

## **Communication as Commodity: Should the Media be on the Market?**

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**ABSTRACT** *Should media communication be left to the market, or rather (partly) removed from the market? This question is discussed by reconstructing an often-found ‘standard argument’ in the literature on the subject. This standard argument states that some form of market-independent media provision is required since markets will fail to deliver a specific kind of high-quality content conducive to the democratic process. This paper argues that the standard argument is defective in several respects. By doing so, it reevaluates the way we think about the contribution of the media towards democracy and the role that the market is to play in this respect. First, the paper argues that the standard argument’s normative premise should not be couched in a welfarist theory but in terms of the capabilities that the media should strive to realise. Second, it sets the normative expectations of the media’s contribution towards the public sphere and democracy at too high a level. Third, the standard argument’s diagnosis of the market’s failure incorrectly assumes that the market can never generate the demand for high-quality content. An alternative, more circumscribed claim about the market’s failure is presented, resting on two more contingent types of demand failure.*

Many have held that media communication is simply a commodity, governed by familiar laws of the marketplace. As a former chairman of the US Federal Communications Commission put it: ‘Television is just another appliance . . . a toaster with pictures’.<sup>1</sup> The main question of this paper is whether we should agree with this diagnosis. Should media communication be left to the market? Or do we have good reasons to remove media communication — completely or partly — from the market, and to provide it through alternative allocation mechanisms? In terms introduced by Michael Walzer, should media communication be a ‘blocked exchange’?<sup>2</sup> To answer this question affirmatively would then be to establish one ‘moral limit to the market’, or limit to ‘commodification’.<sup>3</sup> The present paper is offered in the spirit of an exercise to determine whether the media is an example of such a limit.

The practical urgency of this question is undeniable. Since their inception, the mass media have played a crucial role in setting political agendas, shaping social debates and informing the general public. During the 20<sup>th</sup> century, most democratic societies have tried to regulate the media, so that they would perform these functions ‘in the public interest’. For example, in many European countries commercial TV and radio were not allowed until the 1980s and public broadcasters held a monopoly position. Nowadays, the positions are reversed. After the break-up of these public monopolies the audience share of commercial channels relative to public channels rapidly increased. Similarly, in the US commercial channels were regulated to provide content of public interest, but during the last decades these regulations were relaxed. As a consequence, public broad-

casting and public interest regulation now are on the defensive. Why spend taxpayers' money on services that are already available on the market? The central point of sceptics has been that public intervention, bypassing the market criterion of satisfying actual consumer demand, is inherently paternalist or elitist. For example, Richard Posner polemically remarked that people simply 'want to be entertained' and 'want to be confirmed in their beliefs', so that '[b]eing profit-driven, the media respond to the actual demands of their audience rather than to the idealized "thirst for knowledge" demand posited by public intellectuals and deans of journalism schools'.<sup>4</sup>

Most political philosophers and social theorists writing about the normative justification of media markets have generally been critical of the idea that media communication may be a simple commodity. They have argued in favour of limits to media markets, often along remarkably similar lines; for convenience sake I will refer to their argument as 'the standard argument'.<sup>5</sup> The first, normative, premise of the standard argument is that consumer preferences should not determine what substantive media content is available in a society. Instead a preference-independent normative theory has to be adopted, which requires the media to deliver a specific kind of high-quality content, roughly equal to serious journalism, conducive to the well-functioning of the democratic process. The second, empirical, premise of the standard argument is that market-based media will fail to deliver the normatively required kind of media content. The conclusion is that some form of market-independent media provision is required.

This paper provides a close evaluation of the standard argument. My aim will be to show that it is defective in several respects. With respect to the first premise, I accept the central importance of the media for democracy, but argue that this should not be couched in a welfarist theory (the media as 'merit good'). Instead I propose to rely on a capability theory identifying those capabilities that the media should strive to realise (Section 1). Through a close examination of Habermas' endorsement of the role of the media in the public sphere, I will argue that, furthermore, the standard argument sets the normative expectations of the media's contribution to democracy at too high a level. The media is best conceived, not as part of the public sphere itself, but as only having a supportive role toward that sphere (Section 2). With respect to the second premise, I will argue that the failure of the market is not as straightforward as is usually thought. The standard argument claims that we cannot rely on the market because it merely satisfies existing preferences while the normatively desirable content forms new preferences rather than satisfying existing ones. I will argue that this claim suffers from a confusion of two different kinds of preferences (Section 3). Alternatively I offer a more circumscribed claim about the market's failure to deliver the normatively desirable content, resting on two contingent types of 'demand failure': in case of an emergency situation where democratic content is threatened with extinction, and in case of a collective action problem with respect to media consumption. At both levels, then, there is a case for non-market media, although less sweeping, narrower and more conditional than the standard argument acknowledges (Section 4).

## 1. A Normative Theory for the Media

The normative premise of the standard argument is put in terms of the requirement to provide specific kinds of media content. This is often elaborated in terms of what

economists call ‘merit goods’.<sup>6</sup> The hallmark of a merit good is that it brings beneficial effects (‘positive external effects’) over and above the value that is generated by the transaction between a good’s producer and its consumer. The most prominent example in the media context is content that keeps the public informed about social and political affairs, enables it to form its own opinions on these affairs and to participate in discussions about them (hereafter referred to as ‘democratic content’). One can, however, also think of other types of merit good. For example, some argue that the consumption of cultural programs has beneficial effects in civilizing people and increasing empathy between them (sometimes all these merit goods are taken together under the heading of ‘edifying content’). Finally, at the other end of the spectrum, there are also ‘demerit goods’: goods with negative external effects, such as media products with racist, sexist or violent content.

