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## ELECTRONIC DEMOCRACY

# BROADCASTING AND POLITICAL EQUALITY, 1977

## *Media and Politics*

*The Communications Act of 1937 required that broadcasters treat political candidates in an evenhanded manner. To some extent, this country had always waged its political campaigns in the media, but when the Founding Fathers protected the people's right to know with the First Amendment, they did not anticipate the power of television. How can the broadcast industry protect political equality by ensuring that voters receive the information they need about the candidates? And what is this information?*

*Since this essay was written in 1976, we have seen the role the media plays in political campaigns grow more powerful. How well is that power used? This essay set forth many still pertinent issues, including equal broadcast time for candidates, the character issue, and the trust or lack of trust the public has in the media.*

*Who could envision that Bill and Hillary Rodham Clinton would appear on 60 Minutes in 1992 in response to accusations of marital infidelity? How should political debates be structured so that each candidate is given an equal opportunity to speak? How partisan should television be? These were important questions that the Markle Foundation was asking in 1976; they are still being asked today.*

The televised debates between candidates Jimmy Carter and Gerald Ford were the high points of the 1976 presidential campaign. In a brief 90-minute period, anyone with a television set could scrutinize the appearance of the candidates, see how they reacted to questioning, and compare one candidate with the other. For almost everyone, the televised debates provided an opportunity to make a more direct assessment of the candidates than could be provided by any other means. The opportunity was not lost. At least 90 million people watched each debate. Both Jimmy Carter and Gerald Ford credit the debates as being important and perhaps vital to their campaigns.

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## ELECTRONIC DEMOCRACY

American political campaigns have always been waged primarily through the media. Jefferson in 1799 said the "press is the engine" of the campaign. Until 1900, the engine was the newspapers, often owned or controlled by the political parties themselves. Given the First Amendment guarantee of "freedom of the press" and the tradition of "robust journalism," this meant a vehicle which protected the party's interests and the candidates' rights. The interests and rights of the public were secondary.

The new technology of broadcasting — first radio and then television — offered new ways of continuing the old form of campaigning, but it also created important changes. One change was to personalize the campaign and focus more attention on personalities rather than party interests. This trend was under way in the late 1900s, and radio greatly accelerated it. Second, and of greater importance, broadcasting is a regulated medium which, in addition to being protected by the First Amendment, ensures the rights of the audience through laws governing fairness and equal time for political candidates. Thus, the televised debate is an impartial media event in that the broadcast medium, unlike the newspaper, is required to be nonpartisan. Theoretically, such debates can advance the concept of political equality by providing the voter with direct knowledge of the candidates.

The historical development of presidential campaigns has now made broadcasting an essential means of reaching the voter. This comes at a time when new rights of voters are to be found not so much in greater access to polling places as in greater access to information about candidates. The traditions of broadcasting are especially appropriate to these conditions as the broadcaster has always been required to represent the public. At the same time, the technology of broadcasting has made possible new opportunities for broadcasting to help extend political equality.

### *Political Equality*

The concept of political equality is not frozen in time. Rather, it is a dynamic idea shaped by the evolution of a nation's values, laws, and technology. Historically, political equality has been most closely associated with the right to vote.

At the time of the earliest settlements in America, it was common practice to limit voting to those white men who proved they were loyal to the religious community. During the latter part of the seventeenth century and in the eighteenth century, religious qualifications gave way to class restrictions. These took the form of property qualifications which were in effect in the colonies and in most of the states of the new republic. At the Constitutional Convention, James Madison argued strongly for a nationwide property requirement. Madison and his allies foresaw that with increasing urbanization fewer people would own property, and they feared the end of the public virtues that were rooted in ownership of land. In this instance, the "Father of the Constitution" argued in vain. Because the Constitutional Convention failed to support a nationwide property requirement for voting, the idea eventually lost popularity in individual states as well. In many states in the East and South, taxpaying qualifications restricting voting to the privileged classes replaced property qualifications. These restrictions, too, were gradually eliminated as the newer western states entered the Union without them.

