

DERELICT OF DUTY: THE AMERICAN NEWS MEDIA, TERRORISM, AND THE WAR IN IRAQ

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I. INTRODUCTION

Normative conceptions of the role that news media organizations should play in democratic societies prescribe two related, yet at times contradictory, functions for the press: (1) The news media should provide a forum for competing ideas so that the public can make informed, intelligent decisions; and (2) the news media should play an active role in ferreting out the truth. The sad reality is that in the coverage of social conflicts, especially in the aftermath of the September 11th terrorist attacks, the media do an inadequate job of performing either of these functions. In fact, the media may incorrectly interpret and act on social conflicts in ways that are dysfunctional to conflict dynamics, leading to tragic consequences.

To shed light on these processes, this Article begins by discussing normative ideals for news media in democratic systems. These ideals are most crucial during times of domestic and international conflict, which especially illuminate the shortcomings of media practice. These deficiencies are illustrated through the discussion of the role the media played during the aftermath of the September 11th terrorist attacks and the build-up to the war in Iraq. The American media's wholesale acceptance of Bush Administration claims about al-Qaeda connections to the Iraqi government, as well as about Iraq's alleged weapons of mass destruction (WMDs) program, constitutes a dereliction of duty. The mainstream media's failure to thoroughly investigate these claims contributed to public misconceptions about Iraq, and paved the way for what, in retrospect, has been largely acknowledged as both a human tragedy and a foreign policy disaster for the United States. This Article provides a discussion of some of the systemic explanations for this failure, followed by an assessment of what became of these normative journalistic ideals. In turn, the discussion moves to a consideration of how current media practices impact the nature of social conflict, and concludes with a proposal for how media practice could be improved.

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II. JOURNALISTIC IDEALS IN CONFLICT SITUATIONS

Based on centuries of philosophical and political writings on the basic normative principles of democratic systems, as well as on the research literature on journalistic practices, Michael Gurevitch and Jay Blumler proposed eight normative standards for mass media systems in democratic societies: (1) the surveillance of relevant events; (2) the identification of key issues; (3) the provision of platforms for advocacy; (4) the transmission of diverse political discourse; (5) the scrutiny of institutions and officials; (6) the activation of informed participation; (7) the maintenance of media autonomy; and (8) the consideration of audience potential.¹ Although the significance of all of these normative ideals is accentuated during times of social conflicts—as they involve ways in which the media can help ensure that social conflicts stimulate progressive social change rather than divisive social decay—five of these ideals are particularly germane to this discussion.

First, the media play a role in publicizing important events and in bringing significant issues to the public agenda. In this way, they are part of the “surveillance” function of the press identified by Harold Lasswell.² As part of this surveillance function, the media do more than just provide a conduit for information; they play an important gatekeeping role in determining the relative importance of events and issues by judging their potential impact on society. But the media not only assess inherent importance, they must also take into account that the citizens they serve attach very different values to the importance of events and issues. These judgments are complex under ideal conditions, and are only further complicated by the current budgetary crisis that confronts most mainstream media, resulting in dwindling resources to provide surveillance. These constraints have increased the pressure to rely on official sources for “information subsidies” in the interest of economic efficiency. Economic pressures also have led to more efficient news styles that emphasize “infotainment,” “personality journalism,” “pseudo-events,” “soft news,” and “talk show politics.”

When it comes to social conflicts, the media must not only highlight key events and issues, they should also seek to identify various interested parties, stakeholders, and positions. They should put these conflicts into context and reveal the forces that shape circumstances and outcomes, as well as evaluate possibilities for equitable resolutions to conflicts. All too often, such decisions are not made in a balanced and impartial way, but are subject to the

1. Michael Gurevitch & Jay G. Blumler, *Political Communication Systems and Democratic Values*, in *DEMOCRACY AND THE MASS MEDIA* 269–270 (Judith Lichtenberg ed., 1990).

2. Harold D. Lasswell, *The Structure and Function of Communication in Society*, in *THE COMMUNICATION OF IDEAS: A SERIES OF ADDRESSES* 37–38 (Lyman Bryson ed., 1948).

influence of power within the social system.³ Moreover, issues are often laid out in episodic, decontextualized, and ahistorical ways.⁴ As such, media agenda-setting may not take place in a meaningful and constructive manner, and may be more influential in replicating existing conditions rather than in fostering progressive change.

Such criticism of the media extends to the normative ideal of scrutinizing social institutions and government officials; the cherished image of the news media as watchdogs has been threatened by the lack of resources available for investigative reporting. The demise of the “fourth estate” has been underscored by recent crises and controversies stemming from government and business institutions that have operated virtually unchecked by investigative journalism. Moreover, the limited investigative reporting that remains may be focused too low in the chain of offenses, or may be focused too much on problematic individuals than on more systemic causes. This fundamental attribution of error may be especially limiting when it comes to the resolution of conflicts; it highlights individual scapegoats in a way that may intensify conflicts and deflects attention away from the systemic roots of problems that may hold the key to potential solutions, all the while fostering public cynicism that poisons the conflict atmosphere.

Positive conflict outcomes are facilitated by the richness of the marketplace of ideas as provided by the media. Ideally, the media provide platforms for a variety of ideas and viewpoints to be disseminated to the concerned citizenry and, through the process of public sifting and winnowing, the best ideas ultimately will prevail. In practice, the marketplace is skewed in favor of official interests, whose voices often come across loudest in conflict situations. Rather than amplify the voices and perspectives of the disenfranchised groups and citizens who need amplification most, the media often serve those who need it least. This skew is legitimized by news routines that are organized around institutions of power.⁵ It is reinforced by the ideologies of objectivity and press autonomy that tend to filter out non-mainstream ideas, as the media hesitates to give platforms to challengers, critics, and radicals out of concern that they would appear as advocates with an axe to grind. On the other hand, media organizations do report official opinions without thinking twice. The result is that citizens may be rather close-minded toward alternative perspectives and lower status groups in

3. J. HERBERT ALTSCHULL, *AGENTS OF POWER: THE MEDIA AND PUBLIC POLICY* 155 (2d ed. 1995).

4. SHANTO IYENGAR, *IS ANYONE RESPONSIBLE? HOW TELEVISION FRAMES POLITICAL ISSUES* 15 (1991).

5. LEON V. SIGAL, *REPORTERS AND OFFICIALS: THE ORGANIZATION AND POLITICS OF NEWSMAKING* 4 (1973).

conflict situations.⁶

Such practices translate into reduced diversity in political discourse, and thus fail to satisfy another normative ideal. Diverse, multilateral discussion among relevant parties is essential for functional social conflict. However, there is considerable concern that the media provide only a limited discourse, “bounded politically by the two-party system, economically by the imperatives of private enterprise capitalism, and culturally by the values of a consumer society.”⁷ Groups outside the mainstream are treated as “deviant.”⁸ As a result, citizens lack awareness—much less understanding—of political alternatives, and may fail to recognize and articulate their own interests. In the process, the marketplace of ideas is narrowed and opportunities for successful conflict resolution are diminished.