The normative claim cannot simply be that the media should — maximally or sufficiently — deliver merit goods and refrain from delivering demerit goods. For demerit goods, it remains to be seen whether or not the negative externality should be borne by media producers and consumers or by the third party benefiting from or being harmed by the externality.<sup>7</sup> For example, offensive speech is often constitutionally protected through freedom of speech, even though it provides clear harm to the offended person. Similarly, positive effects do not automatically qualify for internalization. For example, a country as a whole may prosper economically if part of the population has seen a winning match of the national soccer team and this causes a consumption boom; but this does not oblige the media to broadcast winning soccer games (and refrain from showing lost games). Any normative claim made on behalf of (de)merit goods needs additional argumentation to establish a normative requirement in its favour. This requires a general theoretical framework and its application to specific potential merit goods.

With respect to the general framework, I propose not to rely on a welfarist framework but instead interpret the normative claim in terms of capabilities. Thus understood the normative claim of the standard argument will read: *the media should promote people’s capability to acquire democratic content*. (I will restrict my attention to democratic content, presupposing other merit goods do not qualify.)<sup>8</sup> Apart from general reasons to prefer capability theories to welfarist ones,<sup>9</sup> there are perspicuous reasons to do so in the media context. The production of merit goods by media organizations cannot guarantee their consumption by citizens, nor should it do so. If the media broadcast democratic content, the realization of the positive welfare effect depends on people’s free choice to actually watch this content. The distinction fundamental to capability theories between ‘capability’ and ‘functioning’ is well-suited to bring out this crucial difference between opportunities to consume and actual consumption, the normative importance of promoting capabilities, not functionings, so that people have the freedom to decide whether or not to function in the relevant way. People cannot be coerced to actually consume democratic media content. Also, a capability formulation of the normative premise fits better with the awareness in communication studies that the reception of a message by an audience is not unproblematic or self-evident. The actual consumption (functioning) may not be identical to what the producer (sender) of the message intended.<sup>10</sup>

A cautionary note: that it is objectionable to legally coerce people to watch certain media content doesn’t mean that a normative conclusion to the extent that people *should* actually consume democratic content is foreclosed by the adoption of a capability

framework. A capability theory is not committed to the argument that capabilities should always be endorsed instead of actual functionings. Rather, the capability framework is valuable for giving us the distinction between both (thus adding analytical clarity compared to a welfarist framework). Even though this distinction is often introduced to support normative arguments that capabilities should be promoted, in principle the distinction leaves open the question whether in a particular context capabilities or rather functionings should be promoted. As we will see, this is important for the justification of non-market media, which will partly rely on promoting capabilities, partly on promoting functionings (see Section 4).

This reformulation in terms of capabilities has not yet given us a reason to endorse the normative premise. To do that, we need a normative criterion that distinguishes normatively valid from invalid claims. If a capability is to have normative force, we need to establish that it somehow is a ‘basic capability’; something that deserves promotion. As a criterion to distinguish basic — or as I will say, ‘morally required’ — from non-basic — or merely ‘morally permissible’ — capabilities, I will use the capacity for agency. Only those capabilities which are necessary to make people into autonomous agents deserve to be listed in a moral theory that requires these capabilities to be realised.<sup>11</sup> Thus, the capability to acquire democratic media content is to be classified as belonging to the category of morally required capabilities if it is somehow a necessary condition for individuals to develop their capacity for agency.<sup>12</sup>

The next step is to apply this general framework to the capability to acquire democratic media content: is this a morally required capability? A positive answer to that question can be defended in either of two different ways. One form of justification is to argue that to have this capability is a necessary condition for anyone to be a person. Following this line of thought, opportunities for benefiting from media content that enhance the quality of one’s democratic participation are valued intrinsically. Edwin Baker relies on this type of justification when he suggests that people’s collective preference for non-market media can be justified by the fact that ‘many people would like to be reflective, more self-reliant, more politically energized, more responsive to the needs of others, and more interested in being informed’.<sup>13</sup> This is a rather strong claim. It may be the case that for some people these opportunities are crucial to becoming the person they would like to be. For many others, however, participation in the public sphere does not play an important role in their self-conception, nor is there a convincing argument that it should do so. For example, what about people spending their life in obsessive engagement with art, sports or science, without any interest in social and political issues? Would they be agents to a lesser extent? That seems hard to defend.

