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## PANEL III: DISCUSSION TRANSCRIPT

PAUL SCHWARTZ: Our panel this afternoon is going to be devoted to international trade and media products. It's our great pleasure here, our great honor, to have Ed Baker talking to us about his theories and ideas as represented and presented in his book, *Media, Markets, and Democracy*.

It's published by Cambridge University Press, 2002. What I want to do is introduce Ed, let him present the book and just say a word before he talks about the book just so I can express my admiration of it.

C. Edwin Baker is the Nicholas F. Gallicchio Professor at the University of Pennsylvania Law School. He has also taught at NYU, where I believe he is now a Visiting Professor; Chicago; Cornell; Texas; Oregon; and Toledo Law Schools. He has also taught at Harvard University's Kennedy School of Government and was a Staff Attorney for the ACLU.

Professor Baker is the author of three books: *Media, Markets, and Democracy*, just published; *Advertising and a Democratic Press*; and *Human Liberty and Freedom of Speech*.

The portion of Ed's book that we're going to talk about today deals with international trade in media products. And the hardest part about getting this particular panel set up was just getting Ed to agree to be on it, because, at least initially in our conversations, he wasn't sure that this part of the book belonged in a panel about telecommunications.

Now, when I say that was the hard part, convincing him to be here, the easy part was, once he agreed, because of his great distinction as a scholar, it became very easy lining up very distinguished interesting people to agree to talk about his work. So I knew I had to convince him to be here, and I'm glad that I did.

His topic, international trade in media products, belongs as part of a discussion and a conference about telecommunications, because international media companies are such a critical part of the current telecommunications landscape. In our morning introduction from Dean Wexler, we heard about AOL-Time Warner and Bertelsmann. In Reed Hundt's presentation as well, we heard about media products and their role in the telecommunications universe. One of the most important con-

cepts in Professor Baker's work, which I'm just going to mention briefly, is the notion that there are different kinds of content. We can remember this point by the acronym DUF. There is "domestic content" and "universal content," and then there is something called "foreign content," so DUF, D-U-F. And what Professor Baker argues, with great skill, is that international media companies will get us a lot of the "U" part of DUF. They will get us a lot of universal content. But what they will not provide is domestic content. And Professor Baker argues again, very forcefully, that for democracy, it is also important that throughout the world, there be domestic content. And his fear is that international trade and media products will only get the "U" part of the DUF, and therefore, it is fitting for governments to intervene in that particular market. So without further ado, we will now hear from Ed.

C. EDWIN BAKER: Thank you. That was a very generous introduction. And I'm very happy to be here. The general question of free trade in media products is, quite clearly, one of tremendous importance. It depends on how you break up your categories, but oftentimes media products are viewed as this country's second largest export. Lots of money is at stake, so you might guess it's a big issue.

It's also been a big issue on the political agenda during the Clinton administration GATT negotiations for the Uruguay round. He said this was the make or break deal. We're going to get free trade in media products, or we're not going to go along. We didn't get it. We did go along. But that was only because of the nature and the strength of the opposition to the U.S. position.

The U.S. position is fundamentally that free trade gives consumers, gives audiences, the type of media products they want — audiences in this country, audiences in other countries. Not only is it important merely as an economic efficiency matter, achieved through the law of comparative advantage, which is the general argument made for free trade. I don't want to argue against that general argument here today. For present purposes I'm assuming that for free trade generally, the comparative advantage argument is perfectly adequate, and I'll put aside Seattle and the various other areas where this has been

contested. But the U.S. position is also that this general argument for free trade is true for media products.

It is also assumed that free trade is essential for free speech – democratic, First Amendment type reasons. A free flow of information is the way you provide for democracy for a free society, for a free world. So our position is based on principle. We want to serve audiences, to give people what they want. And we want to serve freedom and the free flow of information. My claim is that both parts of the U.S. argument are wrong.

I'll take up the economic argument first. In order for me to contest the economic claim, essentially I need to do two things: First, I need to show or argue that there's a reason why markets fail in respect to media products in a different way or to a greater extent than they do in products generally. I'll assume that most people will sign on to the idea that markets are a good way, generally, to distribute goods, resulting in efficient production and satisfying consumers. I'll accept that as a given. So what I need to do is show that there is something about media products that distinguishes them from other economic products.

That's not enough. When I first started writing this, I thought that was all I needed to show. But then I realized, under international trade rules, regulation of markets is fine as long as the rules don't treat foreign products differently than domestic products. So for instance, if the problem with media products is too much porn, which would be some people's view, then a *general* regulation of porn wouldn't be interfering with free trade because it would apply to both foreign and domestic porn. So what I need to show is both that markets fail, and that this failure is exacerbated by, or differentially involves, international trade in media products.

My claim is that there are three ways in which markets in media products fail. Moreover, each has a quality that causes international trade to exacerbate the problem. The first of the three concerns is the idea of externalities. Externalities generate a general reason to conclude that a market doesn't work right. When you have negative externalities of a product, the market produces more than people would want if they had to pay the full cost; that is, if their externalities were internalized. When products have positive externalities, then we have less of them than people would want if all the beneficiaries of the

products paid for them. Since some of the benefits of these products go to people who don't have to pay, suppliers produce less of the product than people would want. This is just standard law and economics.

My claim about media products is that, though all goods have some degree of externalities, the externalities in the media context are incredibly important, incredibly large. And to the extent that's the case, then one would expect that the results of what markets will give you is nothing like what markets would give you, what people would want, if markets were paying the full cost and nothing but the cost. In other words, if a product's positive externalities were internalized, we'd get more of those media products; if the producer paid the costs of the negative externalities, we'd get less of those products.

