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Lee C. Bollinger
Lee.Bollinger@chicagounbound.edu

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Why There Should Be an Independent Decennial Commission on the Press
Lee C. Bollinger†

In 1947, the Commission on Freedom of the Press chaired by Robert M. Hutchins, published its report entitled "A Free and Responsible Press."† Sharply criticized by the media when published,₂ the Hutchins Commission Report (as it has come to be known) seems to have assumed only minor status within the history of freedom of the press in this century,³ as well as among reports on social problems generally. In this article, I will consider whether the Hutchins Commission Report deserves a different fate. Given the media's usually astounding self-preoccupation, the fact that the Report was about the "press" would lead one to ex-

† Dean and Professor of Law, University of Michigan Law School.
² The Supreme Court, for example, has referred to the Hutchins Commission Report only twice. See Miami Herald Publishing Co. v Tornillo, 418 US 241, 250-51 (1974); Gertz v Robert Welch, Inc., 418 US 323, 399, 403 (1974). Compare in this regard, for example, the Commission on Violence in the late 1960s, or, for an even more dramatic comparison, the Warren Commission.
pect news sources to pay great attention to it. On the other hand, the fact that the Report was highly critical of the press might also explain its largely negative reception and subsequent neglect. If that is true, then the Report’s lack of influence may symbolize the power of the press to shape and control the agenda of public debate, and thereby also to shape our collective memory. Ironically, as we shall see, this was one of the Commission’s primary criticisms of the press.

We should be interested, of course, not only in how history has treated the Hutchins Commission Report, but also in the quality of its ideas and the validity of its critique of mass media. Perhaps the Report deserves greater attention than it has achieved, and perhaps this volume in particular will serve to highlight and revivify the value of its ideas and recommendations.

A primary theme of this article is that the Report offers us, at the very least, a useful benchmark against which to compare, and thereby to throw into sharper relief, how, if at all, our concerns about the quality of American journalism have changed. In the end, I believe, that inquiry also provides a basis for considering whether one of the Report’s prominent and most interesting recommendations—namely, the establishment of a permanent, independent, non-governmental commission on the press—was ill-conceived or wise.

I begin by summarizing the Commission’s Report and then turn to offering a contemporary evaluation of its ideas.

I. The Report

The Hutchins Commission Report opens with a general statement of its intent: to study “the role of agencies of mass communication in the education of the people in public affairs.” The statement is revealing about the Commission’s conception of its enterprise and of the press. The reference to “agencies of mass communication” anticipates the Report’s pronouncement that society in 1947 was in the midst of a communications revolution. This revolution was the result of a shift, over the course of the last century, from numerous small, privately-operated press operations reaching limited numbers of citizens to a few huge, corporate organizations bent on making profits and counting audiences among the millions. Equally significant is the reference to the role of these

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4 Hutchins Report at vi (cited in note 1).
5 Id at 15.
agencies of mass communication in the "education" of the public. The Commission took the high road in assessing the performance of the press. In this country, the Commission believed, the press does more than provide information for a fee: it educates.

Finally, the Commission's general statement of purpose is revealing about its limited focus. Its interest was in the "education of the people in public affairs," and it disclaimed any intention of dealing "with the interrelationship between the American press and American culture." A broader study, the Commission said, would have "emphasized the dramatic change by which the agencies of mass communication have become a part of the American environment, affecting the thought and feeling of every citizen in every department of his life." Describing culture as a "department" not integral to the highest understanding of public issues, the Commission evinced both a broad understanding of the new effects of mass media and a narrow understanding of the role of culture in public discourse.

As the Report sets out to gauge the quality of the "American Press," it provides the reader with a description of an ideal press, against which actual press performance can be measured. According to the Report, a good press must provide "a truthful, comprehensive, and intelligent account of the day's events," a "forum for the exchange of comment and criticism," a means of "projecting the opinions and attitudes of the groups in the society to one another," a "method of presenting and clarifying the goals and values of society," and a "way of reaching every member of the society by the currents of information, thought, and feeling which the press supplies."

The Commission then pronounced its virtually unqualified judgment that American mass media were falling well short of this standard. Indeed, to the question, "Is the freedom of the press in danger?", the Commission answered with an emphatic "yes." It recognized that "the agencies of mass communication are only one of the influences forming American culture and American public opinion," but "[t]hey are, taken together, . . . probably the most

* Id (emphasis added).
* Id at 1.
powerful single influence today.” According to the Commission in 1947, that influence was a negative one.

The Report draws on two types of press criticism, although it does not carefully distinguish between them. The first criticism involved a claim about the press’s control over information, ideas, and access to public debate. The central problem was this: Advances in communication technology, making possible the ever-increasing accumulation of information about the world, as well as the reporting of that information to larger and larger audiences, have created a world in which only large corporate enterprises can succeed. The phenomenon of economies of scale has contributed to a steady decline in the number of press organizations. In 1947, the city with a single daily newspaper was the rule rather than the exception. And unlike the press in the early days of the Republic, only the press itself had the first-hand experience of distant events necessary to verify the accuracy of their reports. As a result, the Commission noted a drastic constriction in the base of the funnel of information and ideas, so great as to cast into doubt the continued viability of the principle that truth will more likely emerge from the conflicting expressions in the “marketplace of ideas” than falsity.