As noted by researchers and media critics alike, the media often fall far short of these democratic standards. Gurevitch and Blumler suggest that four major obstacles hamper the media’s ability to live up to these normative goals. First, in certain situations, these ideals may be contradictory.⁹ For example, the goal of providing a forum for diverse viewpoints may become problematic when the facts suggest that a particular viewpoint is correct and others are not. Second, the agenda and perspectives purveyed by the elite communicators who dictate the media agenda may disenfranchise common citizens.¹⁰ Third, many citizens in a free, democratic society may choose to be politically disengaged.¹¹ Finally, social, political, and economic conditions may inhibit the media’s pursuit of these democratic ideals.¹²

When it comes to social conflicts, we may collapse five of the aforementioned normative ideals into two: (1) the representation of the diverse viewpoints of various parties to the conflict (which combines the ideals of the provision of platforms for advocacy and the transmission of diverse political discourse), and (2) the necessity of evaluating these various viewpoints and rendering decisions in light of the preponderance of facts—the process of getting to the truth (which combines the ideals of providing surveillance of relevant events, the identification of key issues, and the

6. Douglas M. McLeod & James K. Hertog, *Social Control, Social Change and the Mass Media’s Role in the Regulation of Protest Groups*, in *MASS MEDIA, SOCIAL CONTROL, AND SOCIAL CHANGE: A MACROSOCIAL PERSPECTIVE* 305, 319 (David Demers & K. Viswanath eds., 1999).

7. Gurevitch & Blumler, *supra* note 1, at 269.

8. Douglas M. McLeod & James K. Hertog, *The Manufacture of ‘Public Opinion’ by Reporters: Informal Cues for Public Perceptions of Protest Groups*, 3 *DISCOURSE & SOCIETY* 259, 260 (1992). See, e.g., TODD GITLIN, *THE WHOLE WORLD IS WATCHING: MASS MEDIA IN THE MAKING & UNMAKING OF THE NEW LEFT* 32 (1980).

9. Gurevitch & Blumler, *supra* note 1, at 270–71.

10. *Id.* at 271.

11. *Id.*

12. *Id.* at 272.

scrutiny of institutions and officials).

Not only are these normative ideals most crucial when societies are engaged in domestic or international conflicts, but such conflicts also provide excellent opportunities to evaluate the media's performance with regard to these normative ideals. Toward that end, this Article now presents a case study of media coverage of one such conflict: the 2003 decision by the United States to go to war against Iraq. By examining the nature of news content of this conflict, we can evaluate the performance of the media and whether they lived up to these normative ideals.

III. AN ASSESSMENT OF MEDIA PERFORMANCE

Evidence for this case study is provided by an examination of the transcripts of the CNN and Fox News coverage of the conflict over U.S. policy toward Iraq during the aftermath of the September 11, 2001, terrorist attacks, which led to the war in Iraq that began on March 20, 2003.¹³ This conflict was chosen because it exemplifies a period of high-visibility conflict that had broad-sweeping social and political ramifications. The analysis focuses on two particular aspects of this coverage: the Bush Administration's contentions about alleged al-Qaeda connections to the Iraqi government and its contentions regarding the presence of WMDs in Iraq. These charges, which were brought by the Bush Administration against Saddam Hussein and his former Iraqi government, were instrumental in providing justification for the U.S. attack on and ultimate occupation of Iraq, which has now lasted more than six years. Throughout this period, these charges remained at the core of the official U.S. policy rationale for the country's actions in the Iraq conflict, though neither allegation has ever been substantiated.

In fact, the bipartisan September 11 Commission dismissed the Bush Administration's often-repeated contentions about an alleged connection between the Iraqi government and al-Qaeda.¹⁴ The report refuted Vice President Dick Cheney's claim of "overwhelming" evidence of a "long-established" link between Saddam and al-Qaeda.¹⁵ The report noted that the Iraqi government had rejected overtures from Osama bin Laden in 1994 and 1996.¹⁶ The report also refuted other claims by the Bush Administration about the al-Qaeda connection, including Cheney's assertion that September

13. David E. Sanger & John F. Burns, *Bush Orders Start of War on Iraq; Missiles Apparently Miss Hussein*, N.Y. TIMES, Mar. 20, 2003, at A1.

14. Walter Pincus & Dana Milbank, *Al Qaeda-Hussein Link Is Dismissed*, WASH. POST, June 17, 2004, at A1.

15. *Id.*

16. *Id.*

11th attacker Mohamed Atta had met with Iraqi officials in Prague in 2000.¹⁷

In the process of interrogating detained al-Qaeda members Khalid Shaikh Mohammed and Abu Zubaydah, the Central Intelligence Agency (CIA) waterboarded them 83 and 183 times respectively to collect information about al-Qaeda operations.¹⁸ One of the primary directives of Bush Administration officials was to seek information about linkages to Iraq.¹⁹ Though these interrogations revealed information (some of which was of questionable validity) about potential al-Qaeda attacks, the detainees provided no information about any linkages to Iraq.²⁰ A general consensus has emerged that Bush Administration assertions about the al-Qaeda connection were at best misinformed—and, at worst, intentionally disingenuous—in an attempt to justify the invasion of Iraq.

The claim regarding WMDs in Iraq has been similarly debunked. No WMDs were found, much less used, in Iraq, when U.S. troops invaded and toppled Saddam Hussein's government. In his book, *The Way of the World: A Story of Truth and Hope in an Age of Extremism*, Pulitzer Prize-winning journalist Ron Suskind presented evidence that, prior to the U.S. invasion of Iraq, the Bush Administration had intelligence information that Iraq did not possess WMDs, chose to ignore that information, and, in fact, was complicit in manufacturing evidence in the form of a forged memo from the head of Iraqi intelligence.²¹ Again, a clear consensus has emerged that the Iraqi government did not possess WMDs as claimed by the Bush Administration.