In the book, I try to categorize ten or twelve significant types of externalities. Think about dinner tonight. I'll enjoy talking to Paul more if he's read good media so that we can have a cultured discussion. That is, it makes a difference to me what he's read. In a sense, I'm getting the benefit of his purchase decision. If I don't pay for that benefit, he's not going to make as many good purchase decisions as he would if they were cheaper for him. If the positive externalities were internalized, he would have gone to a few more operas or whatever else I'd love to talk with him about.

But the dinner account just begins the discussion of significant externalities. When you walk down the street, you don't want to be robbed, shot or raped. The social science evidence has fairly strongly indicated that, to some extent, violent crime is affected by people's media consumption. Despite that, we don't charge for this cost. The price doesn't go up to pay for the violent, criminal acts that in some ways were encouraged by people's media consumption.

We may disagree about what this means, but we'd like it if our fellow citizens voted more intelligently. Well, how they vote depends a lot on the media products people consume, as do their attitudes about the world and their attitudes about various candidates and issues. Thus, though there may be disputes about what good products are, what a good vote would be, the generic notion that we want better voting suggests we also want better media products. Your reading of the good product benefits me and benefits a lot of other people. That's an in-

credibly important positive externality that media products can have. Or, if the media leads you to vote stupidly, misguidedly, it's an incredibly important negative externality.

We want less government corruption. Media, an active media that exposes corruption and leads to some type of reform, benefits us whether or not we pay for that media product or not. This too is a benefit that is not paid for by the people who do purchase and read or consume the media product. So essentially, those media products are underproduced because their producers don't get the full benefits of their contribution to society.

I could go on with more and more examples of negative and positive externalities. But the general rule of thumb is that what people would generally think of as good media products tend to be the ones that produce positive externalities, and what people tend to think of as bad are the media products that tend to generate negative externalities. So, we get more bad quality media and less good quality media through the market than we would if the market was properly pricing products to take into account the negative and positive externalities.

Now, what's the impact of *international trade* in this context? It's complex, and it's not unidirectional. But let me suggest two tendencies which provide reasons to think international trade exacerbates the problems.

First, a producer of entertainment products who wants to produce both for domestic audiences and for foreign audiences should find it advantageous to produce a product that is easily understandable to people in any society. It should supply the types of messages, and use the type of language, that is most universally translatable.

Well, some things easily fit that category. Most people understand when somebody hits another person over the head. Sex and violence are oftentimes described as the most obviously universally accessible forms of communication. Complex dialogues, cultural specificity, are harder to translate. They are most comprehensible to domestic audiences.

International trade encourages developers of communications products to have more of these universal qualities and less of the domestic qualities. If the universal qualities are, as some but not all of them are, things like sex and violence that may produce negative behavioral reactions socially, then the

net effect of international trade is to increase the supply of products that create problems within a society.

George Garbner studied American TV and found that the American audience tended to like the non-violent programs better than the violent programs, but the violent programs kept being more heavily produced. And what he observed was that the violent programs could be sold internationally more easily than the sitcoms. The availability of international trade led to American, as well as international, audiences receiving more of this violent program content.

That's one consequence of international trade that a policy-maker ought to consider. Whether it's significant enough to develop policy on this basis is a more difficult question. But it's a way in which the international trade aspect has consequences — negative consequences. Likewise, a national audience is less likely to get commentary on domestic political issues if the media product is aimed at an international audience. Similarly, such media products are less likely to serve the watchdog role of media looking for corruption. Not many people in Italy care much about how corrupt officials in Brooklyn may be. So, to the extent that you internationalize the content, you'll have lots of content about universal themes and less about practical domestic matters. And to the extent that domestic content is important for politics, trade will have deprived politics and society of beneficial content that has positive externalities locally, in favor of media content that has no particular externalities one way or the other, or maybe material that has negative externalities. That is, in respect to content with positive political externalities, the market fails generally, and international trade tends to exacerbate these market failures.

The second way in which markets fail with respect to media products has to do with the way in which media products differ from at least some other products. The first copy of most media products is very expensive to produce. Then, after you produce the first copy, you can duplicate it more or less endlessly at either a low price or, potentially, at zero cost. This type of product has an essentially "public good" quality. It's expensive to have it initially, but then lots of people using it doesn't increase the cost much at all. Markets have never been viewed as being very successful at producing this type of product. If I had an-

other ten minutes, I'd try to give you a simple economic model to illustrate this.

But what I want to do instead is to assert seven propositions about the implications of having a product of this sort, which has a declining average cost curve where the first item was expensive and the later copies are very cheap. The first point is that there will be non-production, the failure to produce goods that are, in fact, valuable to the consumers. The reason, assuming that the seller has to sell at a single selling price, is that the seller isn't going to be able to get revenue from a lot of people who would have bought the product, but not at the chosen selling price. So the seller isn't able to capture all the value, even though the amount the public as a whole valued the product may be a lot. That is, there may be no selling price at which a seller could produce it and make a profit, even though the product is valued by the public much more than it costs. In those cases, the product won't be produced.

Second point. Competition can exacerbate this problem. Some products with this type of cost structure will be produced and sold. It depends on the specifics of the demand. It may be that the demand is just high enough to make production profitable. Even though the product produces a huge social surplus, it only barely produces the minimum profit necessary for the publisher, the creator or the seller to provide it.

