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DESCHOOLING THE NEWS MEDIA— DEMOCRATIZING CIVIC DISCOURSE

AKILAH N. FOLAMI*

INTRODUCTION

The Age of Professions will be remembered as the time when politics withered, when voters . . . renounced the authority to decide who needs what and suffered monopolistic oligarchies to determine the means by which these needs shall be met. It will be remembered as the age of schooling, when people . . . had their learning needs prescribed and were trained how to accumulate further needs, and . . . became clients of prestigious pushers who managed their habits[,] . . . when formed opinion was a replay of last night's TV talk-show.¹

This Article interrogates the traditional role and effect of professionals and professionalism in America's media and civic discourse landscape. It does so by considering Ivan Illich's deschooling theory within the context of broadcast journalism's historic and traditional role in facilitating civic knowledge and engagement during the so-called Golden Era of Journalism. In revisiting "network news"² history through the lens of Illich's deschooling theory, this Article highlights broadcast journalism's professionalization of political discourse. Furthermore, it contends that media law reified this professionalization through early interpretations of the bona fide newscast and news interview exemptions³ to the equal

* Associate Professor of Law at the Maurice A. Deane School of Law at Hofstra University. I would like to thank the organizers from the Western New England University School of Law for inviting me to present an earlier draft of this paper on a panel titled, "Re-Envisioning Media and the Rule of Law" at their *Radical Nemesis: Re-Envisioning Ivan Illich's Theories on Social Justice* Symposium. I would also like to thank Julie Steiner and Alafair Burke for their comments on an earlier draft of this paper.

1. Ivan Illich, *Disabling Professions*, in *DISABLING PROFESSIONS* 11, 12-13 (Marion Boyars 2005) (1977) [hereinafter Illich, *Disabling*].

2. Unless defined otherwise herein, references to "traditional news," "network news," and "broadcast journalism" refer to traditional newscast formats, styles, and norms developed and provided by the commercial television broadcast networks and not to local news programming or to public broadcasting.

3. See Equal Time Amendment to Communications Act of 1934, Pub. L. No. 86-274, 73 Stat. 557 (codified as amended at 47 U.S.C. § 315(a) (2006)). There are two

time rule.⁴ And finally, it concludes that both professional journalism and the media law that elevated it undermined development of a fuller and more authentic participatory democracy by relegating American viewers to passive followers of a professionalized political discourse on civic engagement.

Moreover, by interrogating the traditional role of professional broadcast journalists in America's media and civic discourse landscape, this Article heeds Illich's prescient call for a close "examin[ation of] the specific role of the professions in determining who got what from whom and why,"⁵ of "whether the professions in fact provide their services so altruistically, and [of] whether we are really enriched and not just subordinated by their activities."⁶ With regard to professional journalism and the media law that stabilized it, both aided in narrowly construing civic engagement and in professionalizing a political discourse that could have benefitted from the theories put forth by Illich in his seminal book, *Deschooling Society*, which addressed deschooling in the context of mandatory education.⁷ Deschooling essentially involves deinstitutionalization because institutions inevitably foster a discourse of dependence and a perpetuation of existing hierarchies, as evidenced, this Article contends, by the professionalization of political discourse on broadcast television.

I. DESCHOOLING THE EDUCATIONALLY SCHOOLED

In *Deschooling Society*, Illich theorized that in order to effectuate a more participatory democracy, society must be deschooled.⁸

additional exemptions from the equal time rule, namely, bona fide news documentaries and on-the-spot coverage of a bona fide news event. Anne Kramer Ricchiuto, *The End of Time for Equal Time?: Revealing the Statutory Myth of Fair Election Coverage*, 38 IND. L. REV. 267, 267-68 (2005). This latter exemption has been interpreted to include coverage of political debates and press conferences. See *Chisholm v. FCC*, 538 F.2d 349, 351, 396 (D.C. Cir. 1976). The bona fide newscast and news interview exemptions are of particular focus in this Article because their early interpretations illuminate most clearly this reification of professionalism in political discourse and its limiting participatory effect on the larger public.

4. See 47 U.S.C. § 315 (providing the statutory language of the equal time rule). When triggered, absent application of any of the bona fide news exemptions, the equal time rule requires broadcast owners to provide equal access time on a particular program to opposing political candidates if access on such program had been granted to any other candidate running for the same office. *Id.*

5. Illich, *Disabling*, *supra* note 1, at 12.

6. *Introduction to DISABLING PROFESSIONS* 9 (Marion Boyars ed., 2005).

7. See generally IVAN ILLICH, *DESCHOOLING SOCIETY* (Ruth Nanda Anshen ed., Harper & Row 1971) [hereinafter ILLICH, *DESCHOOLING*].

8. *Id.* at 23.

