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THE PENTAGON PAPERS AND THE ABOLITION OF TELEVISION

Delenda est Carthago.

CATO the Elder

I

It should be instructive, in assessing the significance among us of the mass media, to consider how we deal today with the press and the television industry.

Our ways of handling television and the press remain quite different, both for historical reasons and for reasons bearing on what is distinctive, if not even natural, to each. There is considerable effort made by some theorists to have us treat these two means of communication the same way. To treat them the same way, however, not only would overlook vital differences between them, but would also threaten the integrity of our regime even more than it may already be. We must, above all, be practical about these matters.

We should take care, whatever we may say or do, not to undermine the privileges and hence the usefulness of a press that has traditionally had a

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On the *Pentagon Papers Case*, 403 U.S. 713 (1971), see Anastaplo, “Preliminary Reflections on the Pentagon Papers,” 118 *Congressional Record* 24990–99 (July 24, 1972).

See, on the epigraph, the conclusion of Plutarch, *Life of Marcus Cato*.

vital part to play in our constitutional system, a part that is ratified by the First Amendment to the Constitution of the United States. The First Amendment, I have argued, prohibits Congress in its lawmaking capacity from cutting down in any way or for any reason "freedom of speech, or of the press." The extent of this freedom is to be measured not merely by the common-law treatises and cases available on December 15, 1791, the date of the ratification of the First Amendment, but also by the general understanding and practice of the people of the United States, who insisted upon, had written for them, and ratified through their State legislatures the First Amendment.

I have further argued (as in Section I of Essay No. 15, above) that although the prohibition in the First Amendment is absolute (we see here a restraint upon Congress that is unqualified, among other Bill of Rights restraints that *are* qualified) the absolute prohibition does not relate to all forms of expression, but only to that which the term *freedom of speech, or of the press* was then taken to encompass: political speech, that is, speech having to do with the duties and concerns of self-governing citizens. Thus, for example, this constitutional provision is not primarily or directly concerned with what we now call artistic expression or with the problem of obscenity. Rather, the First Amendment acknowledges that the sovereign citizen-body has the right freely to discuss the public business, a privilege theretofore claimed only for members of legislative bodies.

II

This can be said to be the "theory" of a constitutional privilege that we all sense to be at the heart of American republicanism. It is a theory that does conform fairly well to current practice in the United States with respect to the press. How does it bear on regulatory practices with respect to the television industry?

The rules governing the press and television *are*, at this time, quite different. For example, the press is barely regulated as such; the television industry as such is quite extensively regulated. I will try to show that there are vital differences in the nature and effects of these two means of communication, differences that are somewhat reflected in current regulatory practices and in immunities from regulation. These differences with respect to regulations may reflect, among other things, some awareness of what each means of communication is likely to do to people.

A discussion of the centuries-old problem of "previous restraints" can provide us, on this occasion, an instructive way of seeing not only what

the mass media are like, but also what the character and requirements of our way of life are. The press has long been, among us, virtually free of previous restraints. These are restraints, imposed on a publisher prior to publication, by government acting in the public interest. Such restraints have traditionally been distinguished from, for example, curbs placed by judges upon public comment by participating lawyers and witnesses on pending court cases for the purpose of ensuring justice in a particular trial. The television industry, on the other hand, has always had many previous restraints to contend with in the broadest sense of the language, which can extend to the licensing of transmitters, the determination and supervision of program content, and the allocation of broadcast power, frequencies, and hours.

I propose to examine, with a view to the common good, the sense there is in the extensive freedom we traditionally accord the press. That is, I propose to examine such things as the risks run and the safeguards provided as well as the advantages offered by our traditional way of regarding what the press may do. I also propose to consider the rationale for the extensive regulation of the television industry to which we are accustomed.

A somewhat detailed discussion of the June 1971 Pentagon Papers litigation should remind us of what the press means to us. I will consider, first, how we live with an absolute prohibition, in practice, of previous restraints upon the press, what that means, and why it should be that way. I will thereafter consider what television is like and what should be done about it.

I am prepared to defend two propositions: first, for the sake of our way of life there cannot be in ordinary constitutional circumstances any previous restraints of publications; second, there should be much more "previous restraint" than we now have of the television industry.

III

i

The publication of excerpts from the Pentagon Papers archives began in the *New York Times* on June 13, 1971, and continued for two more daily installments before being enjoined in the federal courts until June 30, at which time it resumed for seven more installments. In the meantime, publication started in the *Washington Post*, the *Boston Globe*, and the *St. Louis Post-Dispatch*, all of which evidently drew extensively on copies of the top-secret archives of some seven thousand pages originally made available to the *New York Times*. Each newspaper was similarly en-

joined in turn as it appeared in print with the story. The United States Supreme Court decision of June 30 permitted all newspapers with access to the archives to publish what they chose. (403 U.S. 713 [1971]) These archives dealt with the history of American involvement in the Vietnam war.

ii

Had there been more that was truly new in the Pentagon Papers than there was, the adverse effect of publication upon security might have been more of a problem for the courts than it was. But it would be rash to insist that no possible harm resulted from the massive publication on that occasion. The *New York Times* did insist in its editorials that it would not have made its decision to publish "if there had been any reason to believe that publication would have endangered the life of a single American soldier or in any way threatened the security of our country or the peace of the world." (June 16, 1971) I do not believe this to be a prudent test: any course of action, ranging from rigorous censorship to uninhibited publication, runs risks and endangers lives. What must be determined is which course is most likely in the circumstances to serve the common good: an episode-by-episode "body count" does not suffice.

It should be noticed that the government was obliged to concede during the Pentagon Papers litigation that it is irrelevant, strictly speaking, to consider as a cause of harm and hence as a basis for suppression by injunction the fact that the documents in question might have been stolen. Indeed, American newspapers frequently publish, and are even expected to publish, purloined documents. The government would have been foolish to make much in court of the theft of the documents; to have done so would have misled the judges relying upon guidance from the attorneys appearing before them. The traditional American opinion about the publication of documents concealed by the government from public view is such that even so "antiliberal" a journal as the *National Review* began its June 29, 1971 report on the publication of the Pentagon Papers with the concession, "We regretfully conclude we cannot fault the *New York Times* . . ."

The government was also obliged to concede during the litigation that designation of a document as a state secret does not settle the question of whether publication of it may be enjoined, not even if the designation seems to be both authorized and reasonable. After all, our form of government is such that periodicals are obviously left free in ordinary constitutional circumstances to publish materials that may harm the national

interest. Yet the government's case and the concessions made by the newspapers during the Pentagon Papers litigation would tend to permit Congress to provide for suppression by injunction of any publication that is likely to cause serious damage to the Country. The orthodox opinion with respect to these matters does not seem to me to recognize that it permits, in principle, press censorship in the national interest, irrespective of whether the materials involved have been classified. We see here the fundamental First Amendment questions touched upon by this litigation, questions that should indicate why the current general prejudice against absolutes conceals genuine dangers to our form of government.