Yet, at the same time that economic qualifications for voting were being eliminated, voting restrictions that disenfranchised immigrants and free blacks began to appear in state constitutions. After the Civil War, the 14th and 15th Amendments prohibited

voting restrictions based on race and nationality, but other qualifications were instituted to keep people from participating in the electoral process. The white primary, for instance, as well as poll taxes, literacy tests, and the like, excluded blacks from elections. However, in 1944 the Supreme Court finally voted decisively that primaries were elections and that no political party could stage a primary that discriminated by race, creed, or color. Moreover, in 1920 the 75-year struggle for women's political equality resulted in the 19th Amendment to the Constitution that gave women the right to vote. The decade from 1962 to 1972 brought other changes. First, in 1962 the Supreme Court ruled in favor of the reapportionment of the House of Representatives to conform more closely to the principle of "one man, one vote." The 1965 Voting Rights Act further protected the voting rights of blacks. In the same year a Supreme Court ruling clarified the servicemen's right to vote. Shortly thereafter the poll tax was ruled illegal. Finally, the 26th Amendment lowered the voting age to 18.

Clearly, the right to vote is a dynamic idea that has evolved far beyond the conceptions of the colonists. We can be certain that more changes will occur in the future. Universal suffrage for all adults aged 18 and up is a reality in almost every part of the country. Inconsistent registration practices still exist, but the problems of political equality concerning the right to vote are now not as critical as the problems surrounding equal access to information. Free and informed choice is the main concern today. And it is in the distribution of political information that the media, and particularly broadcasting, will have an even more important role in the future than they have had in the past.

*Newspapers  
and Presidential  
Campaigns*

In an era of television campaigning, many of us are astounded and sometimes perplexed by the importance of television. It is nothing new, however, for presidential campaigns to be conducted primarily through the media. In the early years of the country, there were no presidential campaigns as we know them. The party system of campaigning was introduced when the Republicans organized in the 1790s, followed by the Federalists and later the Whigs. Before 1824, presidential electors in most states were chosen by the legislature rather than by popular vote. Campaigning was far different. The candidates did not campaign directly, but wrote letters and worked through subordinates. Once the popular vote determined presidential electors, the party job was to stimulate and increase voter turnout. When the country settled on a party system of elections, it was natural and probably inevitable that the newspaper would become a handmaiden to the campaign.

The campaign of 1800 shows the emergence of the newspaper as a powerful tool of the party in winning campaigns. On February 5, 1799, Jefferson wrote to James Madison urging that he and his colleagues write daily articles and letters for the Republican press. He felt that the "press is the engine" necessary to pull a campaign ahead. In late 1799, the "Jeffersonian Raleigh Register" was founded in North Carolina. It was promptly awarded the state government printing contract by the Republican-dominated legislature, thereby ensuring a measure of financial health for the paper. The history of the media and the parties reflects a tradition of mutual dependence until twentieth-century broadcast technology and regulation. The early papers were hard-hitting, sensational, and ideological. They

were partisan and partial, usually owned or controlled by one of the parties. In 1800, it is estimated the population of the 16 states was approximately 5,308,000. These people were widely dispersed and travel conditions were difficult. It was not the custom for presidential candidates to campaign personally, and, in any case, it would have been impossible for a candidate to reach many of the voters. Parades, barbecues, festivals, torchlight processions, and cider-drinking parties were all features of the early campaigns, but the newspaper, often distributed free by party workers, provided coverage of campaign events and the issues for those voters not directly contacted by the campaigns.

Throughout the nineteenth century, newspapers were the principle medium of political communication, and they were of paramount importance in presidential campaigns. They published information about campaign events and the letters by which candidates communicated their views. In fact, the newspapers and other special political publications were the only direct lines of communication between the candidates and the people. Until late in the nineteenth century, presidential candidates did not personally campaign. It was considered demeaning and even improper for a presidential candidate to descend to the fray. Newspapers were the only way for national party organizations to reach every party member quickly and easily. Newspapers allowed political parties to run coordinated national campaigns.

Many newspapers were created and nurtured by political parties. The party in power gave its newspaper the public printing orders, helped raise subscriptions, distributed copies, and in times of need made cash grants. (It was not until 1846 that public printing was opened to competitive bidding.) Many editors rose to positions of party power, and some received public offices. Thomas Greenleaf, editor of the *New York Argus*, was elected a sachem of Tammany in 1789; Peter Freneau, editor of the *Charleston City Gazette*, as well as Jefferson's manager for South Carolina in 1800, was named South Carolina's secretary of state. Jackson's kitchen cabinet was composed primarily of editors.

In 1840 Abraham Lincoln was a member of the Illinois State Central Committee of the Whig party. His message to his subordinates underlined the importance of the press. Lincoln wrote, "every Whig in the state must take it [*The Old Soldier*, a newspaper created specifically for the campaign against Van Buren] and you must raise a fund...for extra copies...for distribution...among our opponents." It is believed that the election of 1844 was decided in the press as a result of an exchange of published letters between candidates. Henry Clay may have lost enough votes in New York to swing the election to James W. Polk.