It seems more promising to turn to an instrumental type of justification. People need to have the capability to acquire democratic content, for it provides them with the opportunity to participate in the public sphere, which makes this sphere function well. This in turn is necessary to enhance the quality of decision making in formal democratic bodies and to have checks against these bodies. A well-functioning democracy is required because this form of government has — at least in complex modern societies — the best chances of creating a society in which people can become full agents and have equal standing.<sup>14</sup> Thus, the capability to acquire democratic media content is required as a prerequisite for the well-functioning of the type of political system that is best placed to promote each person’s capacity for agency. Admittedly, this is a rather abstract argument. Therefore I will hereafter take a closer look at the relations between the media, the

public sphere and democracy, scrutinizing arguably the most influential account of these relations: Jürgen Habermas' study of *The Structural Transformation of the Public Sphere*.<sup>15</sup>

Before doing so, the sketch of our normative theory of the media needs one addition. For the media do not only deliver democratic content, but also non-democratic or — for brevity's sake — 'entertaining content'.<sup>16</sup> Should our normative theory include an imperative for people to have a capability to such content? Arguably, the media should be allowed to let viewers have their daily portion of soap series, quizzes and sports matches. None of these activities can be labelled as immoral. Neither can they be considered morally required, however, for it is difficult to see what entertainment would add to the development of agency. They are morally permissible. This classification is important, for in cases of conflict the realization of morally required capabilities takes priority over morally permissible capabilities. To the extent that it is practically impossible to promote both, the promotion of the capability for entertaining content will have to yield to the higher-order capability to acquire democratic content. Nonetheless, the non-democratic capability represents a separate source of normative claims on the media, even if only of the permissible kind. This is important, since our main question is about the suitability of the market mechanism for the media context. Since it is rather uncontroversial that the market is best equipped to realise entertaining content, we can now conclude that media products should not be 'blocked exchanges'; there is a legitimate scope for market-based media. The difficult matter is whether the capability to acquire democratic content can *also* be satisfied in a market context or requires non-market media.

## 2. The Media and the Public Sphere

In this section I will argue for a specific relation of the media to democracy on the basis of a close reading of Habermas' book on the public sphere.<sup>17</sup> I draw from it two different theses about the effects of the mass media on the public sphere and democracy. This will lead me to formulate more precisely the extent to which the media is able to support the public sphere and democracy. I will focus on Habermas' earlier work because this text displays the features that are important to my argument in the most exemplary fashion. To keep the discussion tractable, I will only briefly suggest how this relates to his later work on the media at the end of this section.

Following Habermas' original study on the subject, the ideal of the public sphere is the ideal of a sphere of rational-critical debate on the part of citizens deliberating among each other. This sphere arose in the 18<sup>th</sup> century as the rising bourgeois class emancipated itself from the state and started to discuss political and administrative matters. Discussions were not confined to politics; cultural and literary matters were equally prominent, as the public sphere provided the opportunity to discuss the new experience of subjectivity that simultaneously entered the sphere of the private bourgeois household.<sup>18</sup> The English coffee houses, the French *salons* and the German *Tischgesellschaften* were the prototype institutional platforms of this public sphere, but the role of the media was also essential. The press initially emerged in response to the needs of merchants engaged in long-distance trade: along with intensified traffic came the need for traffic in news. In a second step, many of the 'political journals' fell into the hands of state authorities, which used them to make public their decrees and control the stream of

information. Only in the third instance did these journals come to exhibit criticism and debate, as genuine organs of the public sphere.<sup>19</sup>

From this point on, two quite different themes can be stressed. The first theme, dominant in Habermas' account — and in media scholars following him — is that the market subsequently captured the media. Once controlled by capitalist interests, the media actively contributed to the decline of the public sphere. I will call this the 'market subversion' thesis. A second theme, more subterranean in Habermas, is that the mass media in and by themselves, i.e. even when abstracted from their market-based organization, subverted the public sphere. I will call this the 'media subversion' thesis. It is necessary to keep both theses analytically separated, even though in empirical reality they may be intertwined.

According to the market subversion thesis, the market initially had a beneficial influence on the public sphere because it provided the means through which people could participate in the public sphere (books, journals, theatre tickets, etc.). After a while, however, the media turned against the public sphere and commodified culture and critical debate itself, transforming it to fit prepackaged formats easily digestible by large audiences. As Habermas writes, 'Today the conversation itself is administered. Professional dialogues from the podium, panel discussions, and round table shows — the rational debate of private people becomes one of the production numbers of the stars in radio and television, a saleable package ready for the box office; it assumes commodity form even at "conferences" where anyone can "participate"'.<sup>20</sup>

The underlying mechanism that Habermas identifies is that the standards of debate are lowered so that a broad audience has access, but what it has access to in no way resembles the original ideal of a public sphere in which participants discussed social and political issues freely. The market not only gave the masses economic access to cultural goods, but 'it also *facilitated* access for broad strata *psychologically*'. As a consequence, '[t]his expanded public sphere, however, lost its political character to the extent that the means of "psychological facilitation" could become an end in itself for a commercially fostered consumer attitude'.<sup>21</sup> When explaining why the media would want to transform the public sphere in the way described, Habermas refers to the advent of 'the advertising business' that in the course of the 19<sup>th</sup> century came to dominate the internal organization of the media.<sup>22</sup>

If we follow the media subversion thesis, the picture is rather different. In Habermas' account, the direct and live discussions in coffee houses (and their present-day equivalents) are emblematic of the interactions in the public sphere. If this is so, then the mass media must always misrepresent the nature of that sphere. Debate in the media is always staged, artificially constructed. Whether a TV show is organizing a debate around a social issue of the day or a journalist interviews citizens on matters of public policy; the form and content of the resulting exchange is always in the hands of the media provider. The provider selects the topic, the guests, the questions etc. From this perspective media communications cannot escape being a *product*. It is always a constructed item that is communicated, not the representation of a spontaneous discussion with open access for all. This product nature of media communication is given with its 'one-to-many' character, whereas communication in the public sphere typically is 'many-to-many'.<sup>23</sup>