It seems to me constitutionally improper for the government, in its effort to suppress by injunction the intended publication of secret documents, to rely upon any standards or reasons that would justify as well the suppression of publications based not upon secret or classified materials but upon what anyone may figure out from unclassified materials to be happening in the United States or abroad. The latter kind of publication, despite its lack of reliance upon any classified materials, may be in a particular instance much more damaging to the national interest than the former. Would not "everyone" agree that informative publications based on unclassified materials should be beyond the reach of the law both before and after publication? Still, if the test is that which was evidently agreed to by the government and the newspapers in the Pentagon Papers litigation, why should not Congress be able to act against such publications even though they are not based on classified materials? This is one reason I suggest that the current orthodox approach with respect to these matters does not appreciate what it opens the door to.

What, one might then ask, is the purpose of classifying documents if newspapers cannot be prevented by injunction, at the option of the government, from publishing whatever should come into their possession? Classification is justified, as I have already indicated and as I shall develop further, with a view to the way the national government, pursuant to law, tries to control the information it considers important to the national interest to keep secret, not with a view to what the government may do to recapture information of which it has lost control. In other words, if the government is permitted to recapture or immobilize by injunction information of which it has lost control, at the same time that it concedes that some classified documents may be published by the newspapers without judicial interference, it can do so only on the basis of legal principles and standards that would undermine and endanger that general freedom of the press on which our regime so much depends to keep the sovereign public informed about what its governments are or should be doing.

Thus I submit, in the face of the current orthodox opinion on this subject, that government can have no authority in ordinary constitutional circumstances to secure, even "in the national interest," a previous restraint upon publication of any materials, classified or unclassified, that happen to be in the possession of the press. This submission seems to me not only to be doctrinally sound, echoing as it does the traditional and sounder orthodoxy of Milton's *Areopagitica*, but also to be in accord with contemporary journalistic practices.

iii

We need not assume in making these observations about the legal merits of the newspapers' position in the Pentagon Papers controversy that American journalistic practices today are necessarily the best way of ordering things. We need only assume that they are what we have come to expect and to depend on, partly because of the character of our regime, and that any realistic effort to justify suppression must take those practices as well as the character of that regime into account. Lest too much be made of the harm that may be caused by publication of classified material (it is obvious that harm can result from such publication as well as from the publication of unclassified material), it should be kept in mind that leaks of classified documents and of high-level military decisions were expected and experienced throughout the Vietnam War. Such leaks are frequently promoted and exploited by our government, especially by high officials in the Pentagon, for political as well as for military and propaganda purposes.

There have been, it should be remembered, revelations about the conduct of the war published in newspapers in recent years more important than anything found in the Pentagon Papers, revelations that did not have their news value dramatized either by massive publication or by the Attorney General's repressive efforts. There was probably little in the Pentagon Papers that the Viet Cong and the North Vietnamese did not already long know. It is evident in these papers that all too often the primary "security" concern of our Executive was not to keep information (say, about air strikes or about other military operations) away from the enemy, for the enemy had already experienced them and may have sometimes known of them in advance, but away from the American public and even from Congress.

It seems common knowledge in Washington that most government documents (some experts have testified to as many as 95 percent of those that are restricted) should not be classified. It seems that the use of the "secret"

classification is often exploited either to prevent political embarrassment or to make a document or the official classifying it seem worthy of serious attention. For good as well as for bad motives on the part of suppliers, publishers *will* be provided classified documents from time to time. Is it not obvious that the best way to improve security, and to enlist the necessary cooperation of publishers in such an effort, is scrupulously to reserve the "secret" classification for appropriate documents?

I continue this review of arguments about the possible adverse effect on national security as a result of the publication of the Pentagon Papers. It is also said that the prospect of more such revelations inhibits our private negotiations with foreign governments. Once again, one has to examine cases and circumstances. Curiously enough, the Pentagon Papers suggest that it was secrecy rather than exposure that often inhibited negotiations during the past decade. One sees again and again that our government pretended in public during the course of the Vietnam War that it was open to negotiations even while it worked in private to prevent them.

The relative lack of conversations with foreign governments in the documents published by the *New York Times* is, we are told, in part due to the fact that the supplier of the material to the newspaper retained the four volumes of the Pentagon Papers archives dealing with negotiations. That is to say, *he* also evidently tried to take the interests of the United States into account, as did the publishers who drew upon the materials they received. This should point up the fact that the primary concern of the government should not be improper publication, but rather keeping truly sensitive materials from coming in the first instance into the possession of anyone inimical to the interests of the Country. Such a possessor of sensitive materials is not likely to send them to American newspapers for publication, but rather to foreign governments. This he is likely to do in secret, not giving the American government an opportunity either to intervene before he or his recipient acts or to apprehend someone afterwards.

I go one step further concerning our dealings hereafter with foreign governments. Did not the publication of the Pentagon Papers improve rather than damage our standing abroad? That is, did not publication help the American people begin to repair the damage done by our government, because of Vietnam, to our standing and hence our interests among civilized people everywhere? Was there any serious criticism of the 1971 publication from communities with a form of government similar to ours? I suspect that many governments were relieved to learn that a country as powerful as ours had begun to pay greater respect than theretofore to what an informed world opinion thinks about the way we use our power.

It is said as well by critics of the press that publication of operational

documents inhibits discussion among the President's advisers. One is tempted to reply, "Well and good, let's have more such inhibitions. That is, let's have it understood that it *can* become known (within a short time, if political in-fighting among such advisers gets serious) what considerations are taken into account in the making of public policy. Perhaps this will make our public servants take old-fashioned morality more seriously and 'realistic' power politics less seriously than they have heretofore." But even this reply may not appreciate how brutal the maneuvering and hence the disclosures around the President can be, so brutal (or so altruistic) that it often does not matter to the disclosing agent that the government might try either to secure an injunction to halt an impending publication or to punish after publication the parties involved.

In any event, we the people simply cannot tolerate a dispensation under which vital public information about what goes on in government councils is limited to what the dominant faction in government chooses to disclose, as would be the case with a tame press. Here too the character of our regime virtually requires the practices to which we are accustomed, practices that offer important advantages along with the occasional risks they pose.

iv

What, then, should the press not be "legally" entitled to print? That is, what should be subject to previous restraint upon application by the government? Most orthodox students of this subject would agree that tactical information and decisions should, if the government wishes, be kept secret *through the use of injunctions* until the immediate military advantage of keeping them secret passes. (I believe it is an illusion that injunctions can, except on rare occasions, be usefully employed even in this limited fashion.) Such a rule, these orthodox students might concede, should not preclude public debate on national policy, certainly not when there is no state of war declared or in effect. Should there not be a presumption against keeping secret either what the enemy already knows or discussions of the overall purpose of what our government is doing?

There does remain the problem of morale, but suppression of publications with a view to morale (which recalls the Eighteenth-Century offense of "seditious libel") presupposes that there cannot be any substantial question legitimately open to the community about the purpose of what the government is doing and for which maintenance of morale is needed. The responsible public servant should be taught not to try to conceal from the community either that which is safely subject to public debate or that which is so decisive in determining public policy as to require public ex-

amination and ratification. The responsible servant of the public, whether in the government or in the press, knows that attempts to keep the wrong things secret, or the appearance of having tried to do so, can corrode public opinion, corrupt the Country's leadership, and permanently damage the political morale of the people. The responsible servant of the public, whether in office or out, should also know how to talk about delicate matters when they do need to be aired publicly.