If you add a new competitive product, it may reduce the demand for the original just a little bit so it is no longer commercially successful. But a no longer profitable product may still be socially valuable to the public — more valuable than it costs. So the competitively successful product could prevent a product that is valued to lose out, to fail. Along with this, there is the possibility that the competition makes us net worse off. This is an empirical question. Clearly, the successful product will put out of business some products that should have been existing. Certainly, the product that prevails is also valued by consumers at least as much as it costs, else it wouldn't have been successful. In fact it will produce some degree of surplus. Some people would have bought the new product at even a greater price than it sells for if the company could have sold it for that price. That amount represents surplus that the new product generates. So the new product will generate some surplus at the price that it's sold, at its competitive price. It'll put out of



business some products that would also have produced value, would have produced a surplus if they existed. The empirical question is whether or not the surplus lost from the products being put out of business would have been greater or lesser than the surplus gained by the competitive product that wins.

In this circumstance, it would be important if one could make any guesses about when there will be a huge loss of surplus. What I want to assert is that it's usually going to be cases when the products that are put out of business have a relatively steeply declining demand curve, which generally means that it's a smaller audience product, that is, a product that's intensely valued by some but for which the demand drops off very sharply. My claim is that a lot of these types of media products will fail when, in fact, they would have produced considerable social value. Moreover, they will fail due to competition with a product that has a flatter demand curve, a larger market product, but a product that produces less surplus than those that it replaces. Now, the empirical ability to identify whether competition leads to a better or a worse result in any given situation is very difficult. But my claim here is that this loss of valued products is a real possibility within the realm of market competition.

Fourth point. This problem would be eliminated completely, not the externalities point, but this problem would be eliminated completely if sellers of all media products could perfectly and costlessly price discriminate. Economists normally say that monopolies don't reduce production to the extent that monopolists are perfectly able to price discriminate. You just have all the surplus go to the monopolists. That result you might quarrel with, but at least you don't have underproduction.

So, if everybody could perfectly price discriminate, underproduction and lost social value wouldn't be a problem. And, in fact, I must admit that media products do engage in a fair amount of price discrimination. However, they don't engage in anything close to perfect price discrimination nor do they do it with little cost. So, inefficient underproduction continues to be a problem.

Fifth point. The problem of competition with media products can be exacerbated if some of the products are able to effectively and relatively cheaply price discriminate and others are

not. Namely, the ones that aren't able to price discriminate are the ones most likely to be put out of business.

If those also turn out to be the ones with smaller audiences, that produce larger proportionate surpluses, then the result is particularly damaging. Those are the ones that we were under-supplying already. The result is that products that produce little surplus, but survive in the market due to effective price discrimination, put out of business smaller audience products that would have produced larger surpluses. Thus, the fact that some groups can effectively price discriminate while others can't, can exacerbate the problem with the market.

The sixth point is that both of the problems with the market tend to be exacerbated by international free trade. Namely, products promoted by international trade tend to be the large market products. They're the ones that are already putting more valuable, smaller niche products out of business. International trade in media products exacerbates the original problem of the negative effects of competition. Secondly, international trade itself opens up new windows, new opportunities to engage in price discrimination, charging different prices in different national markets and further segmenting each of these markets. Their price discrimination process is served by international trade.

Of course, price discrimination by domestic products is not aided by international trade. So the international trade again works in favor of the "mega product," as opposed to the smaller domestic product, and in a way that could undermine what we presumably want, at least in this part of the argument, which is to give people the media products that they, in fact, value. The competitive process produces inefficient results.

The final point in this section is to note that the welfare loss due to this form of competition could be reduced if the mega products of international trade could be slightly burdened, if their competitive advantage could be reduced a little, and if the opportunities for the domestic products could be slightly improved by receiving some type of subsidy. In this respect, many countries' trade policies make a lot of sense. For instance, various countries tax the movie imports and use that tax revenue to subsidize local movies. That policy is precisely the way to get the more efficient results you would want in terms of the economic analysis. Now, whether it's overdone or underdone is

a more difficult empirical question. Still, this type of policy is precisely the type that makes economic sense from the perspective of giving audiences what they want.

The third way in which markets arguably fail, if our goal is to give people what they want, is if markets aren't the right measures or identifiers of people's preferences. Markets operate on the basis of identifying and measuring preferences only through people's market behavior, namely their willingness and ability to pay in a market for the good they want. Their preference is measured by how much they're willing to pay, and it's identified by their willingness to express this preference within a market transaction. Both measurement and identification measures are open to serious quarrel. People identify their preferences in huge numbers of different circumstances. And it turns out they don't always identify them even in the same rank order.

We identify our preferences in a market, and sometimes we identify our preferences in a discussion. I'm telling you what I want. Sometimes what I tell you and what I do in a market are not the same. We identify preferences with or without deliberation. We identify preferences when we go to a voting booth. We also identify our preferences when we go to a mall.

Each example can be varied in several ways. Social science research shows this. I steal from Cass Sunstein here. If people are given a choice between *A* and *B* and they would choose *A*, if you add *C* to the possible choices so now they can choose between *A*, *B* and *C*, one would think that the real choice now is between *A* and *C* because they've already shown they like *A* better than *B*. But in fact, one of the major effects for introducing *C* into the equation is now many people choose *B*.

How one identifies a preference is incredibly context specific. There's no particular reason to think that any one identification is objectively right. There is no reason to say that the preference on which I spend money is more real. I go and buy a shirt at the mall, which I put in my closet and never take out. I should have engaged in a little bit of deliberation with my friend beforehand, and then maybe I would have identified a different preference. In any event, do I really have a preference for that shirt? My never wearing it is behavior showing that I don't.