When Habermas tells us that in the early days of the public sphere this was otherwise, we see how the media's being part of the public sphere depends on a very peculiar setting. For here Habermas describes the functioning of weekly periodicals that were so

localized and small-scale that they could be considered as adjuncts ('integral parts') to the live discussions in the public sphere.<sup>24</sup> But these journals are only vaguely reminiscent of today's mass media; they look more like websites destined for (and accessed only by) members of a specific club. From this perspective, the tale of the decline of the public sphere emphasises a rather different development: the decline of the original discussions in the coffee houses due to the rise of state bureaucracies, special interest groups and political parties that closed the void between the private sphere and the state. This in turn provoked a new role for the media, much better integrated with their large-scale technological expansion on a commercial basis; that of 'public opinion formation', the conscious manipulation of the public for the sake of parochial interests.<sup>25</sup>

The difference between these two explanatory accounts is crucial for the market's relation to the ideal of a public sphere. If the market subversion thesis is correct, then the media's role in sustaining a public sphere can in principle be salvaged, by taking the media out of the hands of commercial (advertising) interests. The state could take over the media and establish public broadcasting.<sup>26</sup> If the media subversion thesis is correct, however, then there is no escape from private interests. The 'administration of conversation' will happen anyhow, *not* only when the media is taken over by the market, but *also* when media products are manufactured through alternatives such as state provision. A non-market-based mass media will also be dominated by groups who capture the relevant organizations. The objection against the market is then reduced to the market's administration of conversations in favour of commercial interests rather than other (potentially more benign?) interests.

We could also try to reconcile both theses, treating them not as mutually exclusive but as mutually reinforcing explanations. The media subversion thesis forces us to admit that the *real* public sphere always occurs outside of the manufacturing of the media's products. Nonetheless, just as a vibrant public sphere is an indirect warrant for the quality of decision making in the official political sphere, the media are an indirect testimony to the civic debate in the public sphere. The media *support* the debate in the public sphere in their products. In this supportive function, the media channels information from society at large to formal political arenas and vice versa. It informs citizens about the plans of political actors, communicates about political deliberations, exposes corruption within political bodies, etc. At the same time it informs political bodies about the desires and actions of citizens within the public sphere.

Thus formulated the ambition is more modest, not claiming a role for the media that it cannot fulfil.<sup>27</sup> Its supportive role would still be quite ambitious, however, in aiming at a representation unhindered by commercial or other particular interests (including state interests!), driven only by the wish to reflect what is going on among the public and in formal political decision-making bodies. At this point the market subversion thesis shows that this supportive role is endangered as soon as commercial interests predominate.

It remains somewhat unclear whether a reading of Habermas' work after his early *Structural Transformation* affirms or denies this conclusion. In a 2006 article Habermas seems to throw all the blame for the artificial construction of debate on the market's influence.<sup>28</sup> In this account the market intrudes the media, which in itself is characterized by an emancipatory potential. The groundwork for this construction is arguably laid in the 1980s *Theory of Communicative Action*, where Habermas subsumes the mass media under the category of 'generalized forms of communication' (i.e. influence and value commitment) rather than the steering media (money and power), and stresses the

emancipatory potential of the mass media.<sup>29</sup> In an article on the public sphere from 1992, however, we find Habermas faulting both the media's own ever-more centralised logic and the market's influence for weakening the public sphere.<sup>30</sup> The same line arguably is taken in *Between Facts and Norms* (1996).<sup>31</sup> These texts support the juxtaposition of the market subversion thesis and the media subversion thesis.

This latter argumentative strategy is in line with my position. However, there remains one point of dispute. Habermas still articulates very ambitious *normative* claims for the mass media.<sup>32</sup> In contrast, my position here is that even if the market doesn't have any influence in the media, the normative role to be attributed to the media in supporting the public sphere will have to be more modest than Habermas' version of the standard argument allows.

### 3. Media and the Market

Now I turn to the second premise of the standard argument, that the market is unable to promote the required capability; that it will tend to offer too little — if any — democratic content. Sometimes an explanation of such low levels is sought on the supply side. For producers, it is often more attractive to produce non-democratic content. The costs of producing a soap opera are lower than the costs of producing high-quality drama and the costs of producing investigative journalism are higher than the costs of news-room interviews.<sup>33</sup> However, if consumers should press hard enough, it seems that cost problems could be overcome. It is telling that even if democratic content is offered free of charge — for example on public television — it attracts substantially smaller audiences than non-democratic content. This shows that the problem doesn't predominantly lie on the supply side. Economies of scale make it attractive to produce democratic content at sufficient levels once it is in wide demand, so there must also be explanations for why demand is lacking.