Thus our concern for security and for breaches in security brings us back to the question of the kind of regime ours is or should be. What is the effect on the competence and morality of our people and its Congress if the public does not have and believe itself to have a pretty good idea of what is going on? Lord Halifax included, as No. 26 of his "Maxims of State" (in 1692), the observation, "That the People will ever suspect the remedies for the diseases of the state where they are wholly excluded from seeing how they are prepared." The President of the United States said (in 1972), in ordering more liberal procedures to be used in classifying information, "Fundamental to our way of life is the belief that when information which properly belongs to the public is systematically withheld by those in power, the people soon become ignorant of their own affairs, distrustful of those who manage them, and—eventually—incapable of determining their own destinies." (*Chicago Sun-Times*, March 11, 1972, p. 23)

The more complicated or diseased any community becomes, the less the kind of secrecy sought by our government with respect to Vietnam is likely to be useful. Secrecy is more apt to hurt us than disclosure is apt to help any potential enemy. Even our economic difficulties of the 1970s, for example, can be traced back to the unwillingness of the Johnson Administration in the middle 1960s to tell Congress what it planned to do about the war. The refusal of the administration to face up publicly to what it was doing and what it was likely to do meant that our vast expenditures for Vietnam could not be financed properly. Such secrecy is also apt to hurt us when it raises fundamental doubts for a generation, especially among the more articulate young, about the good faith of any government in the United States.

Still, it is realistic to recognize explicitly and to help the young recognize, even as we attempt to confine legitimate government secrecy to the narrowest possible extent, that any regime in which public opinion is as critical as it is in ours does have serious limitations. It is no doubt better to be ruled by wise men than it is to be dependent upon what the public may happen to believe from time to time. Wise men can safely determine, for example, what it is salutary to reveal to the public. Unfortunately, there are far fewer wise men among us than there are men who believe them-

selves, or are believed by others, to be wise. It must be recognized as well that it is rare when the genuinely wise man, who must be distinguished from the ideologue, is permitted to rule, even if he should be willing to do so. It is a mark of practical wisdom for us to recognize that we must often settle for far less than the best possible regime. Considering the dreadful alternatives we have been offered this century, constitutional government, especially when tempered by a sense of its own limitations, by a people's sense of natural justice, and by tradition, may be the best kind of regime available in our time.

Justice Hugo L. Black, in his concurring opinion in the Pentagon Papers litigation, observed that "paramount among the responsibilities of a free press is the duty to prevent any part of the Government from deceiving the people and sending them off to distant lands to die of foreign fevers and foreign shot and shell." (403 U.S. 717 [1971]) There is something archaic about his "foreign fevers and foreign shot and shell." It was appropriate, in the course of unprecedented litigation that touched upon questions about the very nature of our regime, that one of the oldest justices ever to sit on the United States Supreme Court should have in his last official pronouncement before resigning instinctively reached back in language as well as in thought to the very foundations of this republic.

v

I believe it salutary that it be generally believed that both the Supreme Court and the press have begun in recent years to redeem American honor and to restore the faith of Americans in their institutions, especially at a time when many have become resigned to mindless violence. It is important for our civic health that the United States diligently expose its own misdeeds and that it be generally understood that it will continue to do so. It is important to notice that although the three dozen analysts who originally prepared the Pentagon Papers were selected by Department of Defense officials, they were nevertheless willing and able to *begin* a serious assessment of the mistakes of our government in Vietnam. It is also important to notice that the district court judge in New York who ruled for the *New York Times* had just been appointed to his post by the administration which was bringing before him its unsuccessful suit for injunctive relief.

One can see both in the press and in the courts, when its members are served by and drawn from a high-minded bar, the institutionalization of a respect for reason and for ethical judgment in public affairs. In this case the Supreme Court in effect ratified what the press had done, and it did so at a time when the public was prepared to be assured that its mounting

ethical concerns about the war were in fact justified. I suspect that the fact that the Court did not forbid the *New York Times* and the *Washington Post* to continue publishing the Pentagon Papers may be far more important in this case than what the Court said in acting as it did. Much of what the Court said, after a hurried argument and on the basis of an inadequate record, seems to me dubious, as was its refusal to repudiate categorically the use of temporary restraining orders in such circumstances.

What the Supreme Court did hold depended on two propositions: first, there has always been a presumption in American constitutional law against any restraint upon a publisher prior to publication except in the case of immediately impending irreparable harm to the security of the United States; second, the government did not show on this occasion that there *was* "irreparable harm" threatening the Country as a result of the intended publication of the Pentagon Papers. (The analysis that follows accepts for the moment what I have already questioned, that there are circumstances in which the government may properly suppress by injunction a publication that is likely to cause serious damage to the Country.)

It should be evident in light of the comments I have made about the security aspects of this matter why the government could not measure up to the "heavy burden of showing justification for the imposition of such a restraint" as it had asked for. (See 403 U.S. 714 [1971].) The sort of evidence that might have been persuasive to the Supreme Court, but which the government could not provide, would have described an impending publication in time of war of information about troop movements, weapons developments, and strategic planning or perhaps an impending publication of materials that would seriously interfere with negotiations vital to the very survival of the Country.

The three justices who dissented in the Pentagon Papers case did *not* claim that the government had made the required showing, but argued instead that the government should have been given a further opportunity to show what it could in the federal district courts. In fact, the Supreme Court was unanimous on certain fundamental issues.

Complaints were registered in the dissenting opinions about the lack of sufficient time to make the kind of record needed for proper consideration of the issues in the case. There is something to the complaints of undue haste. It was pointed out in a dissenting opinion that the *New York Times* was pressing for an immediate disposition of the case in the name of its readers' "right to know," when it had itself held back the documents and its story for months. On the other hand, is it relevant how long a publisher has been contemplating publication? When he moves, he is constitutionally entitled to be able to publish immediately unless there is a clear legal prohibition.

Still, it should be said that if the government's argument is accepted to the extent that it was accepted by the newspapers (to the effect that injunctions may indeed be secured to prevent "irreparable harm" to the Country), then the government should have been given more time to make its case at the trial-court level, even to change if necessary its original allegations and to introduce new evidence as it itself became more familiar with the voluminous record. In such circumstance it is unrealistic to expect everyday rules of civil procedure and of evidence to be scrupulously observed.

But there would have been no case at all if the *New York Times* had published in one issue everything it had, foregoing thereby the considerable commercial advantages of serial publication. Nor would there have been a case requiring immediate appeal to the Supreme Court, after accelerated hearing in the trial and intermediate appellate courts, if the government had limited itself to what it clearly had a legal right to try at leisure (assuming the existence of a relevant statute): a criminal prosecution of those persons improperly possessing or communicating classified documents.