The style of presidential campaigns began to change in 1884. Until that year, no presidential candidate had ever actively campaigned. For the first time since 1856, a Democrat had a chance of winning the White House. James G. Blaine, the Republican nominee, tried to reverse the tide and traveled through the Northwest and New England on a speech-making tour. He was heavily criticized by the Democrats as a crass politician engaged in demagoguery, and in the end he lost the election to Grover Cleveland. However, Blaine's speech making in 1884 set the stage for a shift in presidential campaigns — from impersonal letter writing and working through subordinates to active, personal campaigning.

In 1896 William Jennings Bryan refused to campaign in the old way and toured the country making speeches. This was the first truly modern campaign in the sense that Bryan chose to focus the campaign on himself, to personalize it. Bryan traveled 18,000 miles, made over 600 speeches, and on occasion spoke up to 36 times a day. He spoke to an estimated 5 million people during the campaign. When he started, he seemed to be a hopeless underdog. His criticisms of the gold standard unnerved many voters, particularly those who worried about the stability and prosperity of the industrial economy. However, his new style of campaigning, combined with his own personal qualities, made him a strong contender. Even though McKinley, the Republican nominee, retained the old ways and was eventually elected, Bryan showed that a personal presidential campaign could be effective. He did this at a time before radio and television, when a personal campaign meant making speeches to groups ranging in size from 100 to 1,000. On his most successful day, Bryan probably spoke to 40,000 people.

Only a man of vast energy could have done what Bryan did. His efforts also probably came at one of the last times it was possible to wage an effective personal campaign without the benefit of broadcasting. In 1896 the population of the country was about 72 million. That he spoke to an estimated 5 million people meant that Bryan reached a significant portion of the population. In his 1912 campaign, Woodrow Wilson carried this personal technique as far as it could go without broadcasting. As the twentieth century progressed, population growth made it difficult to reach a significant portion of voters by personal speech making.

*Radio and Personal  
Campaigns*

Radio broadcasting was to provide the means needed for presidential campaigning in the personal style initiated by Bryan. In 1923 President Warren Harding made an historic radio broadcast from St. Louis on *The World Court*. It has been estimated that 1 million people heard him. The immense impact of this speech indicated the potential of radio to both the candidates and the broadcasters.

The convention and campaign of 1924 marked the emergence of radio in politics and the beginning of the transition from newspapers to broadcasting as the engine of campaigns. Radio needed the drama of the convention to capture large audiences, while politicians needed radio to reach efficiently a population which in 1924 numbered 114 million. Radio was shown to be the means to use the techniques of personal campaigning far beyond the dreams of earlier candidates. In the presidential campaigns following 1924, radio became increasingly important. Most of the speeches on the radio were broadcasts of live public appearances by the candidates. After his election in 1932, Roosevelt began developing an even more personal way of using radio. His famous "fireside chats" were broadcast from his office directly to the listener at home. By all accounts, the "fireside chats" were effective media presentations, marking a further development in the use of broadcasting as a personal vehicle for presidents and presidential candidates.

Throughout the Roosevelt era, 1932-45, radio flourished in its golden years. Radio offered a means for personal campaigning in a time when travel in the Bryan/Wilson manner was not practical, and it offered a distribution system for

*The Traditions  
of Broadcasting*

political messages that could not be matched by the press. It seemed at the time that radio would inherit the traditions of the newspaper campaign: the alliance between newspapers and political parties, the importance of editors in political parties and national office, the free and unbridled use of newspapers for political purposes limited only by the steadily diminishing power of libel laws, and sometimes the active financial support of newspapers by political parties. This was not to be. The traditional relationship of press and politics that dominated the nineteenth century would be legally checked for the broadcast media.

In the late Hoover and early Roosevelt years, the foundations for the regulation of broadcasting were established by the Radio Act of 1927 and the Communications Act of 1934. The origins of broadcast regulation had little to do with presidential campaigns or politics, but the consequences of the regulatory acts have had far-reaching influence on the electoral process.

