bleeped from the podcast version of the show. This version is heard by a larger and larger percentage of their audience, and unregulated by the government.

For all we know, it is the same with NBC versus MSNBC, and ABC's *World News Tonight* versus the ABC's *News Now* cable and cell-phone cast I was on in June. I do not even consider my own program a radio show anymore. I consider it a radio-based multi-platform media production that consists of a daily radio show available on WNYC, a daily podcast of selected material from that show, available on iTunes, including a public comments page for every segment, a blog and a collection of weekly web video picks, all

http://journalism.nyu.edu/pubzone/weblogs/pressthink/2006/08/15/ear_ntw.html (last visited Apr. 17, 2008).

²⁶ WNYC - Crowdsourcing Map: How Many SUVs Are on Your Block?,

http://www.wnyc.org/shows/bl/suv_map_07.html (last visited Apr. 17, 2008).

²⁷ Communications Act of 1934, 47 U.S.C. § 1 *et seq.*

available on the web at wnyc.org, and even a Facebook webpage that we just set up for other kinds of social networking experiments with newsgathering and community-building. In other words, what used to be a one-way, single-medium broadcast is now a two-way audio, video and print experience. As these developments progress, the FCC is losing control over my world.

It is not that broadcast regulation means nothing. But, the three major network newscasts have lost half their audience in 25 years, and as Katie Couric seems to have demonstrated, they are not coming back. O'Reilly and Colbert may not deliver their wares directly to as many people, but they have a lot more to say about sensibilities in this country than, say, Andy Rooney on CBS's *60 Minutes*. Yet only Rooney is regulated by the FCC.

Consider this op-ed piece in *The New York Times* by Michael Copps, FCC Commissioner. *The Times* devoted space for Copps to argue that the FCC should still compel broadcasters to serve the public. Copps listed the important standards such as whether a station shows programs on local civic affairs, broadcasts political conventions and debates, and airs educational children's programs that are actually educational.²⁸ But those are rules for the old media. On the web, all those things exist in spades. Local civic affairs? Every co-op board and neighborhood association has its own website and often a website created by their critics. Political conventions and debates? In full, all the time, and on multiple sites, with a thousand citizen editors choosing what excerpts to highlight on YouTube. Even Copps' most exemplary broadcast station could not come close. Toto, we are not in 1954 anymore!

Put another way, the FCC's job is to regulate the airwaves. That means their purview includes wireless telephone frequencies and taxi dispatchers, as well as TV channels. As the FCC loses control of media content, it will become a backwater, or more of a traffic cop, to stop the pirating of frequencies more than anything else dealing centrally with our democracy. The way the FCC is most likely to regulate Google is if Google buys those mobile phone frequencies they have been after.²⁹

Such a paradigm shift in media has not taken place since the 1920s and 1930s when radio was becoming the first dominant electronic medium, and the Communications Act of 1934 was being born around those implications. To have a meaningful debate over media regulation for the twenty-first

²⁸ Michael J. Copps, Op-Ed., *The Price of Free Airwaves*, N.Y. TIMES, June 2, 2007, at A34.

²⁹ Brad Stone, *Google Will Bid in U.S. Auction of Wireless Airwaves*, N.Y. TIMES, Dec. 1, 2007, at C3.

century, we will practically have to start from scratch. The new paradigm is that, which is different from the old.

Remember, the Communications Act of 1934 and all that flowed from it that form the basis of current media law were predicated on the paradigm of scarcity. The radio and television airwaves were so strikingly powerful compared to what had come before that Congress and the people were shocked by it and afraid. There were only a relative handful of radio and television stations in each market, giving those few owners unbelievable power to set the agenda, include or exclude meaningful news and public affairs coverage, and choose opinions for exposure or for invisibility. Thus, Congress declared the airwaves public property, and the companies that broadcast over those airwaves licensees. The companies could make tons of money with their programming, but they had to meet certain basic public interest broadcasting requirements in order to maintain the privilege of using the public airwaves for private gain. From these mandates, flowed the Fairness Doctrine, children's programming requirements, indecency standards, and all the rest.³⁰

Unfortunately, I would argue, the government turned out to be interested mostly in keeping sex off the air, and the rest was left to the revelations or ravages of the marketplace. The children's programming we all grew up with – Public Television excepted – was overwhelmingly garbage-designed to court the toy and junk food industries, despite decades of impassioned debate and earnest official declarations.