Deschooling for Illich compelled the end to compulsory education to pave the way for the rebirth of the Epimethean Man. The Epimethean Man—a figure of Greek mythology—thrived, defined, and determined his own needs and fate via introspection, natural inquisitiveness, and group learning.⁹ To Illich, compulsory education extinguished the independent autonomy of the Epimethean Man and created instead a deeply engrained desire and need to be schooled by others early on in the life of human beings.¹⁰

In addition, compulsory education normalized the professionalization of teaching by requiring teachers to be licensed via certification and, thereby, tasked with the service of schooling.¹¹ Through its certified teachers, the state determined what was legitimate for learning and what was not via the curriculum.¹² To Illich's dismay, such schooling infrastructure birthed a mental and psychological dependence in human beings early on in life. As a result, natural curiosity and learning were socially constructed as external to self and in need of awakening during childhood by the professionally certified teacher and state sanctioned curriculum.¹³ Moreover, through the social construction of childhood¹⁴ and "the hidden curriculum of school[s],"¹⁵ compulsory education removed learning from group life and from every day interactions and exchanges with and among peers and community.¹⁶ Therefore, mandatory schooling solidified hegemony of those socially constructed and legally sanctioned as "in the know,"¹⁷ with knowledge itself becoming a

9. *See id.* at 6, 39, 115.

10. *Id.* at 8, 29, 38.

11. *Id.* at 15, 39.

12. *Id.* at 2, 88.

13. *Id.* at 3-4, 13, 108.

14. Illich contended that childhood was a socially constructed privilege for children in more developed countries and/or from families with more economic resources. Such children were separated out from the demands and rigors of adult living. Childhood therefore permitted these children the leisure of not working and of going to school to be schooled which could serve as a basis for maintaining their economic status. Illich pointed out that most children throughout the world, especially those living in poorer countries, were not granted the privileges of leisure and school-based learning that a socially constructed childhood provided. Most children instead had to work and contribute to the family's subsistence and existence by working inside or outside of the family household. *Id.* at 6-7.

15. *Id.* at 2.

16. *Id.* at 8, 74, 80.

17. *Id.* at 14-15, 60; *see also* Illich, *Disabling*, *supra* note 1, at 17, 19.

means of creating, maintaining, and enforcing the existing hierarchical order and social stratification.¹⁸

While Illich takes particular aim at compulsory schooling in *Deschooling Society*, his broader goal was to call into question the legitimacy of all modern institutions that have the effect of undermining the public good, despite their claims and societal presumption of doing otherwise.¹⁹ For Illich, most modern institutions schooled and stripped individuals of their autonomy and fostered passivity, dependence, and over-reliance on others.²⁰ The most damaging effect of such schooling was the squelching of an individual's innate inquisitiveness and ability to discover her own passions and needs independently through reflection and every day communicative exchanges with others.²¹ As a result, individuals perceived themselves as in need of professional guidance, as students in teacher-led classrooms, as workers in the workforce, and as consumers of marketed and manufactured products and services.²²

To usher in a new era of informed choice over manufactured and schooled ones, Illich advocated for the deschooling and disabling of not only compulsory educational systems, but also of all other institutional systems in society that disempower individuals.²³ Illich's goal was to pave the way for a more authentic participatory democracy; this Article's aim is to push forward that cause. This Article advances Illich's broader call for democratization beyond the mandatory educational infrastructure that he targets and deconstructs in *Deschooling Society*. It does so by highlighting the need for the same deschooling at the intersection of two other areas of society, namely, mass media and its related laws.²⁴

18. ILLICH, DESCHOOLING, *supra* note 7, at 50; Illich, *Disabling*, *supra* note 1, at 16; see also CHARLES DERBER, WILLIAM A. SCHWARTZ, & YALE MAGRASS, POWER IN THE HIGHEST DEGREE 8 (1990); BRIAN MARTIN, INFORMATION LIBERATION 19 (1998) ("Powerful groups are doing everything they can to control markets and opinions in the changing information order.").

19. ILLICH, DESCHOOLING, *supra* note 7, at 2; Illich, *Disabling*, *supra* note 1, at 15; John Pauly, Review Essay, *Ivan Illich and Mass Communication Studies*, 10 COMM. RES. 259, 261 (1983).

20. ILLICH, DESCHOOLING, *supra* note 7, at 40, 60; Illich, *Disabling*, *supra* note 1, at 22, 27-28.

21. ILLICH, DESCHOOLING, *supra* note 7, at 29.

22. *Id.* at 1, 28, 40, 60.

23. *Id.* at 2.

24. See generally MARTIN, *supra* note 18, at 8 ("The problem is not with media in general, but with mass media, namely those media that are produced by relatively few people compared to the number who receive them Instead, the aim should be to replace mass media by communication systems that are more participatory.").

II. PROFESSIONALIZING CIVIC DISCOURSE AND DISENGAGING THE PUBLIC

Today, studies reveal the continued downward spiral of American civic literacy and engagement among its citizens, including its college students and elected officials, that began in the mid-1970s.²⁵ Moreover, studies spotlight the mounting struggle of professional journalists and traditional news networks to maintain profitability due to declining viewership.²⁶ As a result, such studies expose professional journalists' and network news's challenge in attracting and engaging the American public.