Throughout the Report, the Commission repeatedly returns to the problem of bias within the mass media. The bias with which the Commission was concerned, however, would exist even if the mass media operated in a vigorously competitive world. The Commission’s major criticism was that the mass media had become “big business,” owned and operated increasingly by “big businessmen” rather than by “professional” journalists. This fundamental characteristic of mass media meant several things for the nature of public discussion of public issues in the press. The point is not, the Commission said, that advertisers—upon whom the media are largely dependent for revenue—dictate content. Rather, the risk is that the operators of institutions of mass communication may turn them into mere profit centers. Sometimes the Commission’s depiction of the problem was anything but subtle: The modern publisher, wrote the Commission, is a “rich man seeking power and

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10 Id at vii.
11 Id at 1. See listing of three reasons that the freedom of the press is in danger.
12 Hutchins Report at 5 (cited in note 1).
13 Id at 13-16.
14 Id at 59.
15 Id at 62.
prestige. He has the country club complex.” He has the country club complex.” This characterization of the modern publisher presumably meant that, in the Commission’s opinion, the issues raised and the arguments presented about those issues tend to be those of interest to members of that particular social class. This characterization also meant—and here the Report is quite explicit—that the press regularly and actively opposes any legislation that would injure its own interests.

But the Commission’s notions about the commercialization of public issue discussion in the media transcend these obvious, even if important, senses of the term “bias.” The Commission tries to get at a more elusive problem: namely, at how the drive for profit motive overwhelms, or seduces, professional journalistic judgment. The Report speaks of how the media managers, driven to acquire wider and wider audiences, create the “news” in ways that will attract attention, even at a cost of significant distortion. Thus, the media avoid presenting material that audiences find unsettling or disagreeable, thereby satisfying the natural human impulse not to confront that with which we disagree. Moreover, media simply “transfer[s] to mass communication what had formerly passed from person to person as gossip, rumor, and oral discussion.” According to the Commission, the “American newspaper is now as much a medium of entertainment, specialized information, and advertising as it is of news.” The Commission observed that “the word ‘news’ has come to mean something different from important new information.” Drama and sensation, instead of accuracy, are the standard: “The criteria of interest are recency or firstness, proximity, combat, human interest, and novelty.” And, again, “[t]o attract the maximum audience, the press emphasizes the exceptional rather than the representative, the sensational rather than the significant.” We get “catch headlines” rather than a “continued story of the life of a people.”

17 Id at 51. At one point the Report asks, rhetorically, whether mass media owners don’t share a “common bias—the bias of the large investor and employer?” Id.
18 Id at 61-62.
19 Hutchins Report at 54-57 (cited in note 1).
20 Id at 57.
21 Id at 53.
22 Id.
23 Hutchins Report at 54 (cited in note 1).
24 Id at 55.
25 Id.
26 Id at 56.
In the Commission's view, the effect of the profit motive on the presentation of public issues lies at the root of the problem. Indeed, this should be expected, the Commission says allusively:

Information and discussion regarding public affairs, carried as a rider on the omnibus of mass communication, take on the character of the other passengers and become subject to the same laws that governed their selection: such information and discussion must be shaped so that they will pay their own way by attracting the maximum audience.27

The manner of selling goods now controls the idea of "news":

Sales talk relies heavily on sheer repetition of stimuli, presents favorable facts only, exaggerates values, and suggests a romantic world part way between reality and a materialistic utopia. It does not discuss a product. It "sells" it.28

In contrast, public discussion

[a]t its best . . . [is] a two-way process, with listening, response, and interchange, in which some at least of the participants are genuinely seeking for answers and feeling their way toward those answers which are supported by the weight of the evidence.29

Unfortunately, according to the Commission, "[m]uch of what [now] passes for public discussion is sales talk."30

Given this emerging, revolutionary new world, what solutions did the Commission propose? At the very outset of the Report, the Commission warns us against feeling a sense of anti-climax when we turn to the subject of what can be done. Conceding that its recommendations are not startling, the Commission tries to alchemize its failure to say anything novel into a sign of significance, saying of its truly modest proposals: "The most surprising thing about them is that nothing more surprising could be proposed."31

Then, the Report relies on the modesty of its recommendations as an argument for why they must be accepted and implemented: "The Commission finds that these things are all that can properly

27 Hutchins Report at 54 (cited in note 1).
28 Id at 64.
29 Id at 64-65.
30 Id at 64.
31 Hutchins Report at viii (cited in note 1).
be done. It is of the utmost importance, then, that these things should actually be done . . . .”\textsuperscript{32}

The concluding chapter to the Report lists thirteen recommendations.\textsuperscript{33} Not one of the thirteen would significantly change the law regarding the press. Indeed, the Report throughout disclaims any wish to retreat from the prevailing level of constitutional protection for the press. Nevertheless, the Report repeatedly warns the press that its failure to live up to what the Commission called the “moral” right of freedom of the press, as distinct from the “legal” right, was jeopardizing its legal right. Society will not tolerate forever, the Report concludes darkly, a free press that abuses its freedom and fails to fulfill its social responsibilities.\textsuperscript{34}