This analysis focuses on the period surrounding U.S. Secretary of State Colin Powell's speech to the U.N. Security Council on February 5, 2003.²² Powell laid out the case for military action against Iraq based on arguments about the Iraqi links to al-Qaeda and Iraq's possession of chemical, nuclear, and biological WMDs.²³ In the process, he showed aerial photographs of buildings and trucks that were alleged to be used for manufacturing biological weapons.²⁴ He also noted that Saddam Hussein "has made repeated covert attempts to acquire high-specification aluminum tubes" for use in making

17. *Id.*

18. Scott Shane, *Waterboarding Used 266 Times on 2 Suspects*, N.Y. TIMES, Apr. 20, 2009, at A1.

19. See James Risen, *No Evidence of Meeting with Iraqi*, N.Y. TIMES, June 17, 2004, at A14; Philip Shenon, *C.I.A. Warned White House that Links Between Iraq and Qaeda Were 'Murky'*, N.Y. TIMES, July 10, 2004, at A7.

20. Shenon, *supra* note 19.

21. RON SUSKIND, *THE WAY OF THE WORLD: A STORY OF TRUTH AND HOPE IN AN AGE OF EXTREMISM* 181–84 (2008).

22. *Live Event/Special* (CNN television broadcast Feb. 5, 2003).

23. *Id.*

24. *Id.*

nuclear weapons.²⁵

Prior to Powell's speech, there was no broad public consensus about whether to go to war with Iraq, nor was there a consensus among experts regarding Bush Administration assertions about the al-Qaeda linkage or about WMDs. In retrospect, neither the alleged connection between al-Qaeda and Iraq, nor Iraq's alleged possession of WMDs, has survived. However, at the time, Powell's presentation was very persuasive and played an integral role in providing the impetus for war.

For many Americans, this was a pivotal moment in terms of whether or not to support the escalation of the conflict in Iraq. It came at a time when the American public was considering whether the United States should allow more time for weapons inspections and sanctions to deal with Iraq, or whether it should take more direct action. As most Americans had no first-hand experience that they could use to make up their own minds regarding al-Qaeda connections and WMDs in Iraq, they were largely dependent on how these issues were portrayed in the media. Americans' knowledge was based not only on televised coverage of Powell's presentation itself, but also on the nature of media coverage leading up to his speech, as well as the post-event spin included with this coverage.

This analysis focuses on media coverage surrounding Powell's speech to assess how the media treated these two crucial issues of the al-Qaeda linkage and WMDs. CNN and Fox News were chosen because they are two of the most important sources of news information for many Americans, and they provide a decent bellwether to indicate how these events were covered, digested, and packaged for mass consumption.

The questions for this analysis are: How did CNN and Fox News report these two Bush Administration claims during the period leading up to the invasion of Iraq, to what extent did they provide countervailing viewpoints and evidence, and at what point did they begin to draw conclusions based on a preponderance of evidence? Ultimately, the results will be used to assess media performance with regard to the aforementioned normative standards in the context of this dispute.

To answer these questions, this analysis includes all transcripts for CNN and Fox News programs for the week surrounding Powell's speech (February 1, 2003 to February 8, 2003) that contained either the phrases "al-Qaeda" or "weapons of mass destruction" within ten words of the terms "Saddam Hussein" or "Iraq." For this Article, qualitative examples that were either typical or particularly illustrative were isolated for discussion.

25. *Id.*

A. *Coverage of Colin Powell's Speech to the U.N. Security Council*

Prior to Powell's appearance, television pundits set the stage by posing the question of whether Powell would present the "smoking gun" in terms of evidence against Iraq. During *Fox News Sunday*, host Tony Snow asked the roundtable panelists, "Colin Powell is going to give a speech to the United Nations Wednesday. He evidently is going to present some new evidence regarding Iraq and weapons of mass destruction. How important is it?"²⁶ Mara Liasson responded,

Well, it's very important because there are countries saying we're waiting to hear this, if the evidence is compelling, we're going to be with the United States. I think there are some countries who would like to be with the United States and have a way to explain to their own domestic populations who are against the war why they are [supporting the U.S.].

...
... You're not going to have some kind of a smoking gun, where there are pictures that are so incredibly dramatic and shocking.²⁷

Bill Kristol, political commentator and Republican strategist, declared with confidence, "Powell is going to show that there are loaded guns throughout Iraq. And what he will then say is, 'We cannot allow them to become smoking guns.'"²⁸

Journalists imbued Powell's speech with critical importance in determining both international and domestic support for intervention in Iraq, as typified by this CNN report:

In many countries around the world, Colin Powell perhaps is the most respected figure in this Bush Administration for making the case on Iraq. As for American citizens, well, the latest CNN/*USA Today* poll, Gallup poll, shows on the importance of Powell's presentation of evidence, 60 percent of the people say it's very important, 27 percent say what Powell's presentation will be, 27 percent on somewhat important, 12 percent saying not important at all.²⁹

26. *Fox News Sunday* (Fox News television broadcast Feb. 2, 2003).

27. *Id.*

28. *Id.*

29. *American Morning with Paula Zahn* (CNN television broadcast Feb. 4, 2003).

The day of Powell's speech, reporters such as CNN's Dana Bash were brimming with excitement and anticipation:

[T]he [S]ecretary's presentation, we are told, will be about a 90-minute-long presentation, audio, video, really a multimedia presentation the likes of which the U.N. hasn't seen in quite some time. And the main thrust of Secretary Powell's presentation will be to show officials at the U.N. that Iraq is, first of all, has weapons of mass destruction and second of all, is hiding them from the inspectors

. . . .
. . . Secretary Powell along with a lot of folks here at the White House have been sifting through mountains, really mountains of intelligence, classified information that they say really does show that Iraq is, has weapons of mass destruction
30
. . . .

Here, Bash substantiates the notion that Powell's testimony is grounded in fact, rather than supplemented by ideology in a rush to judgment.

Not only was Powell's testimony broadcast live, but portions of it were replayed throughout the following days. Video clips from the speech were often used to lead into news stories and panel discussions, and were often integrated into the discussions. As such, regular CNN viewers were treated to repeated excerpts of the Powell speech.