That is to say, the government has in such circumstances a remedy, even if there should be as I have argued an absolute prohibition upon previous restraints of the kind sought in the courts on this occasion. In fact, it has several remedies, including recourse to the power in the event of certain truly critical emergencies, to say nothing of an impending nuclear holocaust, of declaring martial law or of suspending the writ of *habeas corpus*. Such emergency measures would permit, for example, effective control for the moment of any publisher regarded as likely to attempt to publish anything, classified or not classified, that the government believes should not be published under the circumstances. Extraordinary remedies are available that permit our people and its government to set aside temporarily our traditional constitutional privileges and practices. Such remedies are of so obvious a magnitude, however, that no sensible people will permit them to be invoked except in the most extraordinary circumstances.

Nor does an absolute prohibition upon previous restraints mean that the government cannot take, in circumstances far less serious than the most critical emergencies, vigorous measures to try to prevent newspapers from acquiring government documents that, once they have them, they cannot be prevented at law from publishing. To illustrate, the government can make it evident that it will, *pursuant to legislation*, discipline all who transmit documents they are not supposed to transmit; the government can from time to time discipline those responsible for such unauthorized transmission to the press and others, without being obliged to show "irreparable harm"; the government can guard carefully the documents it is

most concerned about; the government can be careful also about the people to whom it entrusts such documents. In addition, the government can attempt to "persuade" newspapers not to publish certain documents that do happen to come into their possession. Such persuasion (which can take various forms, some of which it may be better to leave veiled) depends in part on the government's being able to show publishers that it is serious and knows what it is doing, that its classification system is reasonable, and that it is dealing in good faith with both the press and the public.

When the state of affairs becomes such that one respectable publisher after another refuses to respect the requests and decrees of government that there be no publication, is not that in itself a good reason for getting to the root of the apparent loss of confidence in the government? We should be reminded by these observations of the most important measure available to a besieged government, and that is to redress the long-standing grievances that in a healthy community usually lie at the heart of such open defiance of government and such generally endorsed repudiation of the Vietnam War as we saw in the Pentagon Papers episode.

vi

It can be argued that the *New York Times* did "freedom of the press" a disservice by not publishing in one issue all that it intended to publish from the Pentagon Papers archives, thereby preventing the Attorney General from even attempting to secure an injunction and from establishing the dubious precedents that may survive the litigation. True, the Supreme Court ruled that the injunctions in this case could not be continued, but no majority of the Court said that they should never have been issued even on a temporary basis. I believe it would have been healthier as well as a sounder reading of the Constitution if the Court had lifted the remaining restraining orders immediately upon reading the lower courts' opinions after each case had been placed on its docket. It would have been sufficient, under the circumstances, simply to have affirmed the final substantive rulings of the district court in each case. It would have been even better to have singled out for approval the initial ruling by the district court in Washington.

Instead, it may seem to have been established by what the Court did and did not do that a temporary injunction may properly be secured merely upon an allegation by the government of grave danger to national security. In a sense, such a remedy can be said to have always been available for the government, for it did secure it the first time it was moved to seek it. But it may have been better for us not to have had such a "first time." It took a massive and even unprecedented stimulus to prod the

government into an attempt this first time. Far less may suffice next time, now that the wall has been breached. It remains to be seen whether we will remember this litigation primarily for what it confirmed about the extent of freedom of the press, or primarily for what it suggested about previously unsuspected powers in the government to abridge, if only temporarily on this occasion, that freedom. To suggest that the government has powers from which, in practice, it cannot really benefit makes it likely that we will lose sight of the rationale for the powers the government does have and from which it can benefit.

The relevant constitutional doctrine, concerned as it is primarily with the ability of citizens to discuss freely and fully all matters necessary for making political judgments, is itself reflected in the everyday practice that is so revealing about the character of our regime. Suppose, for example, that the government had succeeded in preserving its injunctions, if only until extended hearings had been conducted in the district courts. Precisely what would such hearings, or even the entering of permanent injunctions thereafter, have meant both in these circumstances and as precedents? It appears that nothing could have prevented publication of the Pentagon Papers by *some* newspapers in the United States.

That is, the permanent injunctions sought by the government against the *New York Times* and the *Washington Post* would not have applied to other newspapers even in this Country until the government had moved specifically against them as well, as it had already moved against the *Boston Globe* and the *St. Louis Post-Dispatch*. The government would have had no legal basis for thus moving until such other newspapers had published, or had indicated they were about to publish, articles based upon the same or similar top-secret archives. A "victory" by the government in the *Times* and the *Post* cases would have meant that the enterprising editor on another newspaper with access to the same material, if *he* desired to publish without government interference, should have brought out in one issue everything he intended to publish. This he could have done, it should be noticed, without the special liability, psychological as well as legal, that would follow upon deliberate defiance of an injunction.

It should also be noticed in this connection that no sensible judge wants to issue an impotent decree. The Supreme Court obviously realized that it would not do much if any good to maintain restraints upon the *Times* and the *Post* in order to give the government time to make whatever case it could, when newspapers all over the Country were appearing almost daily with their own gleanings from the "secret" documents under review. There is something to be said for having court orders reflect an awareness of what people are going to do anyway.

One result of all this litigation may be to induce dedicated, as well as irresponsible, publishers hereafter to print immediately all that they have which they believe the government might be disposed to challenge in court, unless they decide that they or the community might benefit from the publicity attendant upon an attempted suppression. By printing immediately everything that they intend to publish and taking their chances on criminal prosecution thereafter, publishers avoid the inconvenience and sometimes considerable expense attendant upon even a temporary injunction, contingencies that they will be advised to assess in the future.

It should now be apparent why it is that everyday practice, as well as the constitutional doctrine that reflects and ratifies such practice, makes previous restraint an illusory remedy for the government to rely upon. When a newspaper has unauthorized possession of any material, the first the government usually knows of it is when it is published, and then no injunction is useful. *This does not mean, of course, that the conscientious publisher should not, in certain instances, consult with reasonable government officials before he uses the material that comes to hand.* He is not bound to publish whatever he cannot be legally prevented from publishing. Will the memory of government efforts with respect to the Pentagon Papers tend, however, to discourage publishers from consulting government officials before publication (as, it seems to me, it would be sometimes patriotic for publishers to do)? Should not the government now counter such a tendency by disavowing recourse to injunctions when consulted voluntarily by publishers? That is, should we not try to restore that traditional relation between the press and the government which the Pentagon Papers litigation has to some extent disturbed?

It also should be apparent from what I have said that whatever the illusions and dangers of certain precedents, there cannot be among us an effective system of previous restraints upon publication through the use of specific injunctions. Previous restraint requires, except in rare circumstances calling for suspension of some constitutional processes, a comprehensive system of censorship which ensures that all prospective publication must be reviewed by the government. That seems hardly likely in the foreseeable future.

What should the press do with the virtually unlimited right it has been shown to have, at least in everyday practice, to publish what it chooses to publish without previous restraint? Perhaps all one can say here is that the press should try to act responsibly, and that we the people should speak up when we believe it has not done so. Certainly it is delusive and hence

self-defeating, considering our traditions and constitutional circumstances, to expect either injunctions or criminal sanctions to compel the press to conduct itself other than it always has.