Several of the Report’s recommendations involve proposals for self-reform by the press: According to the Commission, the press needs a meaningful code of ethics. (The Commission found one such code developed by the American Association of Newspaper Editors in 1947 to be empty.) Media should “accept the responsibilities of common carriers of information and discussion”\textsuperscript{35}—a recommendation that harks back to a statement in the Report’s foreword that it is “imperative that the great agencies of mass communication show hospitality to ideas which their owners do not share.”\textsuperscript{36} Additionally, the Report recommends that the press finance new, experimental activities “of high literary, artistic or intellectual quality,”\textsuperscript{37} strive to serve “minority” tastes,\textsuperscript{38} and “engage in vigorous mutual criticism.”\textsuperscript{39}

As for other institutions in society, the Report approves of federal regulation of radio and television to insure that they operate according to the “public interest,” as well as state boards of review for motion pictures.\textsuperscript{40} It further recommends that the government “facilitate new ventures in the communications industry.”\textsuperscript{41} It asks specifically that libel laws be amended to allow the injured party to obtain “a retraction or a restatement of the facts

\textsuperscript{32} Id.
\textsuperscript{33} See id at ch 6.
\textsuperscript{34} Id at 80.
\textsuperscript{35} Hutchins Report at 92 (cited in note 1).
\textsuperscript{36} Id at viii.
\textsuperscript{37} Id at 93.
\textsuperscript{38} Id.
\textsuperscript{39} Hutchins Report at 94 (cited in note 1).
\textsuperscript{40} Id at 82-83.
\textsuperscript{41} Id at 83.
by the offender or an opportunity to reply”; but it refuses to urge legal remedies for lying generally by the press.42

Universities have an important role to play, according to the Commission. To promote “professionalism” within the press, educational institutions should upgrade schools of journalism, making them genuine centers of intellectual inquiry and scholarly criticism rather than merely vocational training programs. Prospective journalists should receive a liberal education.

Finally, and most importantly, the Report recommends “the establishment of a new and independent agency to appraise and report annually upon the performance of the press.”43 The Commission believed that:

[We] cannot turn to government as the representative of the people as a whole, and we would not do so if we could. Yet it seems to us clear that some agency which reflects the ambitions of the American people for its press should exist for the purpose of comparing the accomplishments of the press with the aspirations which the people have for it.44

An independent commission would do this and “would also educate the people as to the aspirations which they ought to have for the press.”45 Such an agency should be “independent of government and of the press,” “created by gifts,” and “given a ten-year trial.”46 The report then lists ten responsibilities for the commission: “Define workable standards of performance”; try to identify the drift towards monopolization; engage in “[i]nquiries in areas where minority groups are excluded from reasonable access”; engage in inquiries “abroad regarding the picture of American life presented by the American press”; investigate instances of lying; appraise the tendencies and characteristics of the media; appraise government action affecting communications; encourage centers of advanced study and research; encourage “projects which give hope of meeting the needs of special audiences”; and finally, the Commission urges—without indicating any consciousness of the risks for its newly conceived institution of falling victim to the very disease it had diagnosed as afflicting modern mass media—that this

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42 Id at 86-87.
43 Id at 100-01.
44 Id at 101.
45 Hutchins Report at 100 (cited in note 1).
46 Id.
new agency should do all this in such a way as to “attract the widest possible publicity and public discussion on all the foregoing.”

Such is the final Report of the Commission on Freedom of the Press.

II. SOME GENERAL CRITICISMS OF THE HUTCHINS COMMISSION’S CLAIMS

To modern ears the Hutchins Commission Report seems familiar, powerful, and naive. The familiar is its concern over the phenomenon of concentration of ownership and the concomitant power of a relatively small group of individuals to control the gates to public discussion. The risk of monopoly had already been identified as potentially impairing freedom of speech and the press, at least by the decade preceding the Hutchins Commission Report. Indeed, Zechariah Chafee—Hutchins’s vice-chairman for the Commission—had already written about this problem several years before. For us today, of course, the danger of monopoly remains an important, and frequently articulated, concern. Many commentators commonly believe, in fact, that the problem is worse now than in 1947. At least some statistics point in that direction, and strikingly so. While the total number of daily newspapers in the country has decreased only slightly since World War II, the number of cities with more than a single daily newspaper has decreased from 117 (cited by the Commission) to roughly two dozen. With the development of television, both broadcast and cable, since the late 1940s, however, it is somewhat harder to say definitively whether the situation, in terms of concentration of ownership, has deteriorated or improved. The emergence of chain ownership also must be analyzed for its impact on reducing diversity within the media.

Where the Hutchins Commission Report is quite novel and powerful, however, is in its indictment of the commercialization of public discussion in the mass media, and especially in its efforts to grasp the wider effects of a business mentality, as contrasted with a more “professional journalistic” mentality, in the press. This has been a subject of some serious writing, particularly in England

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47 Hutchins Report at 101-02 (cited in note 1).
(and continental countries as well), where state control of broadcasting was (or has been) for many years the norm, and the advantages and disadvantages of a free market alternative are more regularly and fully debated. In comparison with contemporary discussions about the effects of a market economy on the press, though, the Hutchins Commission Report can also seem quite sketchy and primitive. It is interesting, for example, that the Report makes no mention of the concern that the different abilities among citizens to succeed in a free market system for goods and services will, presumably, deeply affect who will have effective access in a for-profit mass communications system. Moreover, even the Commission's speculations about the psychology of a for-profit press do not fully capture the range of potential effects. Some commentators, for example, believe that such a system tends to be safe and non-experimental, and that it overemphasizes the joys of materialism, which in turn has an insidious connection to an unhealthy fascination with sex and violence.