Just last month, I saw the Little League World Series on ESPN – programming aimed at children by definition – with Tony the Tiger as a commercial figure incorporated into some of the programming, pushing a sweetened cereal that may ultimately weaken your body, to an audience of kids interested in high performance sports. How hypocritical is that? And the cartoon tiger, it turns out, has sharper teeth than the FCC.

Let us take the Fairness Doctrine as example of an old media policy that produced mixed results and is becoming irrelevant. The Fairness Doctrine was a reaction to the unique scarcity and scariness of television. First declared in 1949, it decreed two things: that broadcast stations spend some time addressing major issues of the day and that they do so with reasonable accommodation to diverse points of view on issues they chose to air. This set up a conflict of interests and of values.

³⁰ Communications Act of 1934, 47 U.S.C. § 1 *et seq.*

Broadcast owners and certain kinds of First Amendment purists argued that the First Amendment's proscription of regulations abridging freedom of the press meant no laws regulating content in any way. Proponents of this plain language argument take the position that government must keep their hands off any and all political content in the media. On the other hand, the idea of the Fairness Doctrine is founded in the commercial reality of political pressures in the broadcast industry, requiring broadcasters to deal with important issues and deal with them evenhandedly. This debate has inflamed passions for decades. The *Village Voice* columnist Nat Hentoff even argued on my show this summer that the Fairness Doctrine was Stalinist.³¹ I love Nat Hentoff, but I think he is in la-la-land on this point. Stalin controlled the media to make sure there was only one acceptable point of view. The Fairness Doctrine sought to insure that diverse points of view got into the public debate. A producer for the old *Dick Cavett Show* called me on the air this summer and told the story of the time that William Proxmire came on with Cavett and railed against the Vietnam War. Cavett's people felt that to satisfy the Fairness Doctrine they had to then invite someone from the other side to defend the war, which they did. I do not think Stalin worked exactly that way.

On the other hand, Hentoff told the story of when he was a left-wing radio host on a Boston radio station once upon a time, and something on his show prompted a Fairness Doctrine claim, and his management's response was "that's it – no more controversy." So the Fairness Doctrine could actually result in less discussion of issues or discussion only in bland safe ways in some cases.

The First Amendment states, "Congress shall make no law abridging the freedom of speech or of the press."³² Sounds simple, but it gets complicated. What does "abridging" mean? What does "freedom" mean? Does the government that imposes a definition of fairness "abridge" a media outlet owner's freedom of the press? Or, does an owner's decision to only air views that he agrees with or that make him more money "abridge" the people's freedom of speech? If the bigwigs own the media and the little guy can only speak on a street corner, is that freedom of speech in any meaningful way? Is that the best democracy can do?

Ironically, there is more opinion journalism on the airwaves since the

³¹ WNYC - The Brian Lehrer Show, Fair and Balanced?

<http://www.wnyc.org/shows/bl/episodes/2007/07/02/segments/81437> (last visited Apr. 17, 2008).

³² U.S. CONST. amend. I.

Fairness Doctrine was abolished in the 1980s³³ than there ever was before. Even though it has been mostly the Rush Limbaughs³⁴ and Sean Hannities³⁵ of the world so far – way out of proportion to the percentage of the population that agrees with them – abolishing the Fairness Doctrine may have been a boon for the expression of pointed opinion, which is a good thing in a free society. It remains an open question, however, why the market so far has favored the right wing shows so decisively in a 50-50 country. Whatever the answer, it shows the market does not replace democracy. Things are needed to supplement it for a representative media.

While abolition of the Fairness Doctrine may have helped unleash opinion radio, it also cut down on reasoned news and public affairs. The Doctrine required radio and television stations to address important issues from multiple points of view. With its repeal, that requirement was gone. Music radio stations that were previously required to report on some news and public affairs just stopped doing any. I used to produce pieces in the 1980s for a weekly 30-minute public affairs program from the NBC Radio Network that hundreds of rock stations used to fulfill their public affairs requirement on the weekend. That public affairs program no longer exists.

More broadly, the network news operation themselves were originally loss leaders for the entertainment companies that owned the networks. Bluntly put, they existed to suck up to the FCC. Their mission was to provide a money-losing public service in pursuit of corporate profits on the entertainment side. What we have today is the news itself as a profit center, which comes with a host of troubling incentives, disincentives and conflicts of interest. These include a disincentive to report on what matters but does not sell, and a disincentive to finance reporting staffs at all because they are expensive and just talk or argue about the news coming across the wire, illustrated with video, which is cheap.