The standard argument argues for the lack of demand by employing a distinction between preference satisfaction and preference formation. Media content either caters to existing preferences (preference satisfaction) or leads to the establishment of new preferences (preference formation). Democratic content typically triggers a process of preference formation on the part of receivers. It stimulates a creation of preferences about objects which were formerly not included in one's preference ordering and aims to challenge existing beliefs, so that people are required to consider a revision of previously-held preferences. Consumers will not exercise (sufficient) demand for this kind of preference-forming content since their preference for it can only be formed by already consuming it. And because consumers don't demand democratic content, market-based media will not offer it and confine themselves to content that appeals to people's wishes to have their actual preferences satisfied. For example, Russell Keat argues that '[t]elevision "ratings wars" provide plentiful examples, with programmes carefully constructed to provide audiences with "just what they (happen to) want", forcing out others which, by virtue of their transformative value, present something to their audiences which may challenge those preferences'.<sup>34</sup>

On the basis of this premise, combined with the previously discussed normative premise, the standard argument concludes that a collective decision should be made to provide non-market media. Such a decision shouldn't be seen as illegitimately overriding

people's preferences (paternalism), for preferences are (partly) a function of the setting in which they are expressed. The content of preferences expressed in the market and that of preferences raised in a process of collective decision-making may therefore legitimately diverge. By expressing a preference for the provision of democratic content in the latter setting, citizens correct their market behaviour. It is a case of auto-paternalism.<sup>35</sup>

In my view this argument must be rejected. I can see no reason why a media consumer couldn't express a demand for media content which is 'transformative' of her beliefs in social and political matters, helping her to reflect on issues important to actual democratic deliberations. 'Preference formation' itself can be considered as a property of certain types of media content ('democratic content'), and consumers can demand content which has that property. Just as consumers can demand to be entertained they can demand to be challenged in their beliefs. Whether or not they are *likely* to ask for such transformative content is another matter; but there is no principled obstacle here. The fact that many consumers do ask for high-quality content (e.g. in newspapers) proves this point. A defender of market-based media might therefore argue that the market is very well capable of catering to the demand for democratic content to a sufficient extent. She could, in support, introduce the following thought experiment.

Imagine that ideal-typically the media market consists of two types of consumers. The first type has a preference for democratic content, but is in the dark about which media goods contain this kind of content. Consequently these consumers may fail to exercise a demand, even though they have the required preference. Call a person suffering from this problem the *democratic-content-seeking consumer*. The problem arises because most media goods are either 'experience goods' or 'credence goods'.<sup>36</sup> For experience goods, one has to become acquainted with their content to know their value. Only after consuming it for some time can one know its value. A soap series is an experience good. With credence goods one cannot evaluate their value, even after consumption. The daily news is a credence good. It is difficult to evaluate its accuracy in reporting on 'reality' since one watches it precisely to learn about the state of reality. Both types of goods lead to an information problem. Here the market, however, may provide a solution, through the possibility of producers establishing a reputation. Review sites, consumer organisations and independent prizes may all help to inform consumers about which providers serve their mission well. Thus, the reputation mechanism helps consumers to act upon their preferences by buying media content from providers reputed to deliver the desired content. If one prefers being a better-informed citizen, one can take a subscription to 'Citizen Channel'. Democratic-content-seeking consumers are auto-paternalist but the market serves their auto-paternalism well.

A second type of consumer is simply too lazy, short-sighted or occupied to purchase democratic media content. Whatever the exact motivation, he has no preference to that end. The problem of these *uninterested consumers* does not originate in a purported lack of information. They know it would be socially better if they consumed democratic content; nonetheless they neglect their capability to acquire democratic content. They may complement this attitude with two different policy stances. Either they prefer to have democratic content available to all (delivered by non-market media, financed by taxpayers), as an insurance scheme in case of the unlikely event that they relieve themselves of their own lack of motivation; or — more likely — they refuse to support such a scheme and give up on their prospects for preference formation with regard to democratic content altogether. The existence of the latter group raises a dilemma: should

we coerce them into collective payments for the supply of democratic content or respect their autonomous wish not to be involved? If we grant these persons their way of life (as it seems we should), then the market gives them all they want. Collective action for non-market media cannot be justified on the basis of this group of consumers.

Proponents of a completely market-based media will say that the two groups of consumers exactly represent the actual media audience. Either consumers are auto-paternalist and the market can help them out or they are not auto-paternalist and then democratic content needs to be offered outside of the market, but this qualifies as real, unjustified paternalism. Some are spontaneously interested in watching democratic content and find the market rewarding their demand; others are not interested and should be left alone. The morally required capability to acquire democratic content is safeguarded by the market, since market demand expressed by the first group creates supply of democratic content, so that those from the second group have supply available in case they change their mind.

#### **4. A Limited Justification for Non-Market Media**

Is there a way around this conclusion? Can the standard argument be saved? I think it can, but only to a limited extent. In this section I will argue that there is a justification for non-market provision of democratic content, in two narrowly circumscribed circumstances. It is worth noticing at the outset that the justification is contingent on these circumstances actually obtaining. The market *need not fail*.

The first situation is where, due to whatever reasons, democratic content is threatened with extinction. This occurs where the actual level of market supply is so low that we cannot reasonably expect prospective consumers to be able to find this content and become acquainted with its value through consumption. For example, if markets — on the basis of actual demand — should only provide one hour of serious political discussion a week, this is probably insufficient to become accustomed to and develop a taste for it. In these circumstances the market fails to realise the capability to acquire democratic content to a meaningful extent. A fall below this threshold justifies provision of non-market media. This justification could be rightfully invoked at an imaginary ‘first day’ of a society, where citizens have no recollection of democratic content whatsoever (for example, after a revolution overturning decades of dictatorship and state propaganda); or a society that has suffered a very gradual but ultimately near-to-complete erosion of the demand for democratic content. At any rate, this justification applies to a kind of emergency situation where the level provided by the market is too low. It will not obtain very often; normally market supply will be above this level.