Where the Report really begins to fall short of seeing the complexity of its perspective, however, is in its uncritical attitude towards its working assumption that the press is the cause of the defects it identifies in modern public discussion about public issues. The problems with this premise about causation are several. It overlooks the possibility that the press may simply be a cog in a larger social wheel that drives it to address public issues in the way it does. The journalist may be locked in a social context just as much as anyone else. To the left, and especially to Marxist-oriented writers about mass media, the press is simply the handmaiden of the class structure of which it is a part. To fix a reformist gaze on the press, therefore, to eye it as the cause of our problems, is not only to ignore the true causes, but to make oneself—unwittingly or not—an ideological tool of these broader forces by providing them with easy cover and a scapegoat. One need not be a Marxist, however, to worry about this kind of misdirected concern. To understand the force of the objection, just consider what might be the consequences of a belief that the media are the primary cause of racism, or sexism, in American society.

An important variation on this criticism of the Hutchins Commission Report is that the Commission fails to understand the role played by the public in producing the system to which it (the

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Commission) so vigorously objects. One possible view of the inade-
quacy of public discussion in the media is that the press is
manipulating an innocent and vulnerable public. Another view,
however, is that the press behaves as it does because the public
asks it to behave that way. If that is true, then any analysis of the
causes of the problem should begin with deficiencies in the minds
of the audience.

It is fairly clear, I think, that the Hutchins Commission under-
stands the public to be a puppet of the press, even though the
Commission does not explicitly say so. When the Report speaks of
the press as an “educator,” when it talks about how a democracy
can be sustained only so long as the citizens possess a certain
“mentality,” a stable and confident temper—in contrast to being
anxious, suspicious, and gullible, and when it speaks of how the
press debases its reporting in order to obtain a “wider” audience,
the implicit assumption of these and other remarks throughout the
Report is that the public is capable of “low wants” and “high
wants” and that the media too often appeal—with unfortunate
success—to the lower sides of human nature. The implicit message
of the Report is that this kind of pandering to the baser interests
of people is destroying the moral character and quality of public
debate.

The Commission’s reaction to this state of affairs was, as we
have seen, to seek various means of developing a “professional”
identity within the press, to be created and reinforced by collective
action within the media and by institutional actions and pressures
from outside. Towards the end of the Report, at the point where
the Commission considers remedies, it openly confronts the claim
that the press is simply serving public demand such as it is. To
this idea the Commission answers:

We have weighed the evidence carefully and do not ac-
cept this theory. As the example of many ventures in the
communications industry shows, good practice in the in-
terest of public enlightenment is good business as well.
The agencies of mass communication are not serving
static wants. Year by year they are building and trans-
forming the interests of the public. They have an obliga-
tion to elevate rather than to degrade them.  

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63 Hutchins Report at 12 (cited in note 1).
64 Id at 91-92.
And in a most revealing statement—revealing of the Commission’s perception that public demands may be illegitimate and of its further belief that when demands are illegitimate they should be ignored—the Commission closes the discussion by noting that “there are some things which a truly professional man will not do for money.”

It is noteworthy, I think, that the Commission did not explore this perspective fully. This omission is probably not because they failed to grasp the implications of what they were saying. Rather, I suspect, the reason lay in their reluctance to appear elitist or paternalistic towards the general public. If that is so, then it should be recognized that a number of unhappy consequences may follow from that reluctance—one of which, relating to the need for an independent commission on the press, is discussed later. For now, I would simply note the following criticisms.

First, one unfortunate effect of the Commission’s failure to pursue this perspective further is that we end up with little understanding of the human psychology that may be at the root of the problem. We have no clear idea of the extent or nature of the drift towards low tastes; we also have equally little understanding of the extent to which these tendencies are distributed among groups within society, including the members of the Commission. The Commission’s attitude that illegitimate public demands should be ignored may also stimulate resentment among segments of the public and the press, whom the Commission was trying to persuade to change.

That leads to a second criticism: While the Commission’s suggestion that the press develop a professional posture and not serve base preferences is a time-honored and sophisticated move in this kind of debate, it may be, at least to some extent, a wholly inadequate remedy for the problem the Commission thought it had identified. That the press can alter the preferences of the public may be granted as plausible to a point. But it must also be granted as plausible that media leadership alone cannot alter the conditions in which large segments of the public find themselves. The dulling of the average American mind by the nature of modern work, or by an unresponsive, overly bureaucratized system of government, may blunt the efforts of even the most imaginative journalists to entice audiences away from their daily dose of low entertainment and frenzied discussions of public issues.

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65 Id at 92.
Commission's method of reasoning obscured these potential obstacles to the reforms it sought.