Historically, professional journalists, including broadcast journalists, assumed the role of informing and engaging the American public in order to further America's self-governing democracy.²⁷ American viewers would dutifully watch every evening in the after dinner hours as professional broadcast journalists hosted network news programming—the only television programming provided at that hour—and guided viewers on what was civically and politically relevant. Some contend that broadcast journalism's foundational role of engaging and informing the public has been undermined by corporate consolidation, which began in the early 1980s.²⁸ Arguably, such consolidation led to the commoditization of political news as entertainment and to the descent of network news into commer-

25. See T. Kenneth Cribb Jr. & Lt. General Josiah Bunting III, *Our Fading Heritage: Americans Fail a Basic Test on Their Heritage and Institutions*, INTERCOLLEGIATE STUDIES INST. AM. CIVIC LITERACY PROGRAM, http://www.americancivilliteracy.org/2008/summary_summary.html (last visited May 24, 2012); see also ERIC LANE & MEG BARNETTE, BRENNAN CENTER FOR JUSTICE AT N.Y. UNIV. SCHOOL OF LAW, A REPORT CARD ON NEW YORK'S CIVIC LITERACY, 2 (April 13, 2011), available at http://www.brennancenter.org/content/resource/a_report_card_on_new_yorks_civic_literacy (referencing other reports indicating that civic knowledge has dropped significantly since 1976 and concluding that “[m]eaningful democracy requires civic literacy Young people do not understand the ideals of citizenship; they are disengaged from the political process; they lack the knowledge necessary for effective self-government; and their appreciation and their support of American democracy is limited”) (quoting KARL T. KURTZ ET AL., NATIONAL CONFERENCE OF STATE LEGISLATORS, *CITIZENSHIP: A CHALLENGE FOR ALL GENERATIONS* (2003)) (internal quotations omitted).

26. See, e.g., Emily Guskin, Tom Rosentiel & Paul More, *Network News: Durability & Decline*, PROJECT FOR EXCELLENCE IN JOURNALISM, <http://stateofthemediamedia.org/2011/network-essay> (last visited May 24, 2012).

27. See Akilah N. Folami, *Freeing the Press from Editorial Discretion and Hegemony in Bona Fide News: Why the Revolution Must Be Televised*, 34 COLUM. J.L. & ARTS 367, 384 (2011).

28. *Id.* at 398-400.

cialized infotainment²⁹ with celebrity reporting and political sound bites over critical and civic substance.

Moreover, with the ubiquity of the Internet and the advent of blogs and other online news resources, viewers have gradually abandoned their reliance on broadcast journalism as their primary source of political knowledge.³⁰ Some viewers have become “news grazers” of motley information sources and mediums.³¹ Much of America has however remained civically illiterate and disengaged politically³²—the Internet and its liberalization of information notwithstanding.

To remedy what they perceive as shallowness and cynicism in journalism, political discourse, and civic engagement, some journalism and First Amendment reformists call for a return to the Golden Age of Journalism.³³ This Golden Age speaks of “when political news was clearly separated from entertainment and when professional journalists, like television anchorm[en Ed Morrow and] Walter Cronkite, civically informed and guided Americans.”³⁴

Unfortunately, a return to the norms of the Golden Age will likely not remedy broadcast journalism’s deliberative peril. The problem plaguing broadcast journalism is not rooted per se in the intersection of civic news with entertainment. Its gradual downward spiral is also not due solely to the corporate consolidation of the industry that long preceded it.³⁵ Broadcast journalism’s deliber-

29. BONNIE M. ANDERSON, *NEWS FLASH: JOURNALISM, INFOTAINMENT, AND THE BOTTOM-LINE BUSINESS OF BROADCAST NEWS* 20-21 (2004); Folami, *supra* note 27, at 399 (“Network news was recast and commoditized, as entertainment programming had been for years. Broadcast journalists were also set up as celebrities and network news and political discourse were relegated to spectacle and entertainment in an effort to appeal to the viewer as consumer rather than as citizen.”).

30. Folami, *supra* note 27, at 367, 373, 408-09.

31. GEOFFREY BAYM, *FROM CRONKITE TO COLBERT: THE EVOLUTION OF BROADCAST NEWS* 16 (2010) (stating more than half of the American public are “news grazers” receiving information from a motley of sources at no particular set time of day).

32. *See generally* Cribb & Bunting, *supra* note 25 (discussing continued decline in civic literacy even in the age of the Internet); Lyriisa Barnett Lidsky, *Nobody’s Fool: The Rational Audience as First Amendment Ideal*, 2010 U. ILL. L. REV. 799, 828-29 (discussing studies that show a process of rationalized ignorance by audiences when they are faced with too much information or with overly complex information).

33. Folami, *supra* note 27, at 371.

34. *Id.* at 367-68, 371.