But there are all sorts of contexts in which people identify preferences. It's not clear that the ones that are identified in the markets necessarily have the greatest legitimacy or the greatest accuracy. They're all just different ways of identifying preferences.

Secondly, there's no particular reason to think that the weighting given in the markets bears any clear relationship to how much a person desires something. The fact that the very rich person eats at a fancy restaurant, as I hope the conference organizers are going to take me to tonight, doesn't necessarily mean that she values that meal more than a starving person would have valued a McDonald's hamburger.

It's not clear that the amount of money spent is a good measure of desire. Essentially what the market does is measure preferences on the basis of how much money one puts into it. In voting, assuming a one person, one vote standard, each person's preferences are valued the same, at least in theory. Of course, voting is actually a much more complex mechanism for weighting preferences, as illustrated by the fact that usually you don't get to vote on specific policies or distributions. But voting shows that there are different ways of both measuring preferences and identifying preferences. Of course, all market societies, for reasons I think are very good, distribute many goods, arguably most goods on the basis of market-identified and measured preferences. I have no generic quarrel with that. But all democratic societies also distribute some goods on a non-market basis. Your preference in your vote depends only on your ability to get to the poll. It doesn't depend on your wealth as it does in a market.

Likewise, various things are distributed on queuing mechanisms. In sum, there are a huge number of ways to distribute things. We give an education to everybody whether they want it or not until they're sixteen or whatever other age the state sets, and after that as long as they indicate a preference to have it, at least until they graduate from high school. And some states have experimented with at least subsidizing, if not making it available for free, beyond that.

So we clearly respond to some preferences on the non-market basis. When you consider things, these tend to be things that are thought to be vital for your membership in that community. These goods or opportunities tend to be distributed on a non-

market bases. In contrast, things that seem to be less essential tend to be distributed on a market basis. Things that are central to the democratic system — a vote — are clearer examples of things that are distributed on a non-market basis.

The point I want to make here is that media products sort of straddle this border. I'm not sure what the democratic importance is in the movie I saw last weekend, but the use of newspapers and its correlation with voting and voting intelligently is very high.

Some media products correlate well with education or political rights. And my inclination is to think that those types of things should be distributed on the basis of preferences that are measured and identified by means that aren't so market based, while for other media products, market based identification of preferences would seem perfectly appropriate. But my more general point here is that the notion that the market gives you what you want is simply misguided. It instead only gives you what you want as those wants are identified in the market-by-market behavior backed with money.

I want to hold the implications to this point for international free trade until I move over to the last part of my discussion, which is about the implications of free trade for democracy. You remember I said that I object to the U.S. position not only about free trade giving consumers the media that they want, but also whether it gives people the media that they have a democratic right to and need to have — the notion of free flow of information. The claim of the market advocates has a very important element of truth to it. Information and ideas from outside your community, from outside your country, can play a vital role for any type of democracy. It can also play a vital role individually. One of my colleagues at the University of Pennsylvania, in the Annenberg School, Larry Gross, describes how extraordinarily important it was for him, as a gay youth in Israel, thinking that he was, in some way, just out of touch with everybody, to be able to go to the library and find a book on gay life written by a pro-gay writer from the United States.

One can also see that, as an American, it is beneficial to have political information from outside. During the last six months, while American media has provided shrill, uncritical support for President Bush's aggression, it's been useful for me to be able to read on-line media from countries outside the U.S.

Generally, getting information from the outside, either cultural, personal, political, is vital. And so to that degree, I want to echo the free trade advocate's position.

But at this point, the free traders often go on attack. They assert that the opponents of free trade claim to defend a national culture. But what they're actually doing, what the culture means, is defending a status quo, which in most of human history has meant defending or masking elite oppression of one sort or another. Free trade advocates also note that the elites' policy in effect forces their fellow citizens to be museum specimens living within this cultural regime that their citizens, if they had a choice about it, would quickly abandon. You see, they would abandon it because if free trade is allowed, they all buy American media products — they buy Hollywood.

It's at this point where I think the free traders don't hear the protectionists' real claims. Most protectionists, at least as I read their language, most of the time, defend a dialogic conception of culture, not a museum conception of culture. From this perspective, culture is about trying to figure out who we are as a people. And for that, it's important that we know where we are, what our past is, what our positions are, what people within our society are saying about issues and values. And so the argument for most of the protectionists is not that they don't want outside content but rather that they don't want outside content at the cost of losing domestic content, domestic media industries, domestic culture, domestic news. It's not so obvious to me that the free traders have adequately responded to their claim.

When we go back to the reasons to sometimes favor non-market measures of the value people place on media products, for instance measures that people would exhibit when they use their political power — their power to vote for public television services or power to vote for subsidies for local media programs — one can see that there may be very good reason for people to conclude that what they value, though they want to have some real access to foreign material, is to make sure that the local culture and the local communication mediums are robust and effective and have the resources necessary to serve them. And so, the very reasons for doubting the market in general suggest particular reasons to favor domestic media products over foreign in international trade.

At this point, I need to steal from Oliver Goodenough. He coined, or at least for me, he coined the notions of weak and strong protectionism. I'm not sure I use the terms exactly the way he does, but there's a sense in which he gets it precisely right. What you want is to have enough protectionism to make sure that local media remain robust. The goal of weak protection is the robustness of the local media. The point is not to keep stuff out. In contrast, strong protectionism is when you come to the border, you can't enter. The goal is exclusion. That would seem to be what is needed if the policy were to defend the museum rather than the dialogic conception of culture.