With my obvious personal interest on the table, I would say that public broadcasting has been the primary outlet to rush in and fill the gap that the retreat of the FCC has left over the last twenty years. *The NewsHour* on PBS, my show on WNYC, and others like it around the country that thrived on multiple points of view came shortly after the Fairness Doctrine was abolished. My own show was created in 1989. It was in large measure, a response by the station to the sudden explosion and popularity of commercial

³³ See *Syracuse Peace Council v. FCC*, 867 F.2d 654 (D.C. Cir. 1989), *cert. denied*, 493 U.S. 1019 (1990).

³⁴ Rush Limbaugh is a radio host, author, and conservative political commentator.

³⁵ Sean Hannity is a radio and television host, author and conservative political commentator.

radio talk shows and their coarseness. Limbaugh had gone national one year before. It was a classic use of public broadcasting that fulfilled its central mission of public service in important areas where the market media did not provide such a service. Similarly, *Sesame Street* and other PBS children's programming were responses to the trash on commercial television that the marketplace could not provide an alternative to. It is no accident that it took not-for-profit media to fill the void that government left by retreating from regulation of the market. Only public broadcasting is still required to demonstrate to the government that it deals with community issues. What may have been a surprise – maybe even a disappointment – to those who deregulated commercial media is that the public radio audience has grown ever since the Fairness Doctrine was abolished while overall radio listening has decreased.

Still, only one commercial station was ever denied a license renewal based on failure to fulfill its Fairness Doctrine obligations. One! Considering how many stations passed off junk as news or buried public affairs 6:00 AM on Sunday, the standards for news and public affairs under the Fairness Doctrine were historically very low.

In my opinion, the Fairness Doctrine, for all the huffing and puffing about it recently by democratic senators and right wing talk show hosts, only created fairness and expanded democracy around the edges, even in the context of scarcity. Additional non-profit programming may turn out to be more powerful than regulation in responding to holes in the market. The point again is that there never were any good old days in American broadcasting, and there never was any Golden Age of Broadcast News. Nostalgia is a powerful drug, a hallucinogen.

So welcome to the present. Now, I would argue that Congress has to make room next to things like the Fairness Doctrine for debates over new policies relative to new media. At this crucial junction – as media both centralize and disburse in unprecedented ways – new questions need to be asked. The changing relationship between media and democracy needs to be described and understood. Enduring principles in media law need to be reaffirmed in relevant, contemporary language. Principles that have become irrelevant or destructive should be labeled such and discarded.

New media present new media law debates. Today's debates have to do with concepts like net neutrality, intellectual property and the digital divide. They have to balance free speech with the threat posed by terrorists and online child predators. They have to balance the interests of online privacy for individuals with those of e-commerce firms that want our

“cookies” and the National Security Agency that wants to know if we are chatting with terrorists. It has to balance the interests of big Internet service providers with that of small content providers.

How fundamentally new is the new world of media law? As fundamental as the question posed by Internet law expert Tom Bell: Is the Internet more like a phone call, a sovereign country, the open ocean or a language?

Still, there are some fundamental principles of media law that need to be reaffirmed. In an excellent book called *The Elements of Journalism*, Bill Kovach and Tom Rosenstiel argued that “the primary purpose of journalism is to provide citizens with the information they need to be free and self-governing.”³⁶ That should be the primary purpose of media law too. Kovach and Rosenstiel’s wording concisely describes the enduring challenge to government in its relationship with the producers of information. In the decentralized new media world, where anyone can be a citizen journalist, policy should grease the wheels for the million little Murrows, not just to publish, but to have a fighting chance to break through the noise and get noticed.

Put another way, in the country that promotes itself as the global model of democracy in action, we should be able to strive for the world’s best system of media that serves, rather than subverts, democracy. Conservatives tend to think that means government doing as little as possible not to get in the way of people’s liberty. Liberals think it means government taking active steps to spread power around. Maybe both principles and the tension between them help make for a healthy democracy. The government may have created the precursor to the Internet, the military’s Arpanet,³⁷ but the private sector provided the web explosion of the last ten years. However, I would go this far: media democracy does not just mean that anyone may throw up a website. That is better than the old days when radio and television scarcity defined the landscape. But the freedom to create websites is just the tip of the iceberg of maximizing democracy.