35. Corporate consolidation and deregulation of the broadcast industry began in the early 1980s with the FCC adoption of laws repealing national and local caps on the number of broadcast stations any one person or corporation could own. *See* Akilah Folami, *From Habermas to “Get Rich or Die Tryin’”: Hip Hop, the Telecommunications Act of 1996, and the Black Public Sphere*, 12 MICH. J. RACE & L. 235, 294 (2007).

ative peril is the net effect of longstanding mainstream societal norms and presumptions related to the professionalization of political discourse that led to the narrowing in scope of civic engagement.³⁶

A. “Certification” Through Professionalism

Mainstream professionalism norms of political discourse and civic engagement required reason to be separated from emotions and pleasure.³⁷ In addition, public and civic knowledge and participation had to be disengaged from popular culture and discourse—a task that could presumably only be accomplished via the process of professionalization.³⁸ For example, beginning in the late 1940s, the broadcast networks (ABC, NBC, and CBS)³⁹ adopted print journalism’s professional code of responsible journalism, which required impartiality, objectivity, and rationalism.⁴⁰

This professionalization of political news amounted to a process by which political discourse was extracted from the everyday language of the average American non-professional citizen—an extraction Ilich despised.⁴¹ Indeed, through the uniform provision of network news programming, the broadcast networks imposed a unitary language on, and format for, the provision of political news.⁴² As a result of these conventional norms, public discourse and the distribution of political news largely became the domain of profes-

Studies have noted that the downward spiral of formal civic engagement and network news viewership began as early as the mid-1970s, however, and has continued to decline ever since. See LANE & BARNETTE, *supra* note 25, at 2.

36. Folami, *supra* note 27, at 371.

37. *Id.*

38. *Id.*

39. BAYM, *supra* note 31, at 9; JACK FULLER, WHAT IS HAPPENING TO NEWS: THE INFORMATION EXPLOSION AND THE CRISIS IN JOURNALISM 12-15 (2010).

40. BAYM, *supra* note 31, at 9. The commercial press’s professional code of journalism was adopted in 1920 to arguably appease burgeoning middle class calls for a more professionally responsible press (than that of the sensationalist, yet popularly appealing, yellow journalism of their day), and to retaliate against populist calls for a more open and accessible press to American citizens. Folami, *supra* note 27, at 382, 383 (“[W]ith the ‘voluntary’ adoption of a professional code of journalism in the early 1920s—due in part to threats of government regulation to open up access—the commercial press evaded such growing and pressing populist concerns. Publishers skillfully reshaped and narrowed sentiments about freedom of the press from concern regarding maintenance of an open and free communication infrastructure to consternation regarding government encroachment upon them—the news gatherers and distributors.”).

41. Pauly, *supra* note 19, at 260, 265, 277.

42. BAYM, *supra* note 31, at 12.

sional journalists.⁴³ Political discourse was redirected from everyday language and communicative exchanges, and instead driven and dictated by the professionals through the distribution of prepackaged political news, which to Illich was one of the biggest offenses to individual agency and autonomy.⁴⁴ In fact, Illich later advocated for a return to recognizing everyday languages and exchanges as a “vernacular value” in one of his subsequent books titled, *Shadow Work*.⁴⁵

B. “Certification” Through the Law

Just as the state certified its teachers and sanctioned the curriculum of the schooled in Illich’s *Deschooling Society*, the law solidified the professionalization of political discourse via early interpretations of the bona fide newscast and news interview exemptions to the equal time rule.⁴⁶ The “equal time” rule was imposed by Section 315(a) of the Communications Act.⁴⁷ It applies to all broadcasters and requires them to provide candidates for public office access to the broadcaster’s station if such broadcaster had allowed an opposing candidate running for the same office to appear on its station.⁴⁸ Congress created four exemptions to the equal time rule in 1959, which included the bona fide news and news interview exemptions.⁴⁹ For the first three decades following the enactment

43. Folami, *supra* note 27, at 371-72.

44. IVAN ILLICH, *TOOLS FOR CONVIVIALITY* 41-42 (Calder & Boyars 1973) [hereinafter ILLICH, *TOOLS FOR CONVIVIALITY*].

45. IVAN ILLICH, *SHADOW WORK* 29, 66-67, 100 (1981) [hereinafter ILLICH, *SHADOW WORK*] (shifting from a focus on institutions and technology to promote informed choice and democratization, Illich turned to promoting vernacular values which focused on enabling face to face cultural and communicative exchanges built on everyday language and actual life experiences).

46. Folami, *supra* note 27, at 371.

47. 47 U.S.C. § 315 (2006).

48. In an effort to ensure equal and even-handed candidate access and exposure on mass media, the equal time rule required broadcasters to grant access on their stations to opposing candidates when it granted access to one of them running for the same political office. 47 U.S.C. § 315; Michael Damien Holcomb, Comment, *Congressional Intent Rebuffed: The Federal Communications Commission’s New Perspective on 47 USC 315 (a)(2)*, 34 Sw. U. L. REV. 87, 88 (2004) (citing *Paulsen v. FCC*, 491 F.2d 887, 889 (9th Cir. 1974)).

49. The bona fide newscast and news interview exemptions, as well as the other two bona fide news exemptions—news documentaries and on the spot news coverage, were enacted when the Federal Communications Commission (FCC) ruled that a broadcaster’s use of a video clip of a politician on its network news programming triggered the equal time rule. CBS, Inc. (*Lar Daly*), 18 Rad. Reg. (P & F) 238, *reconsideration denied*, 26 F.C.C. 715 (1959). Immediately following the *Lar Daly* decision, the bona fide news exemptions to the equal time rule were enacted. Thomas Blaisdell

of the bona fide newscast and news interview exemptions, they were only applied to candidate appearances on network news programming and public affairs programming⁵⁰ and not entertainment programming.