When I look around the world at the countries that have resisted the U.S. trade position, it seemed to me that they have mostly defended a notion of weak protectionism. For instance, there is a Canadian example that was dealt with by the World Trade Organization. The Canadian law, which was found to be contrary to free trade principles, said, "we will let anything in that people want to come in. All foreign content is allowed in. What we want in order to preserve the Canadian magazine industry, is for the Canadian advertisers to spend their money on advertising in Canadian media so that there will be enough financial support for the Canadian magazine industry to maintain some degree of viability."

During the period when the law was in effect and the Canadian magazines got the Canadian advertising subsidy, Canadians bought huge numbers of Canadian magazines. During the earlier period when this Canadian advertising money wasn't going to essentially subsidize Canadian magazines, Canadian magazines had a very miniscule percentage of the Canadian market. Instead, foreign, mostly American magazines almost entirely dominated the Canadian market.

Well, if Canadians want to have some Canadian-created content, as shown by their purchases when Canadian magazines were getting the advertising subsidy, they should be happy to have some mechanism around to support it. If Canadian magazines serve Canadian identity, Canadian politics, then one would have thought this type of protectionism makes perfect sense. Referring back to Reed Hundt's remarks, if there are really no borders, free trade may not matter so much, at

least politically. If there are no nations, free trade may not matter so much for national politics.

But to the extent that the Canadians need to figure out how to deal with First World people, they need to figure out what they want in terms of their health care system; to the extent they have huge numbers of domestic issues, they should want to have a media that served their interests in discourse about issues, which was precisely what the protectionist policy did by directing Canadian advertising money to Canadian magazines.

So if I'm right, though the United States' position may very well serve the profits of, and otherwise benefit, U.S. firms, the U.S.'s principle claims — its claims that we are serving the consumers of the world and that we're serving the democratic needs of people — are precisely wrong. Some degree of protectionism could serve both of those much better than a pure free trade regime.

So I have to say that what I'm fearful of, and what many people engaged in the NAFTA and GATT negotiations saw, is that the free trade position of the United States doesn't make the United States so much an international leader. Rather, it makes the U.S. what various countries have suggested the United States might be at times — an international bully. Thank you very much.

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OLIVER GOODENOUGH: This framework comes from the title of this session: "International Trade in Media Products." My premise is that we have been making policy, deciding adjudications and writing into international trade agreements a set of rules about international trade in media products without having very much understanding of the international trade aspects and even less of what media products are and what they do in culture. We've been proceeding blindly on the basis of a received orthodoxy which really needs examination.

My praise is for Ed Baker's book. It is a wonderful book in this field. It significantly raises our level of understanding of at least half of this equation, international trade and markets. As you heard discussed, he identifies a whole series of subtleties involved in the economics of this kind of product, and identifies issues that really need to be addressed by the sort of or-



thodox, may I say, knee-jerk free traders. It's a wonderful book from that standpoint alone. To me, the great revelation was in the pricing differentials and how this really is dumping. When I read this, the light went on for me. It should have gone on earlier.

It's a wonderful book. I do have one suggestion to add to the economic analysis. In talking about consumer preference in this area, particularly in connection with advertising driven media, it is important to recollect that the watcher is not the end consumer of the economic process. The watcher is to that process as halibut is to fishing: the product, what is being packaged and sold — advertising-driven media — is the attention of a mass audience. You are the halibut. You are not a consumer. And what is being put out there in terms of media production is bait. It might be sensible to talk about fish preferences for various types of bait as a basis for analyzing the economics of the fishing industry. But I think it would be more intelligent to talk about the preference of the ultimate buyer/consumer/fish-eater, rather than the fish.

And so my one suggestion is that if you turn some of the economic analysis upside down and really say who is the consumer and what's being consumed. For advertising-driven media, particularly free television, where there's no out-of-pocket expense to the individual involved, it might well be worthwhile changing the preference structure around and recognizing who is really exercising preference and who is just a piece of the manufacturing process captured by the cheapest, most effective, smelliest bait we can spread in front of them.

Disagreement. You heard the discussion of weak and strong protectionism and you have heard the example given of how the Canadian magazine rules were in fact a form of weak protectionism. I am taken to task by Professor Baker for having made the mistake of suggesting that this structure was strong protectionism in a piece of writing which you here in the room can receive for free thanks to the market-distorting influence of my law school's open xeroxing policy.

I don't come away persuaded that I'm wrong. But I do come away persuaded that reasonable people could differ, which is perhaps as close as I'm going to get on this one. Part of the problem is that if you take a weak protectionism/strong protectionism taxonomy, then I think that what the Canadians have

done is used a weak protectionist approach to achieve a strong protectionist result. This suggests to me that perhaps the division is not as clean a taxonomy as it would be nice to have it. That doesn't mean it's useless or it's not helpful, but when we get into the gray areas near the edges, reasonable people can perhaps continue to differ on how to characterize things.

What's my elaboration? Well, my elaboration is the need to address the other half of the framework. As I say, Professor Baker's work provides a wonderful contribution to the economics and market side of the framework. And it provides a partial contribution to the media product, culture side of the framework. The notion of a dialogic culture which Professor Baker develops is very useful, but still only a partial description of what's going on. Having an informed democracy is an important element, but by no means the only element of having a coherent culture.