Democracy, after all, never was the same as simple libertarian anarchy. Democracy is “a state of society characterized by formal equality of

³⁶ BILL KOVACH AND TOM ROSENSTIEL, *THE ELEMENTS OF JOURNALISM: WHAT NEWSPEOPLE SHOULD KNOW AND THE PUBLIC SHOULD EXPECT* (Three Rivers Press 2007).

³⁷ Michael Hauben, *Behind the Net: The History of the ARPANET*, <http://www.dei.isep.ipp.pt/~acc/docs/arpa.html> (last visited Apr. 17, 2008).

rights and privileges.”³⁸ As such, democracy involves a systematic approach to the distribution of power, including guarantees for majorities and minorities (think the 40-vote filibuster system in the Senate versus the simpler majoritarian system in the House). Democracy requires strong, independent institutions, both public and private, and a free press. These are what make self-government possible.

Paradoxically, government does have a role to play in the creation of strong institutions that monitor government. Recent old-media experience shows why. It is a classic vicious cycle: the transformation in Washington from a public interest-oriented to a private ownership-oriented view of the airwaves is fueled by broadcast owners becoming more powerful through the campaign finance system. They then influence Congress to call off the FCC. With the new unrestrained freedom to focus on private profits over public interest that their campaign donations have bought them, media companies transform broadcast journalism increasingly into *infotainment*. As a result, Americans approach media less as citizens and more as mere consumers. This weakens the ability of democracy to fight the creeping privatization of policy. And, the cycle continues.

What the government still requires from old media, by the way, is that they broadcast political ads by candidates for office if the candidates want to buy. I would propose that they turn this requirement on its head and make the broadcasters provide those spots for free. That is where most campaign dollars are spent. That is the root cause of why the Norman Hsus³⁹ and Blackwaters⁴⁰ of the world get more influence with our elected officials than you or me. And think about how cynical the system is: broadcast companies that wield influence through campaign donations then get government regulation that encourages the donations to be spent back with them. In my opinion, this is legal corruption with most of the legal graft going to fund media buys.

The web could also be transformed into a special interest playground without good public policy in place to prevent it. These questions are hardly being asked yet outside of obsessed new media circles, but we have to take a realistic view of companies like Google and Yahoo!, and not see them simply as a group of cool young techies creating killer applications, but also as

³⁸ Dictionary.com, <http://dictionary.reference.com/browse/democracy> (last visited Apr. 17, 2008).

³⁹ Norman Hsu was a pyramid investment promoter in the apparel industry. In November of 2007, Hsu was indicted by convicted by a grand jury for violating campaign finance laws.

⁴⁰ Blackwater Worldwide (formerly known at Blackwater USA and was renamed in Oct. 2007) is contracted by the United States to provide security services during the ongoing Iraq War.

today's rising class of power industrialists whose private interests can run roughshod over the public interest if society allows them to. We went through a similar transformation with Microsoft in the 1990s.

Let us take the example of the very important net neutrality debate. Congress is currently considering a proposal it calls The Internet Freedom Preservation Act,⁴¹ which would "amend the Communications Act of 1934 to ensure net neutrality." It would become the "duty of broadband service providers (to) not block, interfere with, discriminate against, impair or degrade the ability of any person to use a broadband service to access, use, send, post, receive or offer any lawful content application or service made available via the Internet."⁴² In other words, Internet Service Providers ("ISPs") could not strike marketing deals with certain websites to create easier access to some sites than to others. Without net neutrality, Ecommerce may substantially dilute eDemocracy, and sooner than you think. If you still think of the Internet as the Wild West, get over it. Start asking if the net will be dumbed down to become mostly a Wild West theme park. If Web 2.0 is the user-powered Web, exploding with eccentricity and promise, Web 3.0 could be a corporate-driven campaign for fewer real choices and more infotainment. Interestingly, activist groups from the Christian Coalition, on the right, to MoveOn.org, on the left, are pressing for a net neutrality law. Arguments against it include that Congress should not legislate preemptively, but rather wait to see if such a problem actually develops. Moreover, such a law might provide a disincentive to ISPs to create faster Internet technology, which might gum up free speech even more than imposing tiered-access.