In general, Powell's presentation was met with rave reviews from a variety of journalists who appeared as talk show panelists. For example, Mort Zuckerman of *U.S. News & World Report* stated,

Well, he was very good. He spoke in a measured tone. He has great credibility. And the fact that it was Colin Powell, who was perceived by many in America and many in the world as the most skeptical about the American approach to Iraq, was very, very important. He has enormous credibility and enormous charisma, and he was foursquare now behind what the president [said].³¹

The *Washington Post*'s Bob Woodward said on CNN that Powell's presentation "obviously was very strong. . . . [W]hen you put it all together the accumulation was profound. . . . And as Powell said, there was no smoking gun. My assistant who looked at it, who's a lot younger said,

30. *American Morning with Paula Zahn* (CNN television broadcast Feb. 5, 2003).

31. *The O'Reilly Factor* (Fox News television broadcast Feb. 5, 2003).

‘Maybe no smoking gun, but there’re [sic] shell casings all over the floor.’”³²

Fox News reports presented the viewpoints of numerous Republican and Democratic Senators who lauded Powell’s performance. Democratic Senator Joe Biden said: “I think Secretary Powell made a very powerful and, I think, irrefutable case today.”³³ Republican Senator Richard Lugar called the testimony “extremely powerful.”³⁴ Democratic Senator Joe Lieberman was quoted as saying that the speech was “compelling, convincing, and chilling.”³⁵ Democratic Senator Tom Daschle remarked, “The methodical way in which the [S]ecretary laid out his case was effective and I’m sure added his ability to build the coalition that we have advocated now for several months.”³⁶

Fox News commentator Bill O’Reilly reinforced this portrayal of bipartisan support:

Here in the United States, Secretary Powell’s speech was generally a success. Even dovish congressmen like Al C. Hastings of Florida admit Mr. Powell made a very persuasive case that Iraq is violating U.N. Resolution 1441.

A few Democrats, most notably Nancy Pelosi and Ted Kennedy, nitpicked the speech, but clear thinking Americans know the gig is up for Saddam. He’s violated the U.N. mandate.

It’s interesting because none of the Democratic presidential candidates said very much because they know most Americans support President Bush.³⁷

Moreover, O’Reilly characterized the speech as swaying the official policy of other nations: “[O]verseas, opposition to removing Saddam is shrinking. Germany and France are on the defensive, China is wishy-washy and Russia is on board.”³⁸

The media also depicted foreign dignitaries as supporting Powell. In one Fox News interview, Israeli Foreign Minister Benjamin Netanyahu said,

I thought he made a very compelling and truthful case. I think he exposed the nature of the Iraqi regime, its deceptions and all the attempts it is making to conceal the fact that it is

32. *Larry King Live* (CNN television broadcast Feb. 5, 2003).

33. *Lou Dobbs Moneyline* (CNN television broadcast Feb. 5, 2003).

34. *Special Report with Brit Hume* (Fox News television broadcast Feb. 5, 2003).

35. *Id.*

36. *Id.*

37. *The O’Reilly Factor*, *supra* note 31.

38. *Id.*

building weapons of mass destruction, its connections to terrorist groups such as al-Qaeda. I think this was a powerful case, powerfully made.³⁹

B. Coverage of the Al-Qaeda Connection

Journalists largely believed Powell's contention regarding al-Qaeda operations in Iraq. For example, CNN national security correspondent David Ensor concluded,

So there you have it, and you saw George Tenet, the director of Central Intelligence, sitting behind Colin Powell as he made those statements. In the past, intelligence officers in the U.S. have expressed some skepticism about the ties. I am now talking to them. They're saying the evidence is stronger and stronger, and you see this group, they say, still operating in Baghdad, still moving money, supplies, and personnel in and out of Iraq that is loyal to Zarqawi and al-Qaeda.⁴⁰

Ensor summarized Powell's presentation with respect to Iraq's ties to terrorism by stating,

There was high drama in the satellite pictures and intercepted conversations. But the most significant new assertions from Secretary Powell concern Iraq's ties with terrorists. And come from multiple sources, officials say, that simply could not be revealed.

Evidence of connections between Saddam Hussein and Osama bin Laden's al-Qaeda, through this man, Abu Mousab al-Zarqawi, the al-Qaeda figure who Powell said spent two months in Baghdad last year.⁴¹

CNN international correspondent Sheila MacVicar further summarized Powell, saying,

Secretary of State Powell called the relationship between Iraq and al-Qaeda a—quote—“sinister nexus” and said this man was the link.

. . . .

39. *Your World with Neil Cavuto* (Fox News television broadcast Feb. 5, 2003).

40. *Live Event/Special*, *supra* note 22.

41. *Lou Dobbs Moneyline*, *supra* note 33.

Powell said this camp in Northern Iraq was established by Zarqawi's networks for training in poisons. He says that although it was an area not controlled by Saddam Hussein's government, a senior agent representing Baghdad had offered al-Qaeda safe haven in the region. And Powell claimed that Zarqawi had established a network of two dozen men in Baghdad last summer while he was getting medical treatment there.⁴²

When journalists reiterated elements of Powell's speech, they rarely, if ever, treated his contentions as anything other than established fact.

Politicians made frequent appearances supporting Powell's assertion about the al-Qaeda connection. For example, Republican Senator Pat Roberts commented to CNN's Wolf Blitzer on Powell's speech,

That caught the attention of the American people. And it says the [sic] al-Qaeda, who are in Iraq, have a cell in Baghdad and have basically a poison center and they are educating and training and are going to dispense those kinds of biological weaponry or say chemical weaponry and it can go to Europe, it can go to the United States. Finally the American people say, "Hey, we've got a problem. We got to take care of this."⁴³

Reaction in support of Powell's contentions included that of foreign dignitaries such as Romanian Foreign Minister Mircea Geoana:

I think it was persuasive, and I think the whole case that Secretary Powell made today was pretty credible.

Again, I think he made an extremely strong impression on all of us, and I think that there is compelling evidence that Hussein and his regime have a tactic for deceit for decades and I think Secretary Powell made a strong impression and the al-Qaeda connection was forceful as well.⁴⁴

From news depictions of international reactions, a viewer would think that the world was solidly behind U.S. intervention in Iraq.

Concern about the Iraqi role in international terrorism was enhanced by CNN reports of government surveillance of various individuals within the

42. *Newsnight with Aaron Brown* (CNN television broadcast Feb. 5, 2003).

43. *Wolf Blitzer Reports* (CNN television broadcast Feb. 5, 2003).