Culture matters tremendously in maintaining social structures, but we have very limited insight into how that works, and that insight is mainly expressed inarticulately, inchoately, through "I just know it's going to be right" kinds of arguments. And it seems clear that media products matter to some degree, but to a degree we haven't fully worked out, in how cultures maintain and sustain themselves.

As we heard, there is some data that viewing violent media productions may create a more violent cultural milieu. But the effect of media on culture is still unclear. In the Canadian circumstance, the one good bit of data that I could find was a big survey of U.S. and Canadian attitudes on attitude formation. It's data came from 1981 and 1990. Surprisingly, it shows clearly that the Canadian attitudes are leading U.S. attitudes rather than the other way around. So the entire myth of Canadian culture being subverted at a deep attitudinal level by American media products was not sustained by the one good set of data I was able to find. If anything, the exact opposite was true. Huh? Canada is raising this huge fuss about U.S. cultural imports. It's one of the recurring problems and themes in their civic life, how to deal with this destructive influence of the U.S., and what we find is that Canadian attitudes are much more robust than we would expect them to be.

The piece that I wrote was at least a first stab at bringing the dynamics of culture into the discussion. It is an inadequate

understanding, but at least it's some work in that direction. I think that what is added with Professor Baker's approach of dialogic culture is a very useful addition. So, we have a reasonably well worked out formal system for talking about how markets work and how economics work. And we have a bit of it for political science. We don't have that yet for culture. There's lots of room to work there.

Now, in making my elaboration, I want to offer one further suggestion. A suggestion for a way perhaps to meld some of the classical preoccupations of economics with some of the preoccupations of the folks dealing in culture. Systems that will sustain themselves over time must be preoccupied not just with output, which is the kind of thing that economic efficiency analysis is looking for. A system that is actually going to persist over time, particularly one having to construct itself out of human interaction day after day, must also solve the problem of stability. A stability solution is as necessary for a human economic system as any output solution. Furthermore, a human economic system also must solve a problem of transferability across generations. These are, in effect, three solutions that a human social structure must be solving simultaneously.

Even Professor Baker's more sophisticated approach rests on a theory of output maximization. The output solution we've got a reasonable handle on. How societies stabilize themselves and how they give that stable solution continuity, making it transferable across individuals and generations, is something we have less understanding of. This is where this question of the effect of media on culture is so important. Professor Baker asks: "Are protectionist measures not just preventing helping to preserve dialog?" We need to ask: Are they preserving the kind of stability and transferability of the rule set which makes the output maximizing kinds of rules possible over time?

That's my elaboration. It leads me to my final point, which is a doubt. It relates to the question of freedom of expression and freedom of speech, the interesting question which Professor Baker says needs to be looked at, not in terms of economics, but in terms of human rights. Free speech is a value we have a lot of, particularly in our society, but it is innately destabilizing.

It's not just free economic markets that destabilize; so does free speech. And while I'm a reasonable believer in markets, I don't hold it up with the same kind of gut fervor that I do the

First Amendment. I'm one of those folks for whom the First Amendment is a given. I think that's got to be right. But my doubt is that if I'm sensitive to controlling free trade to preserve stability, to what degree do I permit destabilization through the transfer of information. Because if cultural protection justifies trade protection of various kinds, how can I counter an argument that no, at least in terms of freedom of expression, a society has got to be open and take those risks of destabilization.

Here's a possible suggestion: I think the first amendment to some degree looks the same as my weak and strong protection. Weak protection would be the kind of measure that might be permitted under the First Amendment, i.e., the U.S. government can take affirmative positions about things; it can give money to opera companies; it can advocate and help. There is no First Amendment problem with the National Endowment for the Arts, at least not that we've explored very much. What government can't do is prohibit speech — which is what strong protectionism accomplishes.

The weak and strong protectionism distinction may reflect my First Amendment orthodoxy, having rejected economic orthodoxy. How one reconciles the freedom of information flow with stability is a question that is going to require far more work to solve than we can give it today.

PAUL SCHWARTZ: Thank you, Oliver. It is now my great honor to introduce Professor Monroe Price, who teaches here in New York at Yeshiva University's Benjamin Cardozo School of Law. Professor Price is co-director of the Program in Comparative Media and Law of Wilson College, Oxford, and has been a communications fellow of the Markle Foundation. I can also say that, of the many, many books that Monroe Price has published and co-edited, I'm a particular fan of his wonderful volume on the V-chip.

MONROE PRICE: The framework I want to use is based on Ed Baker's attack on the two notions that have historically undergirded the argument for free trade in media and information. The first argument, is that a free trade model furthers the likelihood that the media "gives people what they want." The second is that expanded market based media, globally dis-

tributed, furthers democratic values. And I think a lot of Ed's book is questioning whether or not free trade performs those two functions.

I want to take issue, obliquely, with the Baker argument. I want to ask whether there is a different explanation for various goals considering the distribution of images, information and programs. Baker handsomely attacks emerging policies on the ground that they do not fulfill the two major objectives. My question is whether it is indeed the goal of global media policies to do either of these two things, or is there some other goal which is a better, or additional, explanation of regulatory frameworks?

And here I want to pick up a little bit on the idea of stability. This is an extension of work that I did a decade ago, or so, in defining *The Market of Loyalties*, which argued that, within a country, regulation is a mode of regulating a market for loyalties and allocating power among competitors for loyalties; or freezing the status quo through an agreement among the competing groups. I think globally a similar kind of competition exists, that is to say there is a competition for influence, in which there are various steps that are taken by various actors. And that the argument for free trade is a central element of masking or shaping a particular entrant into this market for loyalties on a global basis. This has to be seen in a much larger context.