There is also a new campaign finance debate that involves the web. Last year, Jeb Hensarling, Congressman of Texas, introduced something he called "The Online Freedom of Speech Act."⁴³ This Act would basically ensure that Congress could not apply McCain-Feingold⁴⁴ or other campaign finance laws to the Web, thus establishing the World Wide Web as a world-wide loophole for wealthy special interests. The Fred Thompson campaign through the summer of 2007 is an example how the Online Freedom of Speech Act exists today. Federal election law restricts campaign advertising in old media until you have announced a campaign. Thompson did not announce until September, but was spending heavily on the web over the summer,

⁴¹ S. 2917, 109th Cong. (2006) (since amended and reintroduced as H.R. 5353, 110 Cong. (2nd Sess. 2008)

⁴² Anthony L. Soudatt, *Net Neutrality or Not?*, NEW YORK LAW JOURNAL, Jan. 29, 2007 (See section discussing the proposed legislation).

⁴³ H.R. Res. 1606, 109th Cong. (2005).

⁴⁴ Bipartisan Campaign Reform Act of 2002, Pub. L. No. 107-155, 116 Stat. 81 (2002) (codified as amended at 2 U.S.C. § 431 (2002)).

which is not included in the law.⁴⁵

So, in Congress and among the presidential candidates, a slow migration is taking place from concern about old media politics to new media politics. I had some great help for this speech from a New York Law School student, Alex Malyshev, who surveyed the six leading presidential campaigns for me on the Fairness Doctrine and Net Neutrality last summer. Those surveyed were Hillary Clinton, Barack Obama and John Edwards among the democrats, and Rudy Giuliani, Mitt Romney and John McCain among the Republicans. Fred Thompson was not in yet. We found that new media politics begin to take shape along old media political lines. McCain is the most revealing. He has been very involved in media regulation issues in Congress for many years. He opposed the Fairness Doctrine and now opposes Net Neutrality on the same grounds: that the unregulated market will provide news and public affairs better than government policy will.⁴⁶ When asked about regulation of the Internet, the Giuliani and Romney campaigns said they had not formulated positions yet on Net Neutrality and cited only their positions on how to protect children from online predators. Romney did have a position on the old media debate. He was opposed to bringing back the Fairness Doctrine. Conversely, the Democrats tend to be abandoning the old media debate for the new. Clinton and Obama are both co-sponsors of Net Neutrality legislation, but told us they had no position either way on the Fairness Doctrine. Edwards also supports net neutrality.⁴⁷

FIVE ADDITIONAL POLICY PRINCIPLES FOR THE DIGITAL AGE

1. We Need Net Neutrality Laws.

2. Election And Campaign Finance Laws Need To Be Updated. But in my opinion, the changes should go in the opposite direction of what Congressman Jeb Hensarling⁴⁸ wants. Close the Internet loopholes. If left unregulated, the Internet will probably expand the impact of big money because it will have more total and more targeted nooks and crannies it can penetrate. This is fundamentally anti-democratic.

⁴⁵ Niki Woodward, Fred Thompson's Campaign Web Site Was Already in Full Swing, *journalism.org*, <http://www.journalism.org/node/7367> (last visited Apr. 17, 2008).

⁴⁶ Michael Arrington, McCain Embarrassed by Yahoo's Actions in China; Also Calls Google to the Mat, *TechCrunch.com*, <http://www.techcrunch.com/2007/11/12/mccain-embarrassed-by-yahoo's-actions-in-china-also-calls-google-to-the-mat/> (last visited Apr. 17, 2008).

⁴⁷ One America, Many Voices: Open Media for the 21st Century, *johndwards.com*, <http://www.johndwards.com/issues/open-media/> (last visited Apr. 17, 2008).

⁴⁸ Jeb Hensarling is a US Representative of the 5th District of Texas.

3. Diversity Of Ownership Policy Needs Reinforcement In The Gray Areas Where The Old Technology Meets The New. There is an outrage in the making right now that few people are aware of. Digital television technology is on the verge of providing every existing television licensee a free diamond mine. As television stations convert from analog to digital as required by the government, each current frequency will be able to carry multiple frequencies.⁴⁹ As of August 2007, the FCC was on the verge of giving all those frequencies to the current licensees rather than declaring the new channels new and looking for the best distribution of them to promote the public interest. It would be the giveaway of the twenty-first century, consistent with the commercial broadcast industry's capture of government in the twentieth century.