Of course, we might also wonder whether the Commission was correct in its attack on what it characterized as low-quality public discussion of public issues in the press. There are problems not only in identifying the causes of low quality, but also in deciding what is actually low and, conversely, what is high quality in the treatment of public issues. The Report manifests a serene confidence in the Commission's ability to know it when it sees it. Yet throughout the Report, the Commission offers virtually no examples of what it regarded as fine and what inadequate. One does not have to be a deconstructionist to feel that the Commission's vague words of criticism and aspiration depend on each reader's assumptions about what is good and bad in press reporting. It is, therefore, difficult to know, as it always is, whether the Commission's indictment of the press reflected its own class-based biases, or perhaps its illegitimate and unjustified wish to represent itself as the grand trustee of high-quality public discussion.

III. THE WORLD SINCE THE REPORT

Putting aside for the moment these general criticisms of some of the premises of the Hutchins Commission Report, and taking the Report on its own terms, we might next consider whether, since 1947, institutional pressures for a more heightened concern within the press to serve the public interest—pressures of the kind the Commission had in mind—have increased or decreased. As we have seen, the Report called for no particular legal regulations. It did, however, stress the need for greater self-regulation within the press and for the development of a sense of professionalism that would be nurtured and encouraged by journalism schools, universities, and an independent, permanent commission. What would the Commission say today if they could look upon the world that followed them?

There would appear to have been little, if any, change in the form of collective self-regulation within the mass media. I know of only one experiment with the kind of independent press council the Hutchins Commission had in mind. That was the National Press Council. Established in 1973 to receive and evaluate complaints against the press, it collapsed in 1984, the victim of benign

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66 For one example of reporting considered inadequate, see id at 56.
67 Williams, Communications at 109-16 (cited in note 51).
neglect by major institutions within the press, such as the *New York Times*.\textsuperscript{58} Furthermore, with respect to press codes of ethics, while there are more today than in 1947, they are, as far as I can tell, still about as vague and ineffectual as the American Society of Newspaper Editors' code, a code severely criticized by the Commission.\textsuperscript{59}

It is more difficult to say whether there has been an improvement in the training of journalists. My own hunch, and it is only a hunch, is that the Commission would not be much more pleased with what it would see today. Journalism schools, and departments of communications, report that they are looked down upon by other parts of academia and even by the working press, and complain that they have not received the support of the press in structuring an appropriate curriculum.\textsuperscript{60} Most assuredly, few would contend that journalism schools have approached the educational or scholarly levels of other professional schools.

One bright spot that should be noted, however, is that there are today several programs in the country for mid-career journalists to take a sabbatical year exploring the university, such as the Neiman Fellows program at Harvard, which is exactly what the Commission recommended. (There are now such programs at Michigan, Chicago, and Stanford.)

Meanwhile, while neither collective self-regulation by the press nor educational programs for journalists have apparently improved, the liberty of the press to behave as it would like has been greatly expanded. A major change since the Hutchins Commission Report is that the Supreme Court has taken a more active role in building a foundation of constitutional protections against public regulation of the media. Beginning with the Court’s 1964 decision in *New York Times Co. v Sullivan*,\textsuperscript{61} the Court has decided case after case (typically one or two every year) in which the media have claimed a right to be free of social control. And the success of the press has been quite stunning—less stunning, it is true, under the Rehnquist Court than before—but still quite stunning. Whether you look at the law of defamation, invasion of privacy, national security, or the freedom to report on and even to attend

\textsuperscript{59} Hutchins Report at 74-75 (cited in note 1).
\textsuperscript{61} 376 US 254 (1964).
trials, the press is far more independent of legal controls today than it was at the end of the Second World War. Moreover, while it is true that the Hutchins Commission did not call for expanding legal regulation of the press, it certainly did not call for eliminating such controls, and yet that is precisely the direction that constitutional law has taken in the intervening half-century.

On first glance, then, one might very well conclude that the context in which the mass media operate has not improved along the lines wished for by the Hutchins Commission; indeed, circumstances may even have worsened. But a second, more thorough, examination of the past five decades reveals a more complex picture. In fact, there have been several highly important changes in the social system that have created new sources of pressure on the press to serve a broader “public interest.”

The first development is the emergence of television, which, it is commonly assumed, has by itself revolutionized the character of modern mass media. At the moment, however, I am not interested in the revolution wrought by television, but rather in the trail of public regulation that has pursued its character. Though radio broadcasts were regulated when the Commission wrote (and, indeed, such regulation received the Commission’s explicit endorsement), the system of regulation at that time was still in its infancy. Over the past thirty years, various rules arising out of the statutory obligations of broadcast media to serve the “public interest, convenience, and necessity” have been developed, refined, and implemented. The fairness doctrine (requiring broadcasters and cable to provide reasonable amounts of balanced coverage of public issues of public importance), the equal time rule (requiring licensees to offer all candidates for public office the same amount of airtime they offer to any single candidate), the reasonable access rule (requiring licensees to give candidates for federal office reasonable opportunities to purchase airtime)—all these and other, more general obligations to operate in the public interest, enforced through a system of renewable licenses—constitute extraordinary inventions in the realm of public regulation of the mass media. To cover public issues and candidates, to be fair and balanced in that

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coverage, and to maintain a general goal of serving the public good were all primary goals of the Hutchins Commission, and they were substantially realized in the scheme of broadcast regulation.