A further-ranging justification arises in a second type of situation, in which market supply of democratic content is higher than this emergency level, but lower than the level needed to make the public sphere function properly. The emergency level may be too low for this because it only ensures consumption of democratic content by a small niche of dedicated citizens. For a proper functioning of the public sphere, wider citizen participation may be needed. This diagnosis changes the normative claim itself. In this situation, the reason for justifying attempts to push consumption to a higher level by taking collective action simultaneously at both sides — raising the level of supply and trying to stimulate demand — can only be found in an independent requirement for high levels of

actual consumption. We do not rest content with a situation in which everyone has the *capability* to acquire democratic content but few convert it into functioning. A sufficient level of *functioning* is now required. Thus, this second type of justification presupposes that the public sphere needs an active citizenry of democratic-content-consuming citizens. Supposing this to be the case, let us see how the argument could be developed.

The justification for providing non-market content up to this higher level can best be explained by a criticism of the market proponent's thought experiment from the previous section. In addition to the democratic-content-seeking consumer and the uninterested consumer, we introduce a third ideal-type consumer, who has adequate information about the reputation of providers and is not uninterested. However, he does not want to engage in consuming democratic content if others do not do the same. This *calculating consumer* conspicuously observes other citizens' behaviour before deciding to watch democratic content. Elizabeth Anderson explains the problem his general attitude gives rise to: 'Because markets don't give consumers control over others' decisions, they tend not to be effective vehicles for satisfying the preferences individuals have that are conditional on their confidence that a large number of other people will behave likewise. Call these *large-scale conditional preferences*'.<sup>37</sup>

If the preference for democratic content is a large-scale conditional preference, this may seem to save the case for non-market media.<sup>38</sup> For now we can explain the lack of market demand for such content by reference to the classical free-rider problem. The consumption of democratic content is a civic duty media consumers will only bear if they receive signals that others are doing their part. This would explain why many consumers do not grasp the opportunity to become acquainted with democratic content through consumption of content already available (as a response to the demand expressed by the small group of democratic-content-seeking consumers). For they think their individual contribution will not have much of an effect on the overall quality of the public sphere.

This solution faces a problem of its own. It assumes collective action will be effective in remedying the individual's motivational defect. With normal examples of collective action problems this assumption is relatively unproblematic. For example, citizens can decide to correct their consumer preferences for products whose price doesn't internalize negative pollution externalities by forcing producers to obey environmental regulations. Or they can protect themselves against the consumption of unhealthy products by severely restricting opportunities for their sale and consumption (e.g. smoking in public places). For the media, however, citizen action at the level of policy making cannot on its own resolve the collective action problem. Here individuals have to take up their citizen role at two levels. First at the political level they have to make a collective decision; and then at the level of media consumption they have to actually watch the collectively established content. Even if people vote for producing democratic content (e.g. by a public broadcaster) this doesn't guarantee they actually watch it sitting at home. Normally collective action is effectively designed as a legal obligation backed up with sanctions; smokers in public buildings and polluting businesses are penalized for their behaviour. For the media, a collective decision to provide democratic media content is insufficient as long as media consumers cannot be penalized when not actually watching (in the absence of a media police force intruding their homes, forcing them to watch . . .).

This dependence on voluntary action is partly a blessing. After all, a defining characteristic of civic virtue is that it involves taking upon oneself civic obligations voluntarily;

without strategically waiting for assurances that others will move too. In this regard, the obligation of citizens to inform themselves and reflect upon political affairs with the help of media content is analogous to the obligation of voting. One is supposed to engage in it not because others do so, but because one wants to be member of a community in which others do so for that very same reason. The voluntary nature of the additional effort needed on the part of the citizen is a constitutive part of the end goal (the establishment of a democratic society); not a merely instrumentally necessary effort that one may abstain from in the absence of simultaneous efforts by others. The flip side of this coin is that the collective effort to provide democratic content is vulnerable to disintegration. When some abstain from watching democratic content, others will wonder why they themselves should keep on paying the required taxes and watch. Arguably, other policy measures (like education) will then be required to convince people of the value of actually consuming democratic content.

## **Conclusion**

This paper has argued for several revisions of the standard argument about the justification of non-market media. The normative claim was formulated as a claim about the capability to acquire democratic content, the substance of this claim implying a more modest role for the media in supporting the public sphere than usually acknowledged. The second premise of the standard argument was transformed into a more circumscribed picture of two specific occasions on which the market will fail to provide democratic content. This led to a limited and conditional justification for non-market media. This leaves the following tasks ahead.

First, the two justifications for non-market media are contingent on the portrayed circumstances actually obtaining. Strictly speaking, this assumes one would have to wait until supply actually falls below one of the two levels before one starts providing non-market content. If one is somewhat less strict, one can also argue non-market provision should be delivered prospectively, as a precautionary measure, because it would be too harmful if democratic content actually falls below one of these levels. Only if we grant such a relaxation can we argue in favour of permanent regulation or public broadcasting. But this relaxation is not innocent, for it harbours the danger that non-market provision continues for long periods of time when there would be no justification for it (because in the counterfactual situation levels of market demand for democratic content would have been high enough). Therefore, more argument is needed to make this leap from the presently offered justification to such a permanent scheme based on a precautionary argument.