Such programming included *Meet the Press*⁵¹ and *Face the Nation*,⁵² where professional broadcast journalists and expert political commentators anchor the programming.⁵³ These early interpretations and applications of the bona fide newscast and news interview exemptions of the equal time rule to include only candidate appearances on network news and not appearances on entertainment programming manifest the law's solidification of conventional norms. These norms placed a premium on reason and rationality as typified by traditional news formats and as personified by professional broadcast journalists rather than by entertaining fodder that was presumed to cater to emotions only and not to the intellect.⁵⁴

Moreover, in limiting these bona fide news exemptions to network news formats only, the Federal Communications Commission (FCC)⁵⁵ aided in positioning broadcast journalists as the gatekeep-

Smith, Note, *Reexamining the Reasonable Access and Equal Time Provisions of the Federal Communications Act: Can These Provisions Stand if the Fairness Doctrine Falls?*, 74 GEO. L.J. 1491, 1498 (1986) (evidencing the presumption about the even handedness of the network news such that the equal time rule was not needed); see *Branch v. FCC*, 824 F.2d 37, 43 (D.C. Cir. 1987) (holding that the amendments were meant "to restore the understanding of the law" that presumed deliberative value of network news).

50. See Kathleen Kirby, *Legal Notes: Bona Fide Coverage*, RADIO TELEVISION DIGITAL NEWS ASS'N (Sept. 2007), http://www.rtdna.org/pages/media_items/legal-notes-bona-fide-coverage600.php.

51. *Meet the Press* is a weekly television show on NBC in which David Gregory conducts "headline-making interviews with world-leaders and U.S. newsmakers." *About Meet the Press*, MSNBC.COM, http://www.msnbc.msn.com/id/3403008/ns/meet_the_press-about_us (last visited May 24, 2012).

52. *Face the Nation* is a weekly television show on CBS in which "Bob Schieffer interviews newsmakers on the latest issues." *About Us*, CBSNEWS.COM, <http://www.cbsnews.com/stories/1998/07/08/ftn/main13469.shtml?tag=hdr;cnav> (last visited May 24, 2012).

53. Holcomb, *supra* note 48, at 93; see also Jonathon D. Janow, Note, *Make Time for Equal Time: Can the Equal Time Rule Survive a Jon Stewart Media Landscape?*, 76 GEO. WASH. L. REV. 1073, 1079-80 (2008).

54. Folami, *supra* note 27, at 390-93.

55. The FCC is the regulating body of the nation's broadcast and telecommunications systems as authorized by the Communications Act of 1934. Broadcast regulation is premised on the scarcity doctrine and the idea that the broadcast spectrum is a scarce resource. *Red Lion v. FCC*, 395 U.S. 367, 376, 389 (1969). Moreover, in exchange for free licensure to use the broadcast spectrum, broadcasters agreed to comply with government imposed public interest obligations as interpreted and defined by the FCC. Tracey Westen, *Government Created Scarcity: Thinking About Broadcast Regulation*

ers of what was construed and accepted as political news.⁵⁶ Just as compulsory schooling and its certified teachers in Illich's *Deschooling Society* solidified the hegemony of those sanctioned as "in the know," these FCC orders arguably helped to professionalize political discourse and in turn solidify broadcast journalism's hegemony over who was sanctioned to discuss and present political news and in what manner.⁵⁷

C. "Schooled" and Disengaged Citizenship

To Illich, certification prepared teachers for the task of schooling the schooled through the process of compulsory education. Similarly, this Article contends that professionalism required professional journalists to authenticate themselves by eradicating "petty passions and narrow[ed] ambitions," which were both deemed as flaws to reason.⁵⁸ Moreover, professional journalism required rationality, reason, and refinement and was juxtaposed against the emotional with the former deemed as satisfying nobler democratic ideals of guiding the public civically.⁵⁹ Political news was therefore deliberately separated from entertainment and stripped of all aesthetical appeal in presentation.⁶⁰

Devoid of aesthetic and entertaining appeal, the serious tenor of the network news and the emotionally restrained professional journalists arguably signaled to the American viewer that someone important was talking to them about matters of importance. Entertainment programming and the emotion-laden whims and pleasures of the entertained—the viewing public—were presumed irrelevant to political discourse.⁶¹ The professional journalist appeared daily on the nightly news then to guide and to inform and not to entertain.

Moreover, the legal reification of professional journalists via the early interpretation of the bona fide news and newscast exemptions to the equal time rule aided in fostering what some have

and the First Amendment, in DIGITAL BROADCASTING AND THE PUBLIC INTEREST 47, 57 (Charles M. Firestone & Amy Korzick Garmer eds., 1998).

56. Folami, *supra* note 27, at 390-93.

57. *Id.* at 391; BAYM, *supra* note 31, at 11-12 ("[J]ournalists were assumed to be informational professionals, value-free experts committed to the ideals of an objective public interest and the rational pursuit of social order.").