But the education, as distinguished from the intimidation, of the press is always in order.

IV

I have referred to "the character of our regime" and to the necessary "ability of citizens to discuss freely and fully all matters necessary for making political judgments." What is required to create and preserve a public that is fit for the conduct of a republican form of government?

Some means of general communication among us is, of course, required. The size of the Country has never permitted exclusive reliance upon speeches promulgated only by natural means. Artificial means of communication are indispensable, and this the press has traditionally provided the American people.

The right of the people to know, of which we hear much today, includes the duty to think. This has as a precondition the opportunity to learn as well as the ability to discern what it is necessary to learn. Information and opinions about vital matters of public concern are needed among us on a day-to-day basis.

Even more important than day-to-day concerns, however, and indeed central to this essay, are several perennial questions: What kind of people is presupposed by institutions that include the absolute prohibition, at least in practice, of previous restraints on the press? What produces and preserves such a people? Is not a people of a certain character, rather than merely a people with certain information, political opinions, and morale, presupposed by our institutions? Of course there could be the prior question of whether we want the institutions we do happen to have. Are there better ones available? On this occasion we must set aside this somewhat theoretical question, however engaging it might be, and proceed on the patriotic assumption that our traditional institutions are to be preserved and utilized.

Serving our traditional institutions, and indeed shaped by and shaping them, has been the press. Whatever its faults (and they have always been serious), the press has been something to which we have accommodated ourselves and upon which we have relied for generations. It is essentially old-fashioned, having developed in this Country along with our other institutions and with the character of our people. For the most part, the possible mistakes in editorial judgment to which I have referred in this essay

affect national security interests; they do not threaten directly the character of the regime itself. I now propose to argue that in considering what we should do about the mass media, our primary concern should not be with the unauthorized revelation of secrets (that is, information about military weapons or strategic policy or diplomatic negotiations), but rather with the promulgation among us of images and other influences that shape and reshape the character of our people.

I have argued that for most practical purposes there has been since at least 1791 no effective legal limitation upon the information made available to the public about the performance of its governments, once the press has managed to secure such information. It seems to me too late in the constitutional day to change this dispensation: too much depends upon it; we are accustomed to it; well-intentioned men, both in the press and in the government, have learned how to deal with this considerable freedom from previous restraint of the press.

Vital to a people's self-governance are its experience and ability in forming, choosing, and assessing its leaders and policies. This means that the character of our people cannot be left only to chance, private influences, or the vagaries of a "free trade in ideas." We should be concerned to preserve in our people a character that permits it to use responsibly the extensive freedom of speech and of the press traditionally and constitutionally available to it.

Before we turn to a consideration of what the mass media do to the character of a people such as ours, we should note one immediate effect that television has on our political institutions. The modern mass media tend more toward centralization of power, while the old-fashioned press tended to be more localizing in its efforts and effects. The local is apt to be both more provincial and healthier; certainly, it is to be encouraged in this day and age. When we "go national" today, whether in the media or in politics, everything tends to become somewhat more gross and less discriminating. A facile simplification is rewarded and hence promoted. Is there then a tendency toward homogeneity of tastes and opinions as well as a general lowering of effective moral, political, and intellectual standards?

Industrialization with its marvels-laden technology can be said to be in large part responsible for such developments. With these developments comes also that sense of helplessness and rootlessness to which modern man is peculiarly subject: one has less the impression of being "one's own man," of being able to do things for oneself. One is forced into a passive role: not the role of the alert observer, but that of the pampered slave.

Since television is distinctively dependent on the technology of modern industrialization, it is so new that there has not yet developed, and one must wonder whether there *can* develop, the carefully-thought-out sys-

tem of checks and balances there is among us in practice with respect to the press. Do we not all recognize that television has had profound effects upon our way of life? Should we not ask, then: What are the effects of television? Have those effects been good? What is the nature of the medium? What is there about television that is different from everything previously relied upon or accounted for by our institutions? What, if anything, can now be done about television?

V

i

I have suggested that the press, despite its efforts to imitate television and to modernize itself, is still essentially old-fashioned. Partly because of things intrinsic to it, it is still moved somewhat by a sense of natural justice, as is the public opinion that it serves.

The press continues to provide us with the serious searching out and recording of the news of the day, whereas television is in this respect for the most part parasitic. I believe it significant that the newscaster on television is rarely the man who has investigated the story being broadcast. Rather, he is usually part of a "show" that draws primarily upon what newspapermen have gathered and put on the wire. Thus there is no necessary connection between the influence or "image" of television "personalities" and their competence. These television personalities wield tremendous influence, but such influence is both ephemeral and beyond their comprehension and hence their control.

Television may help keep the press "honest" by presenting events that will be subsequently described on the printed page. But, one must wonder, at what level is such honesty promoted? What level suffices to satisfy the television viewer? What can be adequately described by television?

ii

To speak as I have of "public opinion" is to recognize in *public* a body that acts and is somehow keyed to political concerns; it is also to recognize in *opinion* something that does depend ultimately on notions of right and wrong and hence on reason. This is quite different from the passive audiences on which television depends and which it creates.

The television industry, in its distinctive modernity, is representative of the *mass media* and their infatuation with appearances. The term mass

media aptly records what happens when modern electronic technology is applied to communications. The decisive factor becomes the necessarily "mass" character of passive and pacified audiences made up of countless private or isolated parties. The emphasis in the term *media* is upon the industry as little more than a conduit. Does not a people lose its moral and hence political sense when it becomes the "masses"? One may even be obliged to consider whether some previous restraint of the press might not become necessary if the people should, because of the debilitating effects of the mass media, remain or become so childish as to be unable to govern itself.

Both the massive character of the audience and the conduit character of the media very much affect the content and the effect of broadcasts, even though the principal concern of broadcasters may not be with either content or effect, but with the constant compulsion upon them to attract large audiences and with the pressing need to keep supplying something to ever-changing (and yet "always there") audiences. To regard a people as a "mass" is to say and perhaps make likely that it will become something that is moved primarily by what *Federalist* No. 1 called "force and accident," by arousals of passion rather than by appeals to reason.

We should not be surprised to hear the effect of television upon audiences spoken of as an "impact" that can be "surveyed" and "marketed." The intrinsic quality of particular programs becomes irrelevant if the surveys do not "measure up," as television executives will sometimes admit and their conduct almost always exhibits.

iii

The effects of television are pervasive and felt both directly and indirectly: directly through what almost six hours a day of *exposure* (not necessarily of viewing) do to the souls of our people; indirectly through the adjustments the press and others consider themselves obliged to make to compete with the television industry in capturing people's attention and thus being able to stay in business. It should be noticed that much of the time devoted to television must be taken from other activities, such as reading, writing, conversation, courting, or playing. What had been the effect heretofore of such activities? What is the effect of their radical curtailment? It is unrealistic to assume that such revolutionary changes as we have undergone have no significant effect on the souls of people.