44. *The Big Story with John Gibson* (Fox News television broadcast Feb. 5, 2003).

United States. Kelli Arena reported:

Sources say the FBI has a handful of individuals in the United States who are believed to be Iraqi intelligence officers under surveillance, along with hundreds of Iraqi sympathizers. Sources say the FBI has not found evidence of any active terror cells in the [United States], but point out there is a danger individuals may act on their own.⁴⁵

C. Coverage of the Issue of Weapons of Mass Destruction

In covering the issue of WMDs, news reports often centered around statements by President Bush and high-level Bush Administration officials. For example, several stories on Fox News led with a video clip of President Bush making a definitive statement on this issue:

We know that our enemies have been working to acquire weapons of mass destruction. That is a fact.

If their ambitions were ever realized, they would set out to inflict catastrophic harm on the United States with many times the casualties of September the 11th.

So we're going to do everything in our power to protect the people and to prevent that day from ever happening.⁴⁶

This clip set up host Greta Van Susteren's panel discussion with three retired military officers, which was in anticipation of Powell's speech and was predicated on the assumption that Iraq possessed such weapons.

White House Press Secretary Ari Fleischer backed up Colin Powell immediately before Powell's speech:

Iraq possesses weapons of mass destruction, particularly chemical and biological weapons. And of course, the President agrees with what Colin Powell has written.

....

I think the reason that we know that Saddam Hussein possesses chemical and biological weapons is from a wide variety of means. That's how we know.⁴⁷

After Powell's speech, reporters repeated his statements in a way that lent credibility to them as established facts. For example, Fox News senior White

45. *Wolf Blitzer Reports*, *supra* note 43.

46. *On the Record with Greta Van Susteren* (Fox News television broadcast Feb. 3, 2003).

47. *Live Event/Special* (CNN television broadcast Feb. 3, 2003).

House correspondent Jim Angle noted,

In a multimedia presentation unveiling a range of newly declassified intelligence, Powell delivers a scathing indictment of Iraq's weapons programs and efforts to conceal them from inspectors. What he called irrefutable and undeniable evidence. For instance, Powell played intercepted conversations between Iraqi military officers in which they talk about getting rid of the evidence before an expected visit from inspectors.⁴⁸

In this report, Angle repeatedly summarized the evidence as laid out by Powell.⁴⁹ Similarly, CNN's Andrea Koppel stated, "Using charts and graphics, Powell said the [United States] believes Iraq has at least seven mobile biological agent factories mounted on at least eighteen trucks."⁵⁰ Again, the journalists provided little, if any, reason to doubt Powell's assertions.

The talk show panelists on both CNN and Fox News were adamant in their affirmation of Powell's testimony. For example, when David Gergen (who appeared on both CNN and Fox News) was asked whether Powell delivered the smoking gun, he responded, "He sure had everything but the—but the bullet itself. It was conclusive, compelling evidence. . . . He demolished the argument that Saddam Hussein is not concealing weapons of mass destruction."⁵¹

Rather than turn to only journalists and politicians, CNN also sought comment from technical experts. For example, former United Nations weapons inspector Terence Taylor said, "Well, I think it will be extraordinarily difficult to contradict this evidence. When you connect it all together, it's a whole body of evidence."⁵² Ken Pollack, a former CIA analyst, commented,

I was actually struck by both how conservative they were. I think Colin Powell picked the evidence that he showed to make sure that it could really be substantiated That said, there is far, far more evidence out there. I think that the great success of Colin Powell's presentation is I think he made an incredibly compelling case using just the limited amount that

48. *Special Report with Brit Hume*, *supra* note 34.

49. *Id.*

50. *Connie Chung Tonight* (CNN television broadcast Feb. 5, 2003).

51. *Id.*

52. *Live Event/Special*, *supra* note 22.

he actually showed.

. . . .
. . . I think the imagery showing some of these sites, demonstrating that the Iraqis clearly have chemical weapons in them, the decontamination vehicles, the signature vehicles.⁵³

Former Secretary of State Henry Kissinger made a call for action against Iraq, treating WMDs as an established fact:

Iraq is a country in the middle of the region from which the terrorists that attacked New York and Washington came. From the middle of the region which financed and feeds terrorist networks.

And are we going to say we're going to sit there and let weapons of mass destruction pile up in a country that has already used them against its neighbors and its own people, against which we fought a war ten years ago and which has, without any dispute, flagrantly violated all the agreements they made in 1991?⁵⁴

The most prominent source of opposition in the coverage was the Iraqi government itself (including Saddam Hussein), which was cited by both CNN and Fox News as denying both the general allegations of the Bush Administration and Powell's testimony specifically. CNN Iraq correspondent Nic Robertson reported that "reaction to Colin Powell's words or the potential for what he's going to say, which has been reported here, or at least picked up by Iraqi officials [is] that they say it's a fabrication. They believe the satellite images that he'll use will be a fabrication."⁵⁵

CNN also acknowledged Iraqi media as refuting claims about WMDs. Robertson noted,

[R]eaction in the newspapers here [in Iraq] to President Bush's meeting with British Prime Minister Tony Blair, saying that everything that President Bush had to say about Iraq's weapons of mass destruction was lies, and characterizing Tony Blair, the British prime minister, as an attendant to the United States, saying that he'd humiliated his country, that the U.N. weapons inspectors here had proved

53. *Id.*

54. *The Big Story with John Gibson*, *supra* note 44.