Second, the line of thought offered in the third and fourth sections has presupposed a somewhat abstract picture of markets obeying standard laws of supply and demand. In this abstract model democratic content only becomes available to the extent that consumers ask for it. Actual market configurations may diverge from this standard in different ways. Our conclusions would have to be modified to the extent that the supply of democratic content is different from what the abstract model would dictate. For example, some media suppliers may offer more democratic content than is strictly asked for by consumers, since they feel it their social responsibility to do so, or because they have the financial means to make a loss on it. They might use cross-subsidization (as

publishing houses sometimes do with their books), paying for democratic content out of the profits made from entertaining content. Another factor might be that markets in small countries may have more difficulty in delivering democratic content than larger countries (given economies of scale), making the case for non-market provision in these countries easier to make than in larger countries. These and other differences in market configurations will have to be taken into account to fine-tune the conclusions to be drawn from the general argument offered in this paper.

Third, it is still open whether non-market provision should take the form of public regulation of private media or of public provision by a public broadcaster. Arguments can be given for both these main options (and several variations thereof). This issue cannot be resolved on the basis of the justificatory question dealt with here. This paper has merely provided the groundwork for a debate on the more specific institutional form of non-market provision. Finally, this also leaves ahead the task of identifying conflicts with market-based media, usually but not exclusively specialising in all kinds of entertaining content. A solution for these conflicts requires both democratic and entertaining content finding a satisfying place in the modern media landscape.

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## NOTES

- 1 Reported in C. Edwin Baker, *Media, Markets and Democracy* (Cambridge: Cambridge University Press, 2002), p. 3.
- 2 Michael Walzer, *Spheres of Justice* (New York: Basic Books, 1983).
- 3 For important positions in this debate, see Elizabeth Anderson, *Value in Ethics and Economics* (Cambridge, MA: Harvard University Press, 1993). Margaret Radin, *Contested Commodities* (Cambridge, MA: Harvard University Press, 1996).
- 4 Richard Posner, 'Bad news', *The New York Times Book Review* 31 July (2005).
- 5 For closely resembling versions, see Baker 2002 op. cit., pp. 80–95. Cass Sunstein, 'Television and the public interest', *California Law Review* 88 (2000): 511–23; Jürgen Habermas, 'Medien, Märkte und Konsumenten', *Süddeutsche Zeitung*, May 16th/17th 2007; Robert W. McChesney, *The Problem of the Media. U.S. Communication Politics in the 21st Century* (New York: Monthly Review Press, 2004), pp. 198–204; Russell Keat, *Cultural Goods and the Limits of the Market* (London: MacMillan, 2000), pp. 151–61. There also is a debate on the justification of public broadcasting indirectly discussing these themes. See Mark Armstrong, 'Public service broadcasting', *Fiscal Studies* 26,3 (2005): 281–299; Shaun Hargreaves Heap, 'Television in a digital age: What role for public service broadcasting?', *Economic Policy* 20, 41 (2005): 112–157; John O'Hagan & Michael Jennings, 'Public broadcasting in Europe: Rationale, license fee and other issues', *Journal of Cultural Economics* 27 (2003): 31–56.
- 6 For example Baker 2002 op. cit., p. 44; Sunstein op. cit., p. 517.
- 7 About the difficulties of making 'externalities' the basis of normative judgments, see Michael J. Trebilcock, *The Limits of Freedom of Contract* (Cambridge, MA: Harvard University Press, 1993), pp. 58–77.
- 8 As regards the main candidate, cultural goods, I must confess to having some scepticism. However intrinsically valuable, it is hard to see that people cannot be full agents if a society should not harbour opportunities to engage in consuming art works. A way around this conclusion would be to argue that certain forms of art are necessary to the functioning of democracy, so that they qualify as democratic content. I remain open to the possibility that such an argument could be successful, but will restrict myself to democratic content that directly supports the public sphere.