The significance of this development, however, has not necessarily been limited to shaping the character of broadcasting. This special system also may have influenced other, technically-unregulated media, specifically, the print media. I cannot here develop this theme, which I explore in *Images of a Free Press*, but the essential idea is that a basic, endemic confusion throughout this period about the reasons (constitutional as well as policy) that broadcasting could be regulated, while print could not, created an unstable environment in which the print media could never, or rarely ever, be sure that the broadcast regulatory regime would not be extended to them. I believe there are some good reasons for thinking that this uncertainty has had an important effect on the development of the mass media as a whole. And, if that is true, then the state has had an important role in nurturing a particular conception of journalistic standards in our society.

Still another significant governmental effort to shape the character of the mass media is the introduction of a system of public broadcasting. The Public Broadcasting Act of 1967 launched a special form of media in this country—a publicly sponsored press with an explicit, central purpose of elevating the performance of commercial media by good example. By establishing a role model, it was thought, the preferences of the public could be raised. Here, then, in concrete form, is yet another substantial embodiment of the ideals of the 1947 Report.

Finally, in identifying the forces that have given rise to a public, or "professional," conception of the press, which has emerged in the last half-century, I believe one must acknowledge the Supreme Court and the process of constitutional interpretations of the First Amendment. This may sound strange, especially as I stressed before how the Court has eliminated most public regulation of mass media. Nonetheless, a dimension of this process of Supreme Court adjudication, I think, has worked in quite another direction. For, as the Court has embarked on the task of interpreting the First Amendment, it has also articulated an ideal role of the press in society—and the role the Court has articulated is

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69 Id.
strikingly similar to the conception in the Hutchins Commission Report. If the Supreme Court's conception is itself influential, and I believe a reasonable hypothesis is that it has been and is, then the role played by the Court (whether deliberate or not) may have been to accomplish through the expression of an ideal what it refused to permit or require by law.\textsuperscript{70}

IV. SOME MODERN ISSUES THE COMMISSION NEVER CONSIDERED

As one tries to understand how the world has changed since the Hutchins Commission Report, certainly the most significant development has been the emergence, and perhaps even the dominance, of the technology of television. It is to the Commission's credit that they seemed conscious of the revolutionary potential of this then inchoate medium. According to the Commission, the public's conception of television does "not altogether reflect the importance of the invention. Television is not just a better or different form of radio. It is a combination of radio and motion picture which adds new dimensions to mass communication."\textsuperscript{71} Anticipating a major theme of some of the high social theorists of modern media,\textsuperscript{72} the Commission observed that with television, people all over the globe "will be permitted the same face-to-face observation of each other that is now limited to the citizens of small communities."\textsuperscript{73} All in all, the Report concluded, we can expect that the "speed, quantity, and variety of mass communication will continue to increase," though, it also warned, this will not necessarily "increase mutual understanding." It may, in fact, "give wider currency to reports which intensify prejudice and hatred."\textsuperscript{74}

Television, and its effects on the public mentality, has, however, become a preoccupation of the past half-century, generating issues never entertained by the Hutchins Commission. It has spawned a huge literature of "media studies" that searches for signs of the human and social transformation presumed to have occurred. Reviewing this literature, one is struck by a shared sense of a momentous change in human history, in tone and even to

\textsuperscript{70} This idea that the Supreme Court's (or legal) characterization of the media has an effect on the character of the media is explored generally in Bollinger, Images of a Free Press (cited in note 49), and particularly in Lee C. Bollinger, The End of New York Times v. Sullivan: Reflections on Masson v. New Yorker Magazine, 1992 S Ct Rev 41-46.

\textsuperscript{71} Hutchins Report at 35 (cited in note 1).


\textsuperscript{73} Hutchins Report at 35 (cited in note 1).

\textsuperscript{74} Id at 35-36.
some extent in substance, similar to what was written, primarily in the nineteenth century, about the transformative effects of the industrial revolution.

Much of the literature, it must be said, is obscurely written and dramatically overstated—as if it were the product, rather than the critique, of the hyped-up media it purports to study. One reads frequently of how television has altered the “time” and “space” limitations on our ability to receive information about the world, yet there is very little analysis or even speculation about what exactly this means for human experience or human nature.

Nevertheless, it is also the case that this area of study has attracted many interesting minds who have raised many important issues, which any intelligent society would want to consider. There are intelligent observations about the impact on the human mind of receiving most of our information and ideas visually. In an essay, “After the Book?,”7 published in 1972, for example, George Steiner argued that the “way of life” connected to serious book reading, which arose out of a tradition that viewed language as the preeminent means of understanding and ordering human experience, is being lost because of new media such as television. To Steiner it is significant that, in modern culture, “a great part of humanity now receives its main informational and evocative stimuli in the form of images and illustrative signal-codes.”8 While the word remains vital, the way of life associated with it over many centuries has diminished.