4. New Models Should Be Found To Promote Public Service Content. Today, instead of laws compelling programming, we need policies that can actively push those sites to the front of people's awareness, so they at least have a fighting chance to compete for our attention with gambling, porn, corporate infotainment sites, etc. That's the nature of the web and the challenge it presents. Take educational sites for example. Sites from Baby Einstein to Shakespeare and chess sites for kids to "all test prep all the time" are a click away for whatever parent or child directs the mouse in their direction. Again, it seems quaint to require a token number of such sites amidst such abundance in the style of the token number of children's hours for the broadcast week. But government support for libraries is more important than ever, as are other means of pushing the web's equivalents of Elmo (which sometimes includes Elmo) to a place where they can be noticed alongside the sugar pushers and other vultures. One idea might be to create an educational or dot-org column for Internet search results. We now routinely get two kinds of results: the genuine closest matches and scads of advertising based on our search terms. Maybe we need a dot-org law or dot-edu law that lifts not for profit and educational websites to visibility, especially for search terms common to children. No one can force us to click on them, but perhaps they could be elevated by their mission to the realm of actual choice, not total invisibility. How to choose those websites, and who chooses them, would of course be contentious and imperfect decisions.

5. Direct Support For New Media Non-Profits. Strategic support for non-profit news organizations and cultural institutions can also help expand web democracy by addition rather than regulation. You can choose any suffix for your website on the Internet, but in the real world, a "dot-org" often does play

⁴⁹ FCC Digital Television Frequently Asked Questions, *DTV Tower Sitting Fact Sheet*, and *RF Guide*, <http://www.fcc.gov/mb/policy/dtv/> (last visited Apr. 17, 2008).

a different role in society than a “dot-com.”

Again with full disclosure about what I do, I believe strongly that public broadcasting stands as a stunning success in its ability to fill holes in the media marketplace by addition rather than regulation. The examples that I gave before from the 80s and 90s offer models for new media. The two most listened to national radio shows, as I understand the numbers, are Limbaugh's talk show and NPR's *Morning Edition*.⁵⁰ You can say that Limbaugh's popularity is reflective of legitimate market success and serves a democratic function even if you hate his politics. *Morning Edition* also clearly fills an American need for its breadth, depth and understated presentation of news as information, not as argument. It reveals an important limitation of the commercial marketplace that it cannot support the existence of something like *Morning Edition* despite its large audience and its central place in our democracy. The same is true for other not-for-profit programming like Pacifica's *Democracy Now*. I believe a mix of market-based and not-for-profit news and commentary is best for an optimal democracy. I believe that will be as true for the new media as for the old. Some quick examples: public radio shows like *Radio Lab*, *On The Media* and *This American Life*, all of which had seed money provided by the government, are some of the biggest national podcast hits on iTunes, serving the serious missions of science education, media analysis and the telling of real people's stories respectively. The funding doesn't just help launch the programs. It helps launch them in a way that gives them a fighting chance to break through the noise if the content is worthy. Don't let the free market utopians kid you. In a market-dominated information world, sustenance for non-profit new media institutions will be vitally important to twenty-first century democracy.

Similarly, Brian Williams in his Time Magazine essay, Kovach and Rosenstiel in their book, and others express concern that the web is causing people to retreat into isolated zones of the politically like-minded. The community building nature of public broadcasting's news and public affairs content by design helps connect politically diverse audiences by design, and fosters interaction among people in different camps. This and other models of online community building could become a growing need in the digital information age where the like-minded may retreat from others.

6. A Final Principle For New Media Law: Maximize Access To The Internet. If you need a computer and web access to be on a level playing field as a

⁵⁰ Talkers Magazine, The Top Talk Radio Audiences, http://www.talkers.com/main/index.php?option=com_content&task=view&id=17&Itemid=34 (last visited Apr. 17, 2008).

citizen today, government should create widespread free wireless hotspots, as some cities have begun to do, and help provide access to hardware for the poor.

These factors are hardly an exhaustive list because there are just a few things that occur to me that may or may not turn out to be the most important new media policy questions. I am not an expert on the Internet or on the law, and the truth is, I have no idea what the central new media policy debates may turn out to be. What I've just given you are stories and observations and vague ideas from one practitioner of twenty-first century multiplatform media who believes in democracy, and believes the future can be better than the past. With continued innovation in the private sector and good policy in the public sector, new media can be a revolutionary force for creating not just a million little Murrows, but a whole nation of them.