55. *American Morning with Paula Zahn* (CNN television broadcast Feb. 3, 2003).

everything Prime Minister Tony Blair had said was lies.⁵⁶

The audience likely discounted denials from Iraq, especially in light of the Bush Administration's repeated characterizations of Iraq as being part of the "axis of evil." Outside the Iraqi government and media, opposition to the Bush Administration was relatively faint in news coverage leading up to the invasion of Iraq. United Nations chief weapons inspector Hans Blix made several appearances, but mainly to say that Iraq, though cooperative with United Nations weapons inspections, was not fulfilling its obligation to disarm.⁵⁷ However, Blix presented no direct evidence of WMDs.⁵⁸

When former President Jimmy Carter questioned whether the Bush Administration had made an adequate case regarding WMDs, he was soundly lambasted by Fox News host Sean Hannity:

Jimmy Carter is a great former president, building houses, he's done some good work. He's now becoming a menace in his constant, almost daily criticism of President Bush and his efforts to try to undermine him, which he's trying to do here. And what bothers me, his record now comes into play, and on foreign affairs it was a disaster, because we know Iran became a terrorist regime, took our guys hostages.⁵⁹

When the discussion on Fox News turned to the issue of whether the Bush Administration was exaggerating the threat of WMDs to advance its intention to go to war with Iraq, Fox News correspondent Major Garrett made an analogy to the Cuban Missile Crisis:

[T]here is one striking similarity. Back in 1962, many European countries thought the U.S. was exaggerating the threat in Cuba because it was obsessed with Fidel Castro. Many of the same countries think the U.S. is exaggerating the threat with Iraq because it is obsessed with Saddam Hussein. Adlai Stevenson proved the Europeans wrong then. It will be a major goal of Secretary of State Colin Powell tomorrow.⁶⁰

Commentator Fred Barnes noted that even the French government, which

56. *Saturday Morning News* (CNN television broadcast Feb. 1, 2003).

57. See Don Van Natta, Jr., *Bush Was Set on Path to War, Memo by British Adviser Says*, N.Y. TIMES, Mar. 27, 2006, at A1.

58. *Id.*

59. *Hannity & Colmes* (Fox News television broadcast Feb. 3, 2003).

60. *Special Report with Brit Hume* (Fox News television broadcast Feb. 4, 2003).

is often held up as the epitome of opposition to aggressive U.S. foreign policy, acknowledged the existence of WMDs: “You know, the French know and have acknowledged to the Bush Administration that indeed Saddam does have weapons of mass destruction, but they just think, well, we don’t want to do anything about it now.”⁶¹ This statement contains two important implications: WMDs must exist if the French acknowledge them, and the French are foolish for not wanting to take action.

News anchors, who at first seemed objective in their questioning, were often won over by panelists who confidently proclaimed belief in WMDs. For example, when former Secretary of Defense Casper Weinberger was interviewed on *Hannity & Colmes*,⁶² Alan Colmes asserted that weapons inspections and neighboring countries were capable of containing Saddam Hussein. Weinberger disagreed:

Well he isn’t being contained, because all of the promises he made at the end of the Gulf War he’s broken one after the other, including throwing the United Nations inspectors out now four or five years without any inspection whatever. . . . The longer we wait, the more we engage in worthless inspections, in accepting more worthless promises, the more danger there is, because he’s moving toward—as Colin said—moving toward the acquisition of weapons of mass destruction, and many of them he has.⁶³

Weinberger was reinforcing Colin Powell’s assertions to the U.N. Security Council.

In response, Colmes (the liberal voice in the *Hannity–Colmes* team) tried to make the point that the Bush Administration did not know that the trucks depicted in aerial photographs of Iraq shown by Powell during his speech actually contained either the alleged WMDs or the parts used to manufacture them. Colmes said, “We saw pictures of trucks. We don’t know what’s in those trucks, necessarily. . . . And some of the pictures looked very pretty, but we don’t know what’s going on in those bunkers, we don’t know what’s going on in those trucks.”⁶⁴ Weinberger responded,

That’s exactly the point. We don’t know what’s going on in them. Now Colin showed that these are trucks

61. *Special Report with Brit Hume*, *supra* note 34.

62. *Hannity & Colmes* (Fox News television broadcast Feb. 5, 2003).

63. *Id.*

64. *Id.*

. . . are mobile laboratories. You can't open up each one.

There are 40,000 or 50,000 trucks that look just like this on the roads of Iraq every day, and that means you have to take somebody's word they are not containing this and that they have disarmed. And you can't take the word of a liar. You can't have a diplomatic solution with a liar. It's just really as simple as that.⁶⁵

At this point, Colmes conceded, "Mr. Secretary, I don't dispute that he's evil, he's a bad guy, he's a dictator, he needs to be watched, he needs to be contained. He should have his weapons of mass destruction removed."⁶⁶ With that, Colmes accepted the contentions of Powell, Weinberger, and the Bush Administration that Saddam Hussein was manufacturing WMDs.

Well after the fact, the U.S. Senate released a report detailing intelligence errors that were reflected in Powell's speech. This was after "State Department analysts found dozens of factual problems in drafts of his speech,"⁶⁷ leading to the removal of twenty-eight of the thirty-eight identified errors and distortions. Even Powell himself admitted, "It turned out that the sourcing was inaccurate and wrong, and in some cases deliberately misleading, and for that I am disappointed and I regret it."⁶⁸ Powell referred to his speech as a "blot" on his record.⁶⁹ Based on the numerous documented factual errors in Powell's presentation and in various drafts of his speech, the Senate report concluded that Bush Administration officials were overly eager to provide justification to go to war with Iraq.⁷⁰

D. Summary of CNN and Fox News Coverage

Coverage of the period surrounding Colin Powell's speech to the United Nations Security Council largely supported the Bush Administration's take on the issues of the al-Qaeda connection and Iraqi WMDs. Source and panelist selection was heavily dominated by official sources and mainstream journalists. In fact, Colin Powell himself was interviewed by Tony Snow, who later went to work as press secretary in the Bush White House.⁷¹ Video clips of President Bush and Colin Powell were often used to lead stories and panel discussions, and were frequently integrated into the middle of such

65. *Id.*

66. *Id.*

67. Greg Miller, *Flaws Cited in Powell's U.N. Speech on Iraq*, L.A. TIMES, July 15, 2004, at A1.

68. *Id.*

69. *20/20* (ABC television broadcast Sept. 9, 2005).

70. Miller, *supra* note 67.

71. *Fox News Sunday* (Fox News television broadcast Feb. 9, 2003).

programming. Most of the coverage consisted of roundtable discussions with various officials, journalists, and experts. Hard news reporting was relatively rare. In essence, this led to relatively monolithic coverage that supported the ultimate decision to go to war in Iraq.

The opposing viewpoints that did appear were most often the opinions of Iraqi officials and journalists. When domestic skeptics did appear, their opinions were isolated and marginalized. Domestic skeptics were virtually non-existent on Fox News. The oppositional viewpoints expressed on CNN, such as those of Democratic Congressman Dennis Kucinich, were buried amongst a multitude of opinions in support of Powell. David Albright, a former United Nations weapons inspector who evaluated Powell's evidence with a critical eye, questioned Powell's conclusion that the Iraqis were buying aluminum tubes to be used as centrifuges for the production of nuclear bombs: "[T]he administration has made the case, particularly in the fall, that . . . the only use for these tubes [was] for gas centrifuge. I think that's been challenged by many gas centrifuge experts."⁷² Opinions such as Albright's were available, but the television media rarely used them.