Commercial considerations are obviously much more important for television than for the press, whatever may be said about the influence of advertisers upon publishers. Television was invented during a more com-

mercial age than was printing; the press developed more naturally as an extension of thinking and writing rather than as a tool for advertising and selling. The commercial aspects of the press simply cannot assert themselves as much as the commercial aspects of television do. For example, one can easily ignore the advertisements in a newspaper. No one doubts the considerable effect that sponsors have in the United States upon the content of television programs and upon audiences.

The commercial aspects of television, however important they may be in so many critiques of the industry, are not our primary concern. (Commercial considerations do lead producers to try to provide what they believe audiences want. This can have the effect of accentuating the bad tendencies intrinsic to television. Thus, since television thrives on "action," there is frequent recourse to the coarsening violence about which we hear more and more complaints.) Nor need the specific content of television broadcasting concern us here, insofar as this can be corrected by a people determined to do so, but rather the very form of it and the consequent effects of the displacement by television of the other means by which souls have been engaged heretofore. The remarkable success of television since the Second World War in sweeping all before it should make us wonder what there is that makes it so attractive. What is the effect of having such a window to the world? What comes through and what is held back by the filter of the television camera?

It need not be denied that there are good programs from time to time on television, genuinely good things in addition to the many apparently good things to which large audiences are attracted. Nor need it be denied that television can seem a blessing to old people, the ill, and harassed mothers with young children. Other salutary effects can be catalogued: the promotion of an acceptance among us of racial justice because of the displays before national television audiences of attractive athletes, politicians, and actors who happen to be Negroes; the sometimes cathartic dramatization of national ceremonies, such as the inauguration or funeral of a President; the presentation of intelligent men and women attempting to discuss serious problems of national concern. It has also been noticed that television does reveal the personalities of public figures, that it "takes the clothes off a man." The audience may well get an impression it might not otherwise have been able to get of what some public figures are like.

And yet, are not the good things on television always an incidental part of the whole? Are not even the good uses to which television has been put due in large part to chance? The issues that capture public attention and get considerable "play" are all too often contrived or accidental. However adept television may be at exposing some public figures, the professional television personalities are themselves little more than animated masks so

far as the viewing audience is concerned. Why this should be so depends on the very nature of the medium.

Distortion and superficiality are among the inevitable effects of television, including effects of the technology itself that are accentuated by the expense of television and its consequent need for huge audiences. Television cannot help but cater to the worst in us, even when it is trying to do its best. Certain things are made to appear easier than they really are. Shallow illusions are promoted, including the illusion that the viewer can learn enough from capsule presentations (a kind of discourse by headline) to get a serious notion of what is going on in the world and to be able to make sensible judgments and responsible choices. Television seems to liberate even while it really cripples, and it does this in so enticing a manner as to drive its competitors either out of the "market" or into suicidal imitation.

Thus television helps create the illusion that it has informed us and that we have "participated" in something we have witnessed "close up." It emphasizes that one must "get it" at once; one can't tarry to look at what has been broadcast, to take one's time studying what one may not understand. One must get it all *now*, for something else is coming soon. One is discouraged from looking back: everything is before us; recollection and reflection are discouraged or at least made difficult. Is not all this more appropriate for entertainment than for serious discourse?

With an emphasis upon the immediate, appearance becomes crucial; it is hard to pin things down. Is not almost everything about television ephemeral? If so, are not ephemeral qualities in the soul appealed to and legitimated? The unreality of it all is intensified by television's reduction of the visible world to a box that is smaller than the size of the human being; this can be both immediately enticing and eventually unpersuasive, if not even psychologically disturbing. The illusion of immediacy is fostered (an illusion that the press finds it more difficult to sustain), and then with the click of a switch the "real world" is gone. Reality is thus distorted, as it is as well with the unnaturalness in the amount and variety of things shown on television, and with the apparent intimate access to things that human beings are used to having and keeping at a distance.

The electronic media are voracious and insatiable. Consequently, they promote novelty, which seems to fit in better with youthfulness, with those who are by nature always changing and experimenting. A "culture" keyed to or shaped by the mass media is bound to be youth-oriented, an unnatural state of affairs for a community. There is constant change, with a consequent profound dissatisfaction and rootlessness. Fashions become more important and character less. Since the visual is necessarily emphasized, the length of discourse that can be presented on television is much

shorter than serious issues require, much less than what would be possible in a meeting hall. Yet most viewers are given the impression that television presents enough.

The addictive effect of television is revealing; one turns it on and it stays on for hours. It is much less likely that this sort of thing can happen routinely with reading. Even if one moves through a prosperous American suburb—that is, among those who have the material resources and the education to be able to do whatever they choose—one can see through almost every living room window the dominating television set turned on all evening as well as much of the day. Are our lives so empty as to be in need of such narcotics? Television reinforces, even as it tries to minister to, whatever sense of emptiness there may be in modern life.

We also can see the effects of television upon the faces of our children. Observe them watching even the commercials with vacuous avidity. It is no wonder that many teenagers become jaded and even psychically disturbed with nothing to challenge them, nothing to excite them but the most bizarre and the most violent things. Broadcasters hardly do all this deliberately; in fact, just as they are really unknown to their audiences, so their audiences are unknown to them. Contact between broadcaster and audience is not human, but rather mechanical, artificial, and fleeting. It is remarkable that broadcasters can stand the life they lead. Are they sustained by what is said about them face-to-face or now and then on the printed page?

It is sometimes said that the young, and some of the old, know today much more about the world—how big and diverse it is, for example—than people did a generation ago. The mass media no doubt contribute to this sense of liberation: they do “open up” the world. But because of the inefficiency of television (consider the amount of material that can be spoken as against what can be read in a given time) one simply cannot get much detail beyond the immediately visible. Even the “educated” young probably know less than any generation heretofore about what has gone before or about the serious questions to which human beings have always addressed themselves. The young spread themselves over much more than did their predecessors, but much more thinly. Hence they cannot begin to know themselves. Yet they readily believe themselves to be more enlightened than their predecessors.

iv

Television means that it is even more difficult than heretofore for reason to contribute to assimilating and ordering the information that comes to people every day. The pictures and sounds that dominate contemporary

“culture” are not speeches; the stimuli of television may go from the passions of the televiser to the passions of the audience without lingering in the reason of either.

Once the need to speak well is reduced by a general addiction to moving pictures, the common language is likely to degenerate. The politician who once made weekly radio reports to his constituents finds, upon being obliged to switch to television because of what is happening around him, that he cannot continue to be as idea-oriented as he had been on radio: he must move from dealing *somewhat* in ideas to “plugging” almost exclusively his name and picture (that is, his “image”). The practical politician conforms to the demands and limits of the dominant communications medium of the moment, and the next generation is trained (or should we say “conditioned”?) accordingly.

Children, as well as adults, are discouraged by television from becoming practiced in reading. Once television becomes available, reading appears to most people laborious and less attractive; the attention span is likely to be shortened for activities requiring deliberate effort; discipline is not encouraged for serious work, and this suggests that everyday passions are even more likely to make themselves felt than they have always been. The general deterioration of serious reading ability will eventually lead to deterioration of the ability to write. Does not this entail for us the impairment of the ability to think seriously?