58. FULLER, *supra* note 39, at 14 (quoting ROBERT H. WIEBE, *THE SEARCH FOR ORDER, 1877-1920* 161 (1967)).

59. Folami, *supra* note 27, at 372.

60. BAYM, *supra* note 31, at 12.

61. *Id.*

coined as a “thin citizenship”⁶² where American citizens dutifully followed the civic cues dictated by the professional gatekeepers of civic discourse and engagement.⁶³ This Article maintains that the network news programming and its broadcast journalists encouraged this thin citizenship, and “confirmed the public’s ‘psychological incompetence’ to participate in the ‘culture of democratic publicity.’”⁶⁴

Problematically, thin citizenship stripped citizens of their own agency and engrained in them a socially construed need for political direction from such broadcast professionals on civic discourse and engagement.⁶⁵ The professionalization of political discourse and its legal reification worked together to “offer[] no role for the public to play save that of passive audience, whose requirements for citizenship could be fulfilled simply by watching TV,”⁶⁶ specifically, its network news programming. Arguably, the roots of such psychological dependence Illich contended was created during the early childhood schooling years—years plagued by a compulsory education system that destabilized natural inquiry and fostered a deeply imbedded desire to be taught by the reified and state certified teacher.

D. “Schooled” Disengagement Subverted

As other media and programming options became available through cable, including cable’s twenty-four hour news programming, this Article highlights the ways in which viewers began to deschool themselves and “tune out” from broadcast journalism nightly airing, eventually becoming disinclined to follow along paternalistically as the recipients of broadcast journalism’s cues.⁶⁷ They preferred instead to proactively engage in their own language (a likely vernacular value to Illich), which often was a mixture of both politics and pleasure.⁶⁸ They chose to be co-creators in the

62. *Id.* at 170.

63. *Id.* For a discussion of the ways in which professional journalism norms in print imposed a hegemonic discourse in that medium as well, see *supra* note 40.

64. BAYM, *supra* note 31, at 170 (quoting James W. Carey, *The Press, Public Opinion, and Public Discourse*, in *PUBLIC OPINION AND THE COMMUNICATION OF CONSENT* 390-91 (Theodore L. Glasser & Charles T. Salmon eds., 1995)).

65. *Id.*

66. *Id.*

67. JEFFREY P. JONES, *ENTERTAINING POLITICS: SATIRIC TELEVISION AND POLITICAL ENGAGEMENT* 21, 25 (2d ed. 2010).

68. PETER DAHLGREN, *TELEVISION AND THE PUBLIC SPHERE: CITIZENSHIP, DEMOCRACY, AND THE MEDIA* 40-41, 55 (1995); Folami, *supra* note 27, at 395 (noting

dissemination, construction, and negotiation of political discourse.⁶⁹ The widely popular appeal of, and participatory engagement on, entertaining day time talk shows, like *Donahue*,⁷⁰ serves as evidence of this participatory public fervor.

On *Donahue*, viewers participated in shaping the political discourse and agenda as participants in the talk show's studio audience and during the call in sections of the show. Average American citizens were successful in bringing to the fore issues of relevance to their everyday lives as defined and discussed by them.⁷¹ "They . . . widened the . . . discourse by discussing political news and engaging politicians and candidates directly when they appeared on such shows—a discursive exchange once reserved only for broadcast journalists and [the expert] political correspondent."⁷²

No doubt cognizant of the populist zeal during this period, the FCC would eventually, through its orders, extend these bona fide news interview exemptions beyond network news and public affairs programming to political candidate appearances on shows generally classified as entertainment, such as *Donahue*.⁷³ Ironically enough and perhaps evincing its hesitancy to make such an extension, the FCC would essentially note in its *Donahue II* order that it was willing to do so because the host was a former journalist who, as such, would likely contain and guide the questions of his studio and call-in audience that were posed to candidates.⁷⁴

television became for the public "the medium through which the everyday was negotiated from a variety of points, including the rational and the pleasurable, and a sometimes simultaneous comingling of the two").

69. JONES, *supra* note 67, at 49, 158, 182.

70. Folami, *supra* note 27, at 395; see also IEN ANG, *LIVING ROOM WARS: RE-THINKING MEDIA AUDIENCES FOR A POSTMODERN WORLD* 20 (1996); DAHLGREN, *supra* note 68, at 62-63.

71. JONES, *supra* note 67, at 6.

72. *Id.*

73. There were two *Donahue* decisions. In the first, the FCC was unwilling to acknowledge the participatory potential of talk shows like *Donahue*, *In re Request by Multimedia Program Prod., Inc. (Donahue I)*, 80 F.C.C. 2d 217, 220-21 (1980), presumably falling back on conventional norms of professionalism and rationalism as typified, at the time, solely by network news programming. The FCC found particularly problematic what it deemed as the audiences' free-ranging ability to voice their personal opinions and to speak directly to political candidates, unfiltered. *Id.* at 221. Four years later, however, in the second *Donahue* decision, the FCC reversed its decision, apparently finding comfort in the fact that the nonprofessional studio audience would be guided by Mr. Donahue, "a skilled professional journalist." *In re Request by Multimedia Entm't Inc., (Donahue II)*, 1984 F.C.C. Lexis 2665, at *2, *13 (1984).