CNN presented results of a poll taken right after Powell's speech that indicated that the American people may have actually been more skeptical of the Bush Administration than the journalists were. "Forty-nine percent of us, almost half of all Americans believe that the President would knowingly present evidence that he knew was not accurate in order to build his case and fifty-eight percent of us believe that the Bush Administration would conceal evidence that goes [against] their position."⁷³

IV. NORMATIVE IDEALS AND JOURNALISTIC PRACTICE

A. *Constraints on Journalistic Practice*

Questions must be asked about why the media failed to play a more active role as the fourth estate in preventing the headlong rush into Iraq. One such question is why was the media not more aggressive in evaluating assertions made by the Bush Administration regarding the presence of al-Qaeda and WMDs in Iraq. Opinion polls showed that the public believed these assertions—a misperception that persisted among a significant portion of the public—long after it became clear that these claims were inaccurate. So, why didn't the media take a more critical role in evaluating these claims? And, what happened to the normative goals of providing information from diverse viewpoints and of ferreting out the truth?

The answers to these questions may be linked to several significant

72. *Live Event/Special*, *supra* note 22.

73. *Crossfire* (CNN television broadcast Feb. 5, 2003).

constraints on media practice. First, the media operate with limited resources. In recent years, these constraints have radically reshaped the practice of journalism. News organizations like CNN and Fox News are doing less original reporting, opting instead for the “talk show politics” model, which is far cheaper to produce. It is relatively inexpensive to put a host in the studio with several guests and to engage them in the discussion of issues. Developing questions and booking guests requires far less energy and resources than the careful research and legwork that goes into producing investigative news packages. In this case, rather than doing thorough investigations of the contentions about Iraq’s ties to al-Qaeda and WMDs, it was much more efficient to pull out the journalistic rolodex and invite guests to the studio.

Additionally, it is important to consider what types of guests are invited and used as credible sources of information. Patterns in guest invitations and source use follow the lines of power, giving disproportionate voice to high government officials. Of crucial significance are not just the sources that supply information, but also the sources who explain the news as pundits,⁷⁴ a fact clearly evident in the CNN and Fox News coverage. Not only are these sources powerful in shaping the meanings of issues and events, but the audience also may see them as being more objective than original sources, though these sources are rarely neutral. As is typical with many such stories, CNN and Fox News coverage was heavily saturated with sources and panelists who represented the Bush Administration, or who were hesitant to criticize the Bush Administration in light of the rally effects⁷⁵ of the post-September 11th context.

The journalistic practice of objectivity also creates conditions for coverage that support the interests of the presidential administration. Journalists are socialized with the ideology of objectivity,⁷⁶ which values the ideal of neutrality. However, in practice, whatever an administration official says is considered by definition legitimate news, and accorded a high degree of credibility. Critics, particularly those who come from outside the power structure, are treated more skeptically. Journalists avoid giving too much attention to radical criticism for fear of being perceived as less-than-objective partisans. In the case of CNN and Fox News coverage, journalists were quick to applaud Colin Powell on his performance at the United Nations, but hesitant to give significant airtime to those who challenged his assertions.

74. See LAWRENCE C. SOLEY, *THE NEWS SHAPERS: THE SOURCES WHO EXPLAIN THE NEWS* 18–20 (1992).

75. See JOHN E. MUELLER, *WAR, PRESIDENTS AND PUBLIC OPINION* 53 (1973).

76. GAYE TUCHMAN, *MAKING NEWS: A STUDY IN THE CONSTRUCTION OF REALITY* 83 (1978).

B. What Happened to Normative Ideals?

In light of the forces that constrain press performance, we can assess journalistic practice with respect to the normative ideals in such conflict situations. As a point of departure, this Article adopts two of the most important normative ideals that media in democratic systems should strive to uphold: (1) the provision of a forum for diverse perspectives on important issues, including both domestic and international conflicts, and (2) the performance of the role of independent arbitrators to explain and evaluate various positions, including the contentions made by various parties to such conflicts, to determine, where possible, what constitutes factual truth.

The analysis of media performance in the period leading up to the Iraq War illustrates the notion that these ideals are simultaneously complementary and contradictory. On one hand, both ideals involve providing information to the public to enhance learning, deliberation, and public opinion formation. However, in practice, these ideals often contradict each other. For example, should journalists continue to provide balanced perspectives on contested public issues when the truth is obvious? How should journalists respond in a social conflict when the facts clearly favor one party to a conflict?

This analysis of CNN and Fox News coverage reveals that the way these news organizations applied these normative ideals was largely dysfunctional and ultimately incendiary to the Iraq conflict. Throughout the post-September 11th period, the American media was quick to accept Bush Administration assertions as truth. Their heavy reliance on Administration sources treated the al-Qaeda connection and Iraqi WMDs as virtually established facts. As the U.S. intervention in Iraq yielded information that contradicted these assertions, the media was hesitant to abandon their concern for providing balanced viewpoints, treating the Bush Administration assertions as viable even in the absence of supporting evidence.

Ultimately, these normative standards were applied in the reverse of what we might consider a logical order. In a conflict situation, it would be desirable for the media to provide competing perspectives until such a time when the preponderance of the evidence indicates that one position actually represents the truth. In the case of Iraq, journalistic practice reversed this process in the sense that the Bush Administration “truth” was accepted early on, and alternative viewpoints were added to the mix only after the emergence of countervailing evidence.

C. Media Support for Bush Administration Assertions

What accounts for this reversal in what would seem to be a logical order? Literature on the role of mass media in international conflict situations provides some answers to this question. In the early stages, coverage

conformed to what Edward Herman and Noam Chomsky call the “Propaganda Model,” in which support for official Administration policy is strong.⁷⁷ The parameters of the truth were narrowed in a manner that paved the way for relatively uncontested engagement in Iraq. A variety of factors have been identified as contributing to support for a presidential administration during international conflicts. Considerable research has shown that during international conflicts, the media—as well as members of the public—tend to rally around the presidential administration and its policies.⁷⁸ This reflects the general tendency of external conflicts to strengthen internal cohesion and to reduce dissent. Beyond these general social principles, there are also factors specific to newsgathering and dissemination routines of contemporary mainstream media, often referred to as “transmission belt” journalism. Simply put, relaying information from official sources without investing the necessary time and resources to investigate its veracity or to seek alternative perspectives and relevant facts is an economically efficient journalistic practice. In this case, the upshot was the extended resilience of Bush Administration contentions.