Despite what is said about television’s ability to “take the clothes off a man,” his television “image” is likely to be quite different from what he is truly like. In fact, it may be virtually impossible for anyone to be more than an image before the camera. But one’s written statements may be very much what one is. In fact, they may be essentially what one is, insofar as one is a thinking being. (I question in passing whether it is desirable for television, or anything else, “to take the clothes off a man.” What kind of public man would permit himself to be routinely stripped? Is it not natural for human beings to attempt to conceal their nakedness?)

It can be said of the mass media that they promote an “education at once universal and superficial.” We inexorably move, as Winston Churchill noticed, “toward goals which are ill-defined and yet magnetic.” We sometimes seem oblivious of “the enormous processes of collectivization which are at work among us.”

v

It should immediately be added, however, that collectivization is not the same as community, just as ill-defined goals may not truly be goals at all. I turn now from considering primarily the effects of television on human

beings to saying something more about the effects of television on a community and on the possibility of community.

Serious association with one another, whether for purposes of entertainment, education, worship, politics, or sports, is undermined by television, especially since viewers and performers (or, as they once were, people and leaders) can make no serious contact with one another. For example, politicians tailor what they say and eventually believe to what can be "put across" on the television screen. The screen depends on and encourages the wrong kind of simplification. No matter how complicated the subject presented may be, it is all too often pretended if not sincerely believed that it can be adequately dealt with, as if magically, in a few minutes.

May not the frequent public protests in this Country against the partisanship of the mass media be crude reflections of a deeper and perhaps instinctive concern among us about what is being done to the human soul by the mass media? Yet it is also felt that something like television is needed for an aggregate as large as the United States has become. It is, some might even say, a necessary evil to cure an even worse one, the divisiveness of bigness.

Television does bring us all together, in a way, but too many at a time and at too low a level. In the process it breaks down smaller communities that until its coming had still been viable despite the onslaughts of the automobile and of the Second World War. The isolation of people, whether the elderly or the infirm or the housewife, that is intensified if not induced by the disruption of our towns and urban neighborhoods, seems to lead to a "need" for television.

Some, however, see the American people, in tens of millions, elevated politically and culturally by the mass media. Such elevation, others reply, is not good for these millions: they cannot become truly enlightened; they are much more likely to become frustrated. Most people, it seems to me, have not been elevated; rather, their cultural life, as well as their politics, has become inferior to what it had been, and their thinking less disciplined and more sentimental than it need be. If people are frustrated, it is perhaps because they have acquired a sophistication that their circumstances cannot permit them to enjoy; the old loyalties and consequent simple pleasures have been undermined. All the while their precious linguistic inheritance is being cheapened.

It is my impression that television fits better with an emphasis upon Presidential rather than Congressional or State politics. Rule by television plebiscite seems to be developing among us, a kind of rule that is peculiarly responsive to the volatile mass tastes that television promotes and serves. The constitutional tendency of television—of the way of life that

permits and is in turn shaped by television—is to unleash desires and arouse expectations that undermine among us the moderation of tradition, the restraints both of a healthy diversity and of a genuine respect for quality, and the requirements and advantages of federalism.

This social indictment of television can be summed up thus: Each of us is constantly addressed by television apart from the others, and yet none of us is ever really spoken to. The ability to read, and hence to think and to join in serious common discourse, suffers. Every kind of association is filtered through the camera and stripped of its humanity. The community is depreciated while a hollow privacy is emphasized; communal tastes are reduced to the lowest common denominator and then shamelessly catered to. Spectacle replaces theater; feeling replaces thought; image replaces character. The world shaped by television is an empty one, starved and frenetic, dreamlike and debilitating. It can be expected to culminate eventually in a crippling mediocrity and perhaps even in tyranny.

vi

It is curious that such innovations should be permitted among us without serious authoritative consideration of what they may do to our way of life. But then, we are all too often inclined to take our way of life for granted, as if there should be no conditions for its existence or, for that matter, any transcendent standards and purposes to which it is dedicated. Perhaps we see the only thing necessary to our way of life to be an openness to constant change and hence experimentation.

Human beings may, by their nature, seek newfangledness. We do seem to have an "unbounded passion for variety." Is there not in such openness to novelty a constant challenge to piety, to what should be worthy of reverence? Certainly there is a challenge to the established way with respect to both opinions and conduct. When a feverish taste for novelty is legitimated among a people, even a good community can become suspect merely because it has been so well-conditioned as to survive and become old.

I do not believe that most of the harmful effects of television can be avoided so long as we have it. Some of television's more obvious abuses can perhaps be ameliorated from time to time, but the intrinsic character of this electronic possession is such as to have profound effects on fundamental relations among us: between man and man, between community and human being, between lover and beloved. The easy intrusion of television into our lives undermines what friendship and influence should mean. Appearance becomes even more important than it had been. In short, television in both its means and its inevitable consequences is simply unnatural and remarkably corrupting.

It has long seemed obvious to me that the television industry should be abolished completely in this Country and that nothing short of this can purge its crippling influence from American life. If this is indeed a society open to experimentation, then let us deliberately experiment for at least a decade with the remedy of complete suppression of television.

If television should be abolished, we should be obliged to go out again into our streets, if only to attend movies. Local entertainment, local gatherings (religious as well as secular), and even genuine popular culture might become important again. Even more importantly, the intrinsically harmful influences of television would no longer have to be contended with.

Is it not revealing that something so harmful as television should have become so entrenched so soon? It is like noxious weeds that happen to be blown in by the wind. Its abolition today is, of course, virtually unthinkable; yet we did not have it a generation ago, however natural it may now seem to most of us.

If we move against television, we reassert ourselves as a community even as we act together on behalf of communal interests. We would show we care about what affects us, thereby again becoming a community. We would show as well that we recognize that mere desires should not govern our lives, that temperance is vital to enduring happiness. But, it may be objected, if we should abolish television, that would open the door to further infringements of our liberty: there might be attempted public interference thereafter with other activities among us which also aim at self-expression and self-gratification. This objection is not groundless. Would we not be obliged, upon the abolition of television, to consider what else needs to be remedied? After all, modern industrial society was far from perfect before television took root among us.

vii

I believe it salutary to argue that there should be in ordinary constitutional circumstances both an absolute prohibition against previous legal restraints of the press and an absolute previous restraint (that is, total abolition) of the television industry. We want the press a certain way because of the nature of our regime. The considerations that lead to an advocacy of extensive guarantees for the press may lead as well to an advocacy of complete suppression of television.

I see in the abolition of television no serious First Amendment problem. Rather than abridge the "freedom of speech" guaranteed by the First Amendment, the abolition of television, and hence a radical reform of the mass media, would enlarge freedom of speech among us. Television interferes, I have argued, with serious general education in a country such as

ours; it affects adversely the ability to read and hence the ability to think and the very status of thought among us, playing up to the passions as it does. The abolition of television would probably contribute *among us* to the preservation of self-government and hence genuine freedom. (I stress "among us" since it would be doctrinaire to insist that television may not have a salutary, even civilizing, effect on certain peoples.)