74. *Donahue II*, 1984 F.C.C. Lexis 2665 at *7-8.

In theory, these rulings opened the door for the continued deprofessionalization and deschooling of political discourse, which was a process Illich deemed as a prerequisite for democratization.⁷⁵ “With such a new beginning, these rulings shifted the paradigm [for the provision of political news from the professional] and had the capacity of broadening the topics, the arena and format of deliberation in the public sphere.”⁷⁶ In doing so, these rulings also “drew in participants who might not have otherwise been engaged due to lack of interest or to marginalization in the mainstream political discourse.”⁷⁷

Unfortunately, this theoretical development of extending political and civic discourse to average non-professional citizens was short lived in practice. Newly adopted laissez faire policies at the FCC and other related deregulatory efforts, such as the repeal of limits placed on media ownership, led to massive media consolidation and to the further blurring of traditional news and entertainment programming.⁷⁸ Such blurring was not for the purpose of facilitating a wider participatory discourse, but rather was aimed to, and had the effect of, commoditizing political news as infotainment to maximize profits for new corporate conglomerate owners.⁷⁹

75. See ILLICH, *DESCHOOLING*, *supra* note 7, at 1-4.

76. Folami, *supra* note 27, at 373.

77. *Id.* at 373-74. “During what [has been] ironically characterized as the Golden Age of Journalism,” the process of professionalizing political news resulted in the construction of political discourse as white and male. *Id.* at 392-93; BAYM, *supra* note 31, at 49.

78. ANDERSON, *supra* note 29, at 21-22; ROBERT W. MCCHESENEY & JOHN NICHOLS, *THE DEATH AND LIFE OF AMERICAN JOURNALISM: THE MEDIA REVOLUTION THAT WILL BEGIN THE WORLD AGAIN*, 62-64 (2010); see also Akilah N. Folami, *Deliberative Democracy on the Air: Reinvigorate Localism—Resuscitate Radio’s Subversive Past*, 63 FED. COMM. L. J. 141, 184 (2010) (discussing deregulation of ownership caps with passage of the Telecommunications Act of 1996, the consolidation in broadcast radio ownership, and the commercialization of radio and its content).

79. ANDERSON, *supra* note 29, at x-xi, xvi, 7; BAYM, *supra* note 31, at 5; MARTIN, *supra* note 18, at 9 (“[C]orporations and governments have a large influence on the mass media, and the mass media *are* big businesses themselves.”); Folami, *supra* note 27, at 399 (“Network news was recast and commoditized, as entertainment programming had been for years. Broadcast journalists were also set up as celebrities . . .”). When media conglomerate Disney acquired ABC and in turn took over ABC’s news division, rumor has it that ABC journalists were often referred to as “cast members” of Disney productions. BAYM, *supra* note 31, at 38.

III. ILLICH'S DESCHOOLING THEORY AND THE CURRENT NEWS MEDIA

With this current state of the political news media, Illich's ideas provide instructive guidance to the on-going debate of whether, or rather, to what extent, professionalism and professional broadcast journalists have a role in America's civic discourse. As theorized in *Deschooling Society*, the schooled came to depend on the teacher for what she should know or what she even thought she should know.⁸⁰ Such schooling created a dependency set up early in childhood which made "a man or woman . . . [an] easy prey for other institutions"⁸¹ to exploit by creating in them a perceived need for assistance that could only be satisfied or provided by someone or something outside of themselves via a product or service.⁸²

Through that process, the certified teacher became the source of knowledge just as the professional journalist of the Golden Era became the source of what was deemed as political news, as newsworthy, and as appropriate modes and methods of civic engagement.⁸³ Arguably, through their nightly news programming of the Golden Era, the broadcast networks provided a service and a product—the network news. America passively watched such network news programming nightly and in turn was guided and learned from the professionals. For Illich, "[t]his transfer . . . from self to institution guarantees social regression, especially once it has been accepted as obligation."⁸⁴ Furthermore, any such news media and political discourse infrastructure that rendered viewers passive, deliberately incompetent, and dependent on the professional cues of broadcast journalists as typified by that era would likely conflict with Illich's vision for deliberately competent and autonomous individuals.⁸⁵

Therefore, Illich's deschooling theory is conceptually contrary to any reformist calls for the return to the Golden Era and its accompanying professionalism standards that were exclusionary and limiting in manner of presentation, content, and engagement. Illich instead prophetically envisioned the creation of a "web" of commu-

80. See ILLICH, *DESCHOOLING*, *supra* note 7, at 76.

81. *Id.* at 39.