As the Iraqi conflict unfolded and these contentions did not hold up, media performance reverted to the practice of “he said/she said” journalism, in which both sides—for and against engagement in Iraq—were treated with equal regard and relatively little effort was dedicated to the search for the truth. As such, the conflict with Iraq was allowed to fester unbound by evidence. This practice has been encouraged by the resource crisis that confronts news organizations. For example, it is considerably cheaper for the television news networks to adopt the talk show and infotainment formats than to engage in more traditional investigative reporting. This practice is also supported by the journalistic ideology of objectivity, in which news media ritualistically present two sides of issues to maintain the illusion of neutrality and balance to avoid appearing partisan by presenting one side as being factually correct. In situations in which the facts tilt toward one side in a conflict, the rationale of objectivity becomes a crutch that disables the search for the truth. In this case, the official policy line was maintained long after it was no longer factually viable.

V. CONSEQUENCES FOR SOCIAL CONFLICT

In reviewing these journalistic practices and the content of their coverage, it is important to consider their consequences in terms of both the public and the dynamics of this conflict. The scope of the negative consequences of the

77. EDWARD S. HERMAN & NOAM CHOMSKY, *MANUFACTURING CONSENT: THE POLITICAL ECONOMY OF THE MASS MEDIA* 1–2 (1988).

78. MUELLER, *supra* note 75, at 250.

U.S. invasion and occupation of Iraq is difficult to fully comprehend. For example, tracing the extent to which the massive expenditure of U.S. resources in Iraq has contributed to the current global economic peril is obviously complicated. In addition, it is hard to say whether the massive military deployment in Iraq has hampered efforts to capture the parties responsible for the September 11th terrorist attacks, who may still be operating in Afghanistan and Pakistan. Yet other consequences are fairly clear. To date, there have been 4,352 U.S. soldiers killed in Iraq and 31,529 wounded, with an additional 318 fatalities among soldiers from other contributing nations;⁷⁹ moreover, there have been more than 50,000 fatalities among Iraqi security forces and civilians.⁸⁰ It is also clear that U.S. involvement in Iraq has been an international relations disaster for U.S. foreign policy.

In terms of public knowledge, it is evident that large segments of the U.S. population accepted the assertions of the Bush Administration. Data from the Program on International Policy Attitudes (PIPA) at the University of Maryland show that the belief in the al-Qaeda connection to the pre-war Iraqi government was at 52% in 2004 and 49% in 2006.⁸¹ Similarly, in October 2004, 49% of the American public believed that the pre-war Iraqi government possessed WMDs,⁸² despite the fact that no such weapons were discovered, much less used during the war. In March 2006, this belief was still at 41%.⁸³

Collectively, such beliefs appear to be a major contributor to support for U.S. engagement in the Iraq conflict. In 2006, support for the war was at 62% among people who believed that Iraq played a direct role in the September 11th attacks, while it was only at 15% among those who felt there was no such connection.⁸⁴ Similarly, the perception that going to war in Iraq was the correct decision was at 85% for people who believed that Iraq possessed actual WMDs, but only 5% among people who did not share that belief.⁸⁵

These observations, and the fact that support for the Iraq War declined markedly over time as Americans became aware that the al-Qaeda connections and WMDs did not exist, point to the fact that U.S. engagement

79. United States Department of Defense, Casualty Update (Oct. 16, 2009), <http://www.defenselink.mil/news/casualty.pdf>.

80. See Hannah Fischer, CRS Report for Congress, Iraqi Civilian Deaths Estimates (Aug. 27, 2008), <http://ftp.fas.org/sgp/crs/mideast/RS22537.pdf>.

81. WorldPublicOpinion.org, Most Americans Believe Bush Administration Is Still Saying Iraq Had Major WMD Program (Apr. 13, 2006), <http://www.worldpublicopinion.org/pipa/articles/brunitedstatescanadara/188.php>.

82. *Id.*

83. *Id.*

84. *Id.*

85. *Id.*

in the conflict was predicated on false beliefs. The mainstream media's failure to play an adjudicating role in separating fact from fiction inherently makes them complicit in the conflict and its disastrous consequences.

Questions might be raised as to whether the case of the build-up to the Iraq War was an idiosyncratic event, or whether it reflects a common pattern in the dynamics of such international conflicts. Historical evidence suggests the latter. For example, the limited scope of viewpoint diversity can be observed in the case of the dropping of atomic bombs on Hiroshima and Nagasaki, in which the American public was presented with the rather uniform view that U.S. actions were justified. Media coverage exhibited a similar pattern of monolithic support for the Vietnam War, at least until leaders within the power structure and large segments of the American public turned against the war.⁸⁶ Similarly, mainstream media coverage of the 1983 Soviet downing of KAL007 followed the official U.S. policy version of events; for example, the Reagan Administration's claim that the Soviets intentionally shot down a passenger airliner persisted as the dominant view long after cockpit transcripts revealed that the Soviet fighter pilots had no idea about the nature of the target.⁸⁷ These and other examples point to the fact that this is a common pattern.

VI. REESTABLISHING JOURNALISTIC PRACTICE IN SOCIAL CONFLICT SITUATIONS

In light of this discussion, this Article concludes by examining a model that might be used to frame the normative role that media should play in such conflicts. If we were to consider conflicts that center around issue controversies over factual disputes (from local to international conflicts) as courtroom trials, with the public sitting as jury, the role of mass media should be to serve as the judge. The media should start by identifying the relevant parties involved—not only the major players, but also the various publics affected by conflict outcomes. They should then present competing viewpoints and perspectives as accurately and as thoroughly as possible. When claims are made, the media should assemble and evaluate evidence that is germane to the dispute. Finally, they should render decisions only when warranted in light of preponderance of evidence, regardless of the status of the parties involved with respect to the existing power structure.

86. DANIEL C. HALLIN, *THE "UNCENSORED WAR": THE MEDIA AND VIETNAM* 10 (1986).

87. BARTHOLOMEW H. SPARROW, *UNCERTAIN GUARDIANS: THE NEWS MEDIA AS A POLITICAL INSTITUTION* 141–52 (1999).