The history of broadcast regulation is well known. The need for the Radio Act of 1927 arose because of the competition for limited spectrum space and the interference caused by duplicating and adjacent signals. From the beginning, the Congress and the FCC have regarded radio broadcasters as "public trustees." A Senate resolution of 1924 states "...the ether and the use thereof for the transmission of signals...is hereby affirmed to be the inalienable possession of the people of the United States and their Government." The Fairness Doctrine is one manifestation of these concepts and imposes on broadcasters very different obligations than the broad freedom allowed the press under the First Amendment. The Fairness Doctrine obliges broadcasters to devote reasonable time to controversial issues of public importance and to provide reasonable opportunity for contrasting viewpoints to be heard. The other explicit programming control of central importance to political campaigns is the "equal opportunities" provision of Section 315 of the Communications Act. This requires that broadcasters treat political candidates in an evenhanded manner. Taken together, these regulatory provisions have had the effect of limiting the use of radio and television as partisan vehicles for campaigns.

Of paramount importance, however, is the fact that just as newspapers were indispensable to the campaigns of the nineteenth century, television and radio have become indispensable to the campaigns of the twentieth century. The broadcast media, however, have adapted differently to the campaign process than did the press during the last century. This is understandable in light of the different regulatory traditions governing broadcasting.

The traditions of the press grow out of the First Amendment: "Congress shall make no law...abridging the freedom of speech, or of the press." The key point is that the protections are for the press, not the readers. Bound only loosely by the laws of libel, the press is free to present news as it sees fit. By extension, in presidential campaigns, newspapers are free to be partisan in their editorial support of parties and candidates. The right of the candidate to present himself in his own terms is unquestioned and a natural corollary of free press.

The traditions of broadcasting grow out of the Radio Act and the Communications Act as well as the First Amendment. The vital difference as far as presidential

campaigns are concerned is the concept of the broadcaster as "public trustee." The concept has been developed by Congress and the courts and is directly stated in the famous *Red Lion* decision of 1969, in which the Supreme Court declared, "It is the right of the public to receive suitable access to social, political, aesthetic, moral, and other ideas and experiences which is crucial here." The court found that, in broadcasting, protections are to be extended to the public as well as broadcasters. The broadcaster is, in addition to representing his own interests, an agent of the public. As the potential of broadcasting in presidential campaigns becomes clearer, the issue of the public's right to have information about the candidates may well become an important one.

The debates of 1960 and 1976 began to demonstrate a fusing of the older campaign traditions with the new style necessitated by broadcasting. Arranging the debates in 1976 was a difficult and delicate task. Both Jimmy Carter and Gerald Ford wanted the conditions of the debates to be as suitable for their individual purposes as possible. In order to comply with Section 315's equal time provision, the debates had to be arranged by a neutral group as an event to be covered by the news media rather than as a partisan political broadcast. The League of Women Voters, representing the public, provided the neutral auspices under which the debates were produced. The broadcasters simply delivered the event to the audience.

It is no longer possible for the parties or the candidates to be the sole arbiters of the conditions of public appearance, as in the tradition of nineteenth-century campaigning. Furthermore, the opportunity to reach the American public is so enticing to the candidates that they are willing to adapt to the new campaign medium. Because broadcasters see that the public's demand for information is consistent with the politician's need to be seen and heard, more debates are likely in future campaigns. It is clear that television debates between candidates attract viewers and are important to the democratic process. After the next campaign debates, it is possible that the debates will be an accepted campaign feature. Again, politics and the media will fulfill each other's needs.

*The Future of  
Broadcasting and  
Presidential  
Campaigns*

What remains to be seen is how broadcasting will respond to the challenges and responsibilities of future presidential campaigns. One distinct possibility is that the Section 315 restraints on broadcasters will result in a cautious response on their part. If so, we will still probably see more debates, but the broadcasters will not be able to take a leadership role as public trustees, a role that could result in creative programming. Of course, broadcasters cannot change Section 315, and many may not believe that changes in equal time constraints are in their best interests. Allotting broadcast time for one or two presidential candidates may open the broadcaster to the claims of all presidential candidates — even those on the ballot in only one state. This could have meant as many as 207 such candidates in the 1976 campaign.

This problem is not insoluble, and it is in the public's interest that it be addressed. With the public financing of presidential campaigns, formulas were devised for the distribution of public monies. These formulas could provide an analogy for the distribution of air time to minority party candidates. Minority party candidates do have rights, and these rights demand respect and protection. It will be impossible,

however, to treat minority party candidates equally in the distribution of air time with those who command major shares of public support. The arrangements in 1976 seem to have met the letter of the law, but the debates were really a convenient subterfuge for escaping the constraints of Section 315 and allowing the exclusive presentation of Jimmy Carter and Gerald Ford. Through the League of Women Voters' sponsorship, the problem of minority candidates was avoided. Similar subterfuges may be possible in the future, but surely that would be a far greater infringement on the rights of minority party candidates than a formula for time allocation. This problem will not go away. The need for the public to see and hear their candidates over television and radio and the desire of the candidates to be seen and heard are too strong to keep candidates off the air. We must find ways to apportion air time responsibly, protect the rights of candidates, inform the public, and provide guidelines for broadcasters that allow them to embark on creative, responsible programming.