Now, it's interesting — and I'll use the "since September 11 argument." Since September 11, the U.S. articulates that there has been an explicit shift in its position on this as in other issues: The attitude toward information moving from one of expanding trade, which was sort of the expanding of the notion of copyright protection, lowering barriers, among other arguments, to one in which there are friends, there are enemies, and the issue in the information sphere is how to manage information so as to stabilize or protect countries that are friends and destabilize countries that are not friends.

I have housed this shift in a post-September 11 context, but it seems to me a much more prevailing and important mode for thinking through policy. And it supplements Ed Baker's arguments of testing media policies against claims of "giving people what they want" or promoting democratic values.

These may also be stated arguments, but a national policy has to look at national security interests, block interests. But one issue is whether Baker is seriously taking these arguments at their face. Obviously, he doesn't do so and recognizes that these are the stated goals; but they're not the real national goals. They're not the real goals because media policies do not necessarily function to perform those purposes, and may be masking some other objectives. And the question is, are they merely masking objectives of expanding a consumer world or are there other kinds of objectives that should be included.

I'm going to provide a few notes from a book I'm writing, called *Media and Sovereignty*, to suggest how to think of alternative articulations to Baker's treatment of "giving people what they want" and furthering democracy. National responses to media globalization can be divided into two categories. One is the protection of a state's internal space, that is to say, what is the mix of ideas within a country. This is the Canadian question, which is: How do we shape what the images are, what are the words, what is the mixture of content within Canada? And this is a model that we're all familiar with and one that we grew up with, namely a kind of bubble of identity in which a nation state tries to shape the images within its boundaries.

But I think there's also a new model of thinking about altering media space, and that involves thinking of affecting external space. Here, the United States is the 800 pound gorilla, but hardly the only gorilla, and how this model functions is certainly relevant to Professor Baker's book. The effort is to develop a model or theory out of something obvious, namely, how the United States influences imagery in the rest of the world through a free market policy. But the question of initiating change externally goes far beyond the United States. One can ask how India or China tries to do this. What are the mechanisms that various countries are beginning to use themselves, not only to look at their internal space, but to look externally?

Now, as to Canada, it's a funny issue, but there was an amusing edition of the public radio show "This American Life" about the secret, hidden ways that Canadians are influencing what Americans hear, everything from Peter Jennings to secret codes on sitcoms that are written by Canadian writers. But that's sort of an odd and eccentric example of this issue. Actually, everywhere you look you can see such efforts: by Serbia

trying to influence European space; or India's Doordarshan trying to influence the Pakistani population. Pakistan is trying to influence opinion in India. On close examination, the process of influencing imagery is a more dynamic framework than would be captured by looking at the issue of free trade through the lens of expanding democracy or giving people what they want. So that seems to me to be the first question.

One way to think about all this is as a kind of information market for loyalties, in which there is a transnational mobilization of pockets of political identity, not only internally, but throughout the world. Let me provide some examples. My favorite involves efforts to influence Kurdish populations within Turkey, using satellites from abroad. Again, this demonstrates the very targeted ways information identifies and shifts a market for loyalties.

A second example involves achieving stability. And this goes to the issue in some ways of national security. What is the mix of voices within a state that will create a kind of stability where there is an international interest in stability, as opposed to an international interest in destabilizing where there is a consensus or external zeal for regime change. So you have, at the same time, the U.S. announcing that its going to take a transmitter and place it either in Iran or in the Kurdish sector of Iraq to destabilize the Iraqi government, and at the same time a kind of active toleration of a Kazakh monopoly of the media on the grounds that Kazakhstan is an important ally and its oil and gas reserves are important. Thus, the U.S. and other states have a variety of media policies that are affected by a notion of what leads to stability in a particular country. And that in some sense can be translated into this question of national culture and national protection of identity through restrictions on media content. How this is done depends on the structure within each country: sometimes the mix is affected by free trade practices; the existence of public service broadcasting; the availability of technology; the nature and history of regime structure; national security concerns; et cetera.

Now, the question then is what's good and what's bad. Which interventions are horrible practice and which are good? And there you have to look at justifications for restrictions; the mode of the communications technology restricted; the object of restriction; the intensity of restriction; and, in a sense, whether

national security proclaimed fears or justify it or not. Increasingly, officials use national security interest to either fence out information, claim that they need to do certain things for internal stability or, finally, in their effort to affect opinions abroad.

PAUL SCHWARTZ: Thank you very much, Monroe. That was wonderful . . . and Ed?

C. EDWARD BAKER: I think I'll go backwards through the comments.

In large part, I have very little to disagree with, as far as Monroe's comments go. In a sense, what I did was describe two definitive normative premises, ask whether they provide a good argument for free trade, and claim that they do not.

What he did, and your characterization of it as sociological I think is right, is to suggest, well, maybe free trade does not serve these premises because it's really trying to do something else. I'm happy to agree. At that point one could look at what else free trade does. If those are good things, we can sign on to them. If they're not, then I'd want to hold up as the standard the normative premises I do defend, namely providing for people's desires and providing for democracy, and say that we need to resist certain aspects of globalization on the basis of those normative premises. In fact, at the end of my talk I cast doubt that what's really going on here is not any attempt to provide for consumers or to provide for democracy, but rather to provide for greater profits for various global corporations.