Such abolition, it should be noticed, need not bring with it the problems of widespread attempted evasions, with all their attendant evils, that we have known from time to time with respect to prohibitions upon alcohol, narcotics, and obscenity. Abolition should be fairly easy to effect *if the community should ever decide to do it*. Nor must we accommodate to television as we must to the existence of nuclear weapons. We may be obliged to develop various weapons as part of our effort to neutralize the possession of them by others, for we can be critically affected by their behavior. But this is not the case with television: if people in other countries are corrupted by television, that is no reason why we should be also.

It should be noticed that the major economic cost of the abolition of television would be borne not by the broadcaster, but by those who would benefit most of all from such abolition, the millions of owners of private television receivers. The aggregate cost of private receivers is far larger than that of all the capital invested by broadcasters. If cigarette advertising, previously the largest single source of television revenue, can properly be eliminated in what is thought to be the public interest, there is no reason in principle why all television advertising cannot be eliminated in the public interest or, to go one step further, television itself. Or are we to assume that there is such a thing as physical health, but no such thing as moral character and social health, for the community to protect and to promote?

VI

We are no more likely to abolish television and to purge the public and the press of its corrupting influences than we are to curtail radically the private use of the automobile. I recognize that I have been talking in effect about the constant need to review the consequences of our technological development. Is television an essentially derivative manifestation of this overall development? Do I attack merely a symptom? Perhaps such an attack can be so put as to illuminate the underlying problems, thereby provoking serious discussion of what we are and are not doing, and why. To ask, as I have, for the abolition of television may do no more than to remind our-

selves, in a pedagogically useful manner, that the common good should take precedence over private gratification.

One can see in the role of television among us a powerful industry enlisted in the thoughtless and virtually inevitable service of the passions. Mutual exploitation as well as unthinking toleration becomes the order of the day. It is not incidental that spectacular rewards and influence seem to some to be available through television. This makes it even more difficult for us as a people both to do what is necessary to conserve what we can of the old way and to resume humane, local, and deliberate control of what instructs and entertains us and hence forms our character and our institutions.

All this may be no more than to say that the way of life brought forth on this continent two centuries ago is in the course of profound alteration, that we have become unable to understand and control what is happening to us. All this should remind us of the vulnerability of reason in the conduct of human affairs, of how difficult it is for any people truly to govern itself.

To govern oneself does mean that one must accommodate oneself to circumstances, that one must make do with what happens to be available, and that one must be prepared to settle for less than the very best. What can be done about television, short of the total abolition I have advocated? Various reforms which reflect some of the criticisms I have made in this essay can be attempted. I collect here, as illustrative of how one may begin to think about reforms, a half-dozen suggestions:

1) There should be a curtailment in the amount of television available daily. It would be good not to have continuous television, but only a couple of hours of transmission at a time, followed by extended intermissions during which there is no local transmission at all. It would also be good to have certain evenings of the week, and perhaps most, if not all, of Sunday, completely free from television as well as from most other commercial activity. In any event, the total number of hours of transmission each week should be markedly reduced.

2) The commercial influence upon television in this Country should be reduced. It would be good to experiment with the means by which British commercial television has insured that there be no identification of advertisers with particular programs.

3) What is the relation between television's pervasive commercialism and its national programming? Whatever it may be, there is much to be said for encouraging local programming, thereby emphasizing the importance of the local community. We should expect with more local programming a decline in the professional quality of programs, at least until local talent began to assert itself.

4) The immediate effect of television upon our political life should be

eliminated if we are to be left free and equipped to assess such things as television upon that way of life. Should not television be explicitly reserved for entertainment, leaving the discussion of politics to more appropriate forums? It would probably be good to permit no political activity at all on television. Perhaps, indeed, all news broadcasts, except for emergency announcements, should be eliminated or should be confined to extended readings from newspaper accounts.

5) If there is to be politics on television, the emphasis should be on lengthy talks and extended civic proceedings. It would probably be prudent to reconsider the "fairness doctrine," for that may provide an overly zealous administration in Washington too great an opportunity to control the political discourse of the country. Insofar as television is permitted to provide a forum for political discourse, it is good for us that it should be able to rely on First Amendment privileges.

6) The nonpolitical content of television, with a view to the effects on viewers of such things as portrayals of violence and legitimation of greed, should be periodically assessed by civic-minded people who recognize that the virtues, vices, and accomplishments of human beings are not without causes. In addition, there should be on television considerable instruction in reading and a number of hours each week during which the pictures are accompanied only by well-written subtitles and good music, not by talk. It should be routinely emphasized on the screen that the viewer must supplement, by extended reading and discussion, what he sees on television if he is to understand the matters under consideration.

7) It should go without saying that any family or neighborhood that "deprives" itself of television is likely to be better off than those families or neighborhoods addicted to it. It may become generally apparent someday, perhaps even in time to make a difference, that the many who are saddled with television are being exploited by the few who profit from it, and that the exploited are so deluded as to "choose" this form of self-enslavement. This is like the relationship between cigarette manufacturers and their victims. It may then become generally apparent that any community respectful of its integrity or concerned about the underprivileged should abolish television root and branch.

VII

How long will our present decline take to reach bottom? In the United States it could take generations, since we do have considerable political capital to draw upon. But the present generation of Americans may be the last one with a genuine opportunity to return the Country to "the old way":

there are still many among us who have been raised without the influence of television. Thus it can truly be said, quoting again from *Federalist* No. 1, that “the crisis, at which we are arrived, may with propriety be regarded as the era in which that decision is to be made,” the decision whether “accident and force,” rather than “reflection and choice,” are to shape our lives. People shaped by television—by that most influential of the mass media, are (I have argued) destined thereafter “to depend for their political constitutions on accident and force.”

It is instructive that we do not (perhaps, by now, cannot) see various of the risks we are running. It is also instructive that we will not do anything serious about the risks we do notice, partly because of immediate pleasures and profits, partly because of profound confusion about causes and effects, and about the nature itself of cause and effect, in moral and political matters. An attempt to return ourselves to a more austere and healthier way of life, a life more conducive to a republican form of government and to the full development of the human soul, is virtually unthinkable. It would also be instructive if the reader, in attempting to assess the argument I have presented here, should be induced to investigate and to make explicit what we take for granted as to how a particular way of life is established and perpetuated.

It should be evident from what I have said about the curtailment of television that the case I have made in this essay for an absolute prohibition upon previous restraints of the press cannot rest simply upon a sentimental desire to see freedom “maximized.” If we are truly to govern ourselves, we are obliged to consider what among us promotes and serves human perfection, the common good, and hence a rational liberty. Such considerations can lead citizens to the reasoned conclusion that some activities in a community such as ours should be given free rein while others should be vigorously held in check.

Unless we are prepared to curtail the mass media and to restore the local press to its rightful place as the principal forum for general discourse among our citizens, we should expect to have hereafter only the masses rather than a community of citizens to reckon with. Indeed, there would then not even be any “we” to make judgments and to act. For “we,” as in “We the People,” presupposes a public, not mere spectators, as fundamental to community and to the body politic.

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