Probably the most commonly raised concern about television, however, is that it is causing a breakdown in our ability or willingness to distinguish the real from the unreal. This claim now permeates every level of public thought and discussion. We see it in the daily news. For example, former Vice President Quayle criticized the television sitcom character Murphy Brown for willingly becoming an unwed mother, prompting many within the press and outside to mock the Vice President by reminding him that Murphy Brown is a fictional and not a real person.9 Murphy Brown then,

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7 George Steiner, After the Book?, in “On Difficulty” and Other Essays 186 (Oxford University Press, 1978).
8 Id at 199.
9 See Andrew Rosenthal, Quayle Says Riots Sprang from Lack of Family Values, NY Times A1 (May 20, 1992); Excerpts From Vice President’s Speech on Cities and Poverty, NY Times A20 (May 20, 1992); Michael Wines, Views on Single Motherhood are Multiple at the White House, NY Times A1 (May 20, 1992); Bill Carter, CBS is Silent, but Then There’s Next Season, NY Times B16 (May 21, 1992); Editorial, Dan Quayle’s Fictitious World, NY Times A28 (May 22, 1992); Richard L. Berke, In Capital and on Coast, Lines
to much fanfare, responded in character to a supposed criticism of her by the former Vice President, thereby strangely reinforcing the sense that the people portrayed on television are real people living real lives.

Puzzlement over and fear of the effects of a televised (or increasingly visual) understanding of the world is also a major subject of contemporary art. Pop artists of the late 1950s and 1960s explored this theme in their work, and it continues to be a pervasive idea in the contemporary art world. Here are two quick examples. In a much celebrated and criticized new opera of a few years ago called “The Death of Klinghoffer,” composed by John Adams and which addressed Arab-Israeli relations in the context of the hijacking of the cruise ship Achille Lauro and the murder of a hostage (Leon Klinghoffer), the live performance was simultaneously shown on a large video screen at the top of the stage. By making one continually choose between seeing the “actual” production and the video displaying a close-up camera view, it raised the issue of how we experience events (both the actual and the operatic), and how we would choose to have that experience and for what reasons.

Last summer the Tate Gallery in London had an exhibition of the works of the well-known contemporary artist Richard Hamilton. One picture, titled “War Games,” showed a “home video center” with a television scene of a simulated battlefield. Toy tanks were lined up as if to represent relative military strength and two signs labelled “Iraq” and “Kuwait” divided the desert, with flags of those and Western countries at various locations. A newspaper with the headline “the Mother of Battles” was folded above the VCR. A red liquid, like blood, dripped from the bottom of the television set. The Tate’s exhibit brochure was direct and to the point, describing the work as the “outcome of Hamilton’s monitoring of television broadcasts during the period of the Gulf War of 1991.”

Drawing on Quayle, NY Times A1, A8 (May 23, 1992); Bill McKibben, *TV or Not TV*, NY Times A21 (May 27, 1992).

Actually I think the criticism is unfair, because it was reasonably clear Quayle was objecting to the behavior of television characters because they influence and affect social mores. Indeed it might be said of Quayle’s critics that, by refusing to acknowledge his criticism of the effects of media, they were fostering the view that media fiction is socially unmeaningful.


known as the 'Sandpit,'” the Tate brochure continued, Hamilton thought that “the television presentation of the war, particularly as a game with models, obscured the fact that thousands of Iraqi conscript troops were dying in their 'sandpit.'”

These contemporary works explore dimensions of this general, and highly important, question about the potentially debilitating consequences for the public mind in the seductive illusions of television. The concerns create a circle: We regard the imaginary events of television as real—and perhaps even as more desirable than non-television “reality”; this, in turn, affects how we construct our actual, real lives—political events, for example, are “staged” to appear more suitable for television and to meet expectations created by television as to what events should be; and, finally, actual events are reported and discussed on television as if they were merely fictional and without serious consequences. The mind ends up profoundly confused in what it treats or experiences as real (as actual and not as representative of, or pretending to be, actual).

The most dramatic and far-reaching theory about what has happened to the modern mind comes from the postmodern pen of the French (of course) theorist Jean Baudrillard. Baudrillard’s thesis is that the televised image is an “evil demon” that has completely corroded the moral character of Western societies. The “image” has succeeded in its immoral conquest, so that now the image has become real and then disappeared—“in the implosion of image and reality.” The claim, if true, is hardly insignificant. Television, Baudrillard says, for example, in its treatment of the Holocaust, is a continuation of the Holocaust:

Henceforth, “everyone knows,” everyone has trembled before the extermination—a sure sign that “it” will never happen again. But in effect what is thus exorcised so cheaply, at the cost of a few tears, will never recur because it is presently happening in the very form through which it is denounced, through the medium of this supposed exorcism: television . . . . They want us to believe that TV will remove the mortgage of Auschwitz by raising the collective consciousness, whereas it is the perpet-

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80 Id.
82 Id at 27.
uation of it in a different guise, under the auspices not of a site of annihilation but a medium of dissuasion.88

In comparison with this realm of criticism of modern mass media, the Hutchins Commission Report seems strikingly tame.

V. The Wisdom of a Commission

The above discussion seems to lead to a realization of the continued good sense, even wisdom, of the Hutchins Commission proposal for an independent, nongovernmental commission to study the role of the press in our political and cultural life. Both the continuity of the problems over the past half-century and the enormously significant changes that have occurred since then suggest that it would be a pity if society did not continue to build upon the labors of the Hutchins Commission.