Monroe Price usefully adds, though in different words, a point that reminds me of some of Noam Chomsky's discussion, that maybe the media industry is designed to maintain the imperialist capitalist order. To the extent that that's what the "market for loyalties" is, we should know it — which is Monroe Price's project — and then know when and how to critique it in the face of other values — which is my project. To the extent that the market for loyalties can be given a better, more normatively defensible characterization, which it might be in some circumstances, we should consider that, too. So his sociological investigation is interesting and useful. However, I don't think it undermines my desire to hold international trade up to two normative principles and then evaluate it in those terms.



Oliver Goodenough's comments — I actually took down a lot of notes. I'll only go through a couple of them. As to one, I have to do at least a little bit of advertising. He asked you to look at advertising media and think about media in those terms. That's what I did with my first book in this area, *Advertising and a Democratic Press*. I fully agree that the impact of advertising is a hugely important topic, and so if you're interested, which you should be, go read my book. Goodenough's comment about Canadians leading Americans in attitude change is right. Monroe Price explained why. They write secret codes into sitcoms. But I'd need a lot more information to comment about that.

More seriously, the main thing I want to emphasize is that Oliver is right. Culture is a hugely complex thing. And I didn't pretend to give a full discussion. The most I did was suggest two different images. One is that culture is something that's preserved and kept the same. A museum. It's sort of an artifact. And that I imagine is an extraordinarily constraining and unappealing conception of culture, just as I find certain forms of closed communities to be unappealing political ideals. But that objection doesn't mean I find communities unappealing.

Will Kymlicka, one of my favorite political philosophers, emphasizes a liberal form of communitarianism. His emphasis — and I drew on this in my notion of "dialogic" conception of culture — is that culture is absolutely essential to transfer from generation to generation, and it's important for stability or maybe just survival. He describes how, when the "first nations" culture is destroyed, the suicide rates go up — a hugely detrimental consequence. But that doesn't lead him to think that the old cultural content must be maintained. Rather, culturally it needs to develop in a way that's by and large internally controlled and discourse controlled, rather than having the internal discourse muted in favor of some outside group, imposing its will. So I agree with Oliver that the cultural points need to be developed a lot more. I do a little more of this in the book, but that was at most a beginning.

And the final observation that I'd make, I'm a tremendous First Amendment advocate. Still, I think maybe some of Oliver and my disagreement about whether the Canadian magazine example was an example of strong or weak protectionism has to do with our specific First Amendment theories. I emphasize

that there's a notion of individual freedom that's important to maintain people's capacity to participate and act as individuals. However, that is not the same as protecting multinational conglomerates and corporations. The First Amendment permits these to be subject to regulations, not to suppress content, which would be strong protectionism, but to change the market around. The permissible goal is not suppression but to restructure the market to produce a more useful and desirable mix of media content.

I disagree with Jerome Barron's remarks also, other than that I resist his pessimism but don't argue that it's not warranted. A couple of points. My claim in favor of national power to engage in some type of regulation of free trade doesn't mean that it will be used sensibly. It's rather a claim that a nation committed to its citizens, either the citizens' democratic or consumptive interests, needs to maintain this power. It's analogous to an argument in the copyright realm that a nation should not alienate the authority to develop a copyright regime that responds to the nation's specific needs. This view rejects automatically standardizing on the basis of global rules that suppress the possibility for national policy choices that might be made more intelligently.

Copyright expansionists, the group that I think is taking the wrong position, first try to win domestically. When they lose domestically, which does not happen often, they go and get the position implemented internationally, and then beat the domestic decision-making over the head the necessity of following international law. Thus, one reason for maintaining resistance to a free trade regime is to allow for internal politics. Of course, domestic politics may move in the wrong direction, as Jerome correctly describes in respect to this country and arguably to an extent in Canada.

The part of his last comment that I want to resist is his suggestion that a nation's resistance to globalization may be at the expense of local dialog. And he gave data to describe how that may very well have occurred to some extent in Canada. In fact, globalization is more likely to hurt local dialog and I think it's occurred in this country to some extent.

Early in the Clinton administration, a report written during the prior Bush administration was put out by the Department of Commerce. The DOC said the U.S. should deregulate in lots

of ways beyond what had already occurred. The reason? If we don't, our ability to dominate the world in media products will be hampered. In order to dominate the world in telecommunications, we need more concentrated media aiming at more global markets. And so we should abandon local dialog. For example, we should allow foreign ownership of broadcasting, in our efforts to create the market conditions needed to support our global dominance.

Free trade advocates argue that the result is not necessarily U.S. dominance. Canada's response to U.S. prominence, or French response to U.S. prominence, could be to avoid their parochialism and thereby compete in the global market by making their products more American. Essentially, what the free trade advocates were saying to the Canadians or the French is: why don't you make more Hollywood-like products. Right. That's one response to globalization and it has a certain type of economic logic.

My suggestion is that it's hard to tag all Canadians or all Americans with the view that we should downplay local discourse, local dialog in favor of global media. Rather, those issues are contested internally within the politics of Canada and are contested internally in the politics of the United States. My claim is that we should not allow the free trade regime to short circuit those politics. My second claim is that, when that occurs, the goal ought to be to produce a robust Canadian public broadcasting system and, as Canadian media advocates have sought, local media for various sub-groups in the Canadian population. These are the policies that the Canadians rightly see are threatened by globalization.

That is not the only way domestic politics could go. There are Canadian interests that favor conglomerate Canadian media that will operate well in a free trade regime at whatever cost to local discourse. That's perfectly possible. But better alternatives are also possible and the choice should be fought out domestically. What I fear is a free trade regime that will short circuit the opportunities for that domestic debate.

PAUL SCHWARTZ: Great. . . . Thank you very much.