If we assume that Section 315 will be modified or, a much less desirable alternative, that ways will be found to avoid its provisions, there is a great opportunity for broadcasting to participate in future presidential campaigns and promote greater political equality. If the ideal of political equality is that all adults have the right to vote, and that all have access to information, then we are at the point to consider the issues surrounding the question of how best to inform the public. Not everyone will avail himself of the opportunity to study the candidates and make a choice, just as not everyone will decide to vote. Nevertheless, today sufficient information seems as necessary to the concept of political equality as does suffrage.

The televised debates of 1960 and 1976 have set the stage for the presidential campaign of 1980 and future campaigns. The main problem, to date, in the staging of these debates has been to find a way, any way, to bring them about. What has been shown is that candidates will appear together and that such joint appearances will attract huge audiences. This creates the opportunity to face the many questions that remain to be resolved. How can joint debate appearances of the candidates be staged so that candidates have a fair chance to present themselves and their positions to the public? While providing for fair treatment of the candidates, what can be done to make the debates as revealing as possible of the candidates and their abilities? Will some combination of individual presentation, questioning by moderators, and face-to-face confrontation prove more informative than the formats used so far? Should the questioners of the candidates be members of the press or should a variety of questioners be used? Is it possible to include some minority candidates in a debate format? Many criticisms of past debates have been made and suggestions advanced. The main point is that as great as were the accomplishments of the last debates, they suggest that future debates can serve the public even better.

Some of the main issues to be addressed at this time are the following: the models for structuring national televised debates and other appearances of presidential candidates, the rights of minority candidates in relation to these debates, the problem of media image created by television, and the role and relationship of the broadcaster to television campaign activity.



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## ELECTRONIC DEMOCRACY

During presidential campaigns, each party spends huge amounts of money to present its positions and candidates to the public. This is as it should be, for it is in our political tradition that candidates try to persuade people to vote for them. Much of the money spent during the campaign is for television-spot commercials of varying lengths and longer periods of air time for political presentations and speeches. A primary problem with the modern media campaign is that the candidates with their organizations largely determine the conditions under which the candidates will be seen by the public. To the extent that the candidates only make public appearances with set speeches and in controlled environments, they are in control of the image and information that reach the voter. Should broadcasters, in their role as "public trustees," ask what they could ideally put before the public that would be helpful to free and informed choice?

Radio and TV broadcasting have the potential to show the many sides of a political candidate. Many programming possibilities immediately come to mind. Biographical information on the candidates is clearly relevant to judgments concerning character and qualifications. Could documentary biographies that would invite such judgments be produced? The candidates' records in prior jobs reveal what can be expected in future jobs. Candidates running for president have experiences in office that could be presented in a format involving both supporters and opponents. Seeing a presentation of the record from a variety of viewpoints would give the voter the opportunity to evaluate the candidates objectively. Seeing how candidates handle themselves in a variety of situations would be fascinating. Imagine if, in addition to debates, the candidates were shown discussing an important question with their advisers. Imagine seeing how the candidate handles questions from experts or the press from other countries. How would the candidates fare if asked their views on significant historical events? Any broadcaster could expand the list of good programming possibilities almost endlessly.

This is the issue. Have we reached a time in our political and technological development when the responsibilities of broadcasters have a new relevance? Politicians have used broadcasting as an effective vehicle for reaching voters. Broadcasters have considered themselves to be impartial reporters with a responsibility to cover the news. We are now at a point in history when the responsibility of the broadcaster could focus on providing the public with the information needed to make free and informed political choices. As a public trustee, is it not the responsibility of the broadcaster to educate the public about candidates, and to do so not simply on behalf of the candidates, but on behalf of the public?

This is a formidable challenge. To meet it successfully would undoubtedly take modification of Section 315. Beyond that, it would require of broadcasters a courageous independence. Rightfully, broadcasters do not want to incur the enmity of presidential candidates. The overriding principle is, however, becoming ever clearer with the passing of time: it is the public's right to know and to receive information necessary to make the ideal of political equality a reality.