A new commission should not, however, try to do all that the 1947 Report recommended. In particular, it should not view itself as a body for receiving and investigating particular complaints about the press. To investigate complaints fully requires either the power to compel the media to cooperate or media willingness to do so, neither of which is likely to occur. Apart from the problems of being an effective investigatory body, however, it must be said that permanent commissions tend rather quickly to become old and tired, and, when they do, no one will, or should, pay much attention to them. There is, moreover, much to be done simply in trying to be self-reflective about the state of the American press and the quality of public thought about public issues. The best people are also more likely to be attracted to such an agenda. My recommendation, therefore, is that a new commission should be called, and privately financed, only once each decade.

The commission should focus its attention on the following matters: first, describing (or characterizing) the history and present conditions of the American press (for example, the degree of concentration of ownership); second, describing and evaluating the sources of various pressures on the media to behave well or badly (there is a particular need to evaluate the effectiveness of public regulations of broadcasting, such as the fairness doctrine); and, third, reviewing and synthesizing, and then offering its considered judgment on, the ideas, observations, and theories that emerge from the very substantial body of literature that already exists on the character of modern mass media. This last-mentioned role for

88 Id at 24.
a commission is particularly important, I think, because much of the literature—indeed, some of the best—is written in a style and at a level of analysis that makes it accessible only to the erudite specialist. A commission could play a very useful role simply in mediating between this sort of high theory and ordinary public debate.

This last observation suggests an additional reason why an independent commission is uniquely valuable in this area of social life. The First Amendment, as I suggested earlier, plays a highly complicated role in shaping the character of the press in this country. But two characteristics of the First Amendment are important here. The first is that the constitutional principle of freedom of speech and press operates on a highly idealistic vision of the role of the press in society. There is a need, therefore, for other institutions to consider the tougher reality. The second is that the First Amendment has the inevitable effect of removing from legislative arenas virtually any consideration of proposals to control the press through law (except with respect to broadcast media). The First Amendment even contributes to an environment in which discussions about the quality of the media are discouraged; the specter of censorship is used as a threat to silence criticism of the press, often inappropriately. In any event, in this area, governmental institutions are precluded from serving one of their important social functions, which is to provide a social forum in which the deeper literature and thought about society are digested and understood through the crucible of potential legislative action. A commission, therefore, can consider what public institutions would consider but for the First Amendment.

CONCLUSION

In the end, however, it must be acknowledged that any commission must have a vision of the world. We have seen that the Hutchins Commission had a vision, even though it glossed over many important implications of that vision. The Commission believed that the commercial context in which mass media operate in this country has a negative influence on their behavior in discussing public issues. Countervailing pressures were required from institutions both within and without the press. The aim was to infuse the media with a norm of “professionalism,” a concept borrowed from other areas of social life.

In my view, this was a sound, but dangerously partial, vision. A commission should recognize that any social and economic system affects the voice of its media, for good and for bad. In Europe,
a state-sponsored and administered system of broadcasting produces—especially in England—an extraordinarily venturesome and experimental journalism (there is nothing quite like BBC Radio 3 anywhere), but it also produces at times a cloying, stuffy and deadening programming, which purports to present, falsely, to nearly everyone, the true “public” voice. Moreover, the problem of getting the best public discussion requires a more subtle understanding than the Commission revealed of the centrifugal forces in human nature—besides commercialism—that draw people away from a proper interest in the collective well-being of the society. Appreciating both the benefits for the principle of freedom of the press of a free market system, and the range of complex forces that diminishes high-quality consideration of public issues, is essential to devising and evaluating the institutions that are supposed to provide the corrective pressures on the primary system. Will these institutions themselves succumb to the pressures they seek to resist? (This is a fear, for example, for public broadcasting—that it has become commercialized; and it ought to be a fear held by the academic community, which is called upon more and more by the press to offer its “expertise” in a sentence, in return for a moment of participation in the culture of fame.) Can the press engage in collective self-reform and adopt an identity of the “professional,” and yet retain what may be a highly desirable ethos of the independent critic at the margins of society?

Above all, however, any commission should set an example for the media and be aware of, and quite explicit about, its own biases, which the Hutchins Commission was not. Commissions may reflect the views of only a segment of the society. They may fail to see the potential for genius in what is assumed to be low culture. And, ironically, they may tend to speak in Olympian judgments, without adequate regard for nuance, failing to see complex problems as complex—which may be, in the end, one of the greatest sins of the media as well. Who can be completely comfortable about the questions of causation discussed earlier? Who can listen to claims about the necessity of separating illusion and reality and not begin to wonder about the complex and potentially positive role of imagination in shaping the understandings of public questions? More than anything else, however, an honest commission, in my judgment, must confront the issue not just of the quality of the press but of the quality of the audience. Media leadership is important,

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84 Bollinger, Images of a Free Press ch 3 at 55-59 (cited in note 49).
but so is public awareness of its own limitations and bad impulses. A commission itself might exercise leadership by arguing with the public that the problems raised by a Hutchins Commission are at least partly theirs to acknowledge and partly theirs to solve.