- 9 For example Martha Nussbaum, *Women and Human Development*. (Cambridge: Cambridge University Press, 2000), pp. 112–48; Amartya Sen, *The Standard of Living* (Cambridge: Cambridge University Press, 1987), pp. 1–19.
- 10 I thank one of the anonymous reviewers for this point.
- 11 For an elaborate defence of this theory, see Rutger Claassen ‘Institutional pluralism and the limits of the market’, *Politics, Philosophy & Economics* 8,4 (2009): 420–447.
- 12 This formulation doesn’t yet say anything about the appropriate level of democratic content that people should have a capability to acquire; for that, see Section 4.
- 13 Baker 2002, op. cit., pp. 93–94.
- 14 Admittedly, a defence of this claim requires a full-scale comparison between the scores of different political systems. In the absence of such a comparison, we rely on the conceptual connection between an ideal-type democracy’s principle that each person deserves equal political influence (one man one vote) and the society-wide ideal of equal protection for each person’s capacity for agency.
- 15 For the influence of Habermas in media scholarship, see Baker 2002 op. cit., pp. 138 ff.; R. Randal Rainey & William Rehg, ‘The marketplace of ideas, the public interest, and federal regulation of the electronic media: Implications of Habermas’ theory of democracy’, *Southern California Law Review* 69 (1996): 1923–1987; James Curran, ‘Mass media and democracy revisited’ in James Curran & Michael Gurevitch (eds) *Mass Media and Society* (London: Arnold, 1996).
- 16 This dichotomy is an ideal type. It allows for nuances in application, such as that certain popular programs normally considered to be in the genre of entertainment can occasionally arouse interest in democratic matters. Also I leave open the possibility that the dichotomy could be supplemented with separate categories of non-democratic, non-entertaining content (such as cultural content).
- 17 By focusing on one text we hopefully gain precision; the drawback is that other accounts of the relations between media and democracy don’t get specific attention. Although warranted by the influence Habermas had on many other accounts, this restricts my argument. Ideally the same exercise would have to be repeated for other accounts.
- 18 Jürgen Habermas, *The Structural Transformation of the Public Sphere* (Cambridge: Polity Press, 1989 [1962]), p. 29.
- 19 Ibid., pp. 15–16, 20–22, 24–25.
- 20 Ibid., p. 164.
- 21 Ibid., pp. 166 and 69.
- 22 Ibid., pp. 184–88. Habermas is somewhat unclear about the exact causes of this transformation. He refers to the fact that the press ‘could abandon its polemical stance and concentrate on the profit opportunities for a commercial business’ because of the ‘establishment of the bourgeois constitutional state and the legalization of a political public sphere’ (Habermas 1989, op. cit., p. 184). However, he also refers to the ‘necessity’ of attracting capital for the ‘upgrading and perfection of the technical and organizational apparatus’ (Habermas 1989, op. cit., p. 185).
- 23 Baker 2002, op. cit., p. 302. The Internet, insofar as it is a sphere where people can communicate directly and spontaneously with one another, escapes this predicament of the other media. For a criticism of high expectations about the Internet, see C. Edwin Baker, *Media Concentration and Democracy. Why Ownership Matters* (Cambridge: Cambridge University Press, 2007), pp. 97 ff.
- 24 Habermas 1989, op. cit. p. 42. Habermas’ position that the periodicals are an integral part of the public sphere directly contradicts his earlier statement that the products of the media market remained outside of the public sphere itself.
- 25 Ibid., pp. 197–203.
- 26 Ibid., pp. 187–88.
- 27 A more detailed account would be needed to elaborate on the structure of the public sphere itself and the demands upon the media, but this formulation of the media’s ‘core business’ suffices for our purposes. One further issue is the tension between the liberal and the republican perspectives on the public sphere; see Nancy Fraser, ‘Rethinking the public sphere: A contribution to the critique of actually existing democracy’ in C. Calhoun (ed.) *Habermas and the Public Sphere* (Cambridge, MA: MIT Press, 1992).
- 28 Jürgen Habermas, ‘Political communication in media society: Does democracy still enjoy an epistemic dimension? The impact of normative theory on empirical research’, *Communication Theory* 16 (2006): 422.
- 29 Jürgen Habermas, *The Theory of Communicative Action Volume Two. Lifeworld and System: A Critique of Functional Reason* (Boston, MA: Beacon Press, 1987), p. 390.

- 30 Jürgen Habermas, 'Further reflections on the public sphere' in C. Calhoun (ed.) *Habermas and the Public Sphere* (Cambridge, MA: MIT Press, 1992), pp. 436–37.
- 31 Jürgen Habermas, *Between Facts and Norms. Contributions to a Discourse Theory of Law and Democracy* (Cambridge: Polity Press, 1996), pp. 376–7.
- 32 For Habermas' later formulation of the normative claim, see *ibid.*, p. 378.
- 33 McChesney *op. cit.*, p. 201.
- 34 Keat *op. cit.* p. 158. Later Keat recognises the problem I discuss in the following paragraphs, but doesn't provide a satisfactory answer (in my view).
- 35 Baker 2002, *op. cit.*, pp. 86–87. Sunstein *op. cit.*, p. 522.
- 36 John H. McManus, *Market-Driven Journalism: Let the Citizen Beware?* (London: Sage Publications, 1994), p. 65. Experience and credence goods contrast with normal consumer goods, which are 'search or inspection goods . . . whose quality is evident merely from examining them'.
- 37 Elizabeth Anderson, 'Consumer sovereignty vs. citizens' sovereignty: Some errors in neoclassical welfare economics' in H. Pauer-Studer & H. Nagl-Docekal (eds) *Freiheit, Gleichheit Und Autonomie* (Wien: R. Oldenbourg Verlag, 2003), p. 383. Both the democratic content-seeking and the calculating consumer use a 'precommitment strategy', the first a private strategy, the latter a collective strategy.
- 38 Do people have different preferences in private compared to collective contexts, or are their preferences continuous but they are unable to attain their highest-valued preference for cooperation in a private context? In the latter case, the dilemma takes the form of an assurance game (not of a prisoner's dilemma, where the highest-valued option is non-cooperation). See Daphna Lewinsohn-Zamir, 'Consumer preferences, citizen preferences, and the provision of public goods', *The Yale Law Journal* 108 (1998): 391–96. In the media context, see Cass Sunstein & Edna Ullmann-Margalit, 'Solidarity goods', *Journal of Political Philosophy* 9,2 (2001): 129–149, at pp. 141 and 43–44; Sunstein *op. cit.*, p. 520.