82. Illich, *Disabling*, *supra* note 1, at 22.

83. Folami, *supra* note 27, at 371-72.

84. ILLICH, *DESCHOOLING*, *supra* note 7, at 39.

85. The author is analyzing this issue further in a forthcoming piece. See Akilah N. Folami, *Democratic Competence and The Press Clause* (Feb. 24, 2012) (unpublished manuscript, on file with author).

nication networks via libraries, reading circles, social interest clubs, et cetera.⁸⁶ He envisioned a day when information could be shared and learning self-generated via this “web” of volunteer networks without any such professional or institutional limitation or hegemonic manipulation.⁸⁷ It is therefore easy to speculate that Illich would likely not have a problem with the democratization of information for the average person—as provided by the Internet via tweets, blogs, citizen journalist postings online—or the transparency of whistle blowing websites like WikiLeaks.⁸⁸

CONCLUSION

To presume however that Illich’s faith in the Epimethean Man’s natural inquisitiveness will translate into a desire for and production of civic knowledge and political discourse is at best an idealistic and optimistic leap of faith, especially in these times that indicate paltry civic literacy and participation levels in America.⁸⁹ Moreover, to relegate the production and provision of political news about America’s politicians and the operation of its government and financial institutions solely to the public demand of the theorized natural inquisitiveness of the Epimethean Man is undoubtedly unsettling. Such political news and discourse should be deemed as a public good that is essential to the maintenance of America’s self-governing democracy.⁹⁰ It needs, as a result, to be sustained by a democratic infrastructure that promotes its open and inclusive production,⁹¹ again with consumer sovereignty considered and encouraged but not solely determinative.

Equally unsettling to the author is the faith that Illich puts in the Epimethean Man such that no communicative standards are needed. Indeed, with the ubiquity of the Internet, should all be deemed citizen journalists with anyone determining what is news-

86. See ILLICH, *DESCHOOLING*, *supra* note 7, at 72-104.

87. *Id.* at 12-13.

88. WikiLeaks posted online thousands and thousands of classified military documents obtained anonymously from a person in the United States military, who is now facing criminal charges. See, e.g., *WikiLeaks*, THE GUARDIAN, <http://www.guardian.co.uk/media/wikileaks> (last visited May 24, 2012) (providing links to news coverage of the release of the WikiLeaks material and its aftermath).

89. See generally LANE & BARNETTE, *supra* note 25, at 2-4 (discussing the lack of civic literacy in New York).

90. See Cass Sunstein, *Television and the Public Interest*, 88 CALIF. L. REV. 499, 517 (2000).

91. Folami, *supra* note 27, at 408-19 (discussing such infrastructure as it relates to broadcast television in particular).

worthy and appropriate for self-generated discourse in the public sphere? In addition, should the blogger who posts an untrue or unverified story be elevated in status to that of a professional journalist who took a self-imposed oath of truth to serve as a public trustee and watchdog, commercial pressures to do so notwithstanding? Moreover, should the blogger who worked as an EMT paramedic and posted a picture of a murdered woman's body on his Facebook site⁹² share the same status of a professional journalist even if an argument can be made that he was sharing news of interest to the naturally inquisitive public that Illich promotes?⁹³ Uploads on YouTube⁹⁴—an online site where members can upload content for other Internet users—of live video footage documenting civic unrest abroad in Egypt, Iran, and Libya⁹⁵ by everyday non-professional individuals gives considerable weight and appeal to Illich's advocacy for an open "web" where information is shared and left unfiltered. But the motley of other shared "news," such as the Facebook posting mentioned above, on the Internet—a technologically advanced version of Illich's visionary web—is reason to give pause.

This flux of banal "news" suggests that there may need to be some infrastructure that is not premised on a return to the aesthetically sterile news format of old, but a criteria or set of criteria which Illich references briefly in *Tools of Conviviality*.⁹⁶ Such criteria should aim to promote and incentivize the development of convivial tools,⁹⁷ like media technologies and related legal infrastructure, to foster natural and group learning among professionals and non-professionals alike.⁹⁸ Convivial tools that do not patronize but rather engage the American public are the objective, as is an infra-

92. Kevin Hayes, *Facebook Sued by Family of Murder Victim After Grisly Picture Posted*, CBS NEWS (Mar. 29, 2011, 10:08 AM), http://cbsnews.com/8301-504083_162-20048274-504084.html.

93. See ILLICH, *DESCHOOLING*, *supra* note 7, at 76.

94. *About YouTube*, YOUTUBE, http://www.youtube.com/t/about_youtube (last visited May 24, 2012).

95. See Raymond Aguirre, *Journalism in the Age of Social Media*, SUITE101 (Feb. 10, 2011), <http://raymond-aguirre.suite101.com/journalism-in-the-age-of-social-media-a345599>.

96. ILLICH, *TOOLS FOR CONVIVIALITY*, *supra* note 44, at 12, 84.

97. Illich defined convivial tools as tools that foster innovative and autonomous interactions and exchanges between people. *Id.* at 11. He would later expand the definition of convivial tools to include language and culture, which represented vernacular values. See generally ILLICH, *SHADOW WORK*, *supra* note 45, at 100-01.

98. The author is analyzing this issue further in a forthcoming piece. See Folami, *supra* note 85.

structure that incentivizes the production and provision of not only political news but also vernacular values.⁹⁹

To that end, Illich's deschooling theory is indeed worthy of continued consideration for those who push for a wider and more participatory civic engagement—social status, professional, and educational pedigree notwithstanding.

99. See Folami, *supra* note 27, at 408-19 (discussing such infrastructure as it relates to broadcast television in particular).

