

# Policy Analysis

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## *If You Love Something, Set It Free A Case for Defunding Public Broadcasting*

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### Executive Summary

Public broadcasting has been in critics' crosshairs since its creation in 1967. Assailed from all sides with allegations of bias, charges of political influence, and threats to defund their operations, public broadcasters have responded with everything from outright denial to personnel changes, but never have they squarely faced the fundamental problem: government-funded media companies are inherently problematic and impossible to reconcile with either the First Amendment or a government of constitutionally limited powers.

The Constitution does not give Congress the power to create media companies, and we should heed the Founders' wisdom on this matter. In fact, consistent with that wisdom, before the Corporation for Public Broadcasting was

created, nonprofit, noncommercial media stations enjoyed a vibrant existence, remaining free to criticize current policies and exhibit whatever bias they wished. Yet today the taxpayer contribution to public broadcasting, although relatively small, clearly influences the decisions of public broadcasting officials.

In fact, public broadcasting suffers the main downside of public funding—political influence and control—yet enjoys little of the upside—a significant taxpayer contribution that would relieve it of the need to seek corporate underwriting and listener donations. But the limited taxpayer funding also shows that defunding can be relatively painless. Public broadcasting not only can survive on its own, it can thrive—and be free.

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## Introduction

Debates over the continued existence of public broadcasting are a recurring event. Most recently, National Public Radio's dismissal of Juan Williams because of allegedly anti-Muslim comments he made at another network reinvigorated conservative commentators' attacks on NPR and led Republican representatives to once again threaten to defund the institution. In a largely symbolic measure, a bill stripping NPR of government funding actually passed the House in 2011 but stalled in the Senate.<sup>1</sup> Although the debate may have died down for now, it is sure to return. Because the fervor has temporarily subsided, perhaps this is a good time to take a sober, nonpartisan look at public broadcasting and ask whether it has achieved the goals set out for it, whether it has been made obsolete by other forms of communication, and whether continuing to chastise public broadcasters, allege bias, and threaten defunding is in the best interest of either public broadcasting or the nation as a whole.

When President Lyndon B. Johnson signed the Public Broadcasting Act of 1967, creating the Corporation for Public Broadcasting (CPB), he called the act an indication that, "while we [Americans] work every day to produce new goods and to create new wealth, we want most of all to enrich man's spirit."<sup>2</sup> That, said President Johnson, "is the purpose of this act."<sup>3</sup> Since then public broadcasting has been a visible part of American life. It has chronicled our history in important documentaries such as *The Civil War* and *Eyes on the Prize*, and it has documented our national character with radio programs such as *This American Life* and *Prairie Home Companion*. Despite these successes—actually, partially because of them—public broadcasting should be removed from the government budget and turned into a private, noncommercial enterprise. Privatizing public broadcasting should not be seen as an attack on a vital public service or as a partisan attempt to tilt the message one way or another. Rather, it should be seen as a sign of public broadcasting's success and an indication of our ability to make prudent decisions about

the proper role of government—decisions that treat the mere existence of a government program as insufficient justification for the program's continued existence.

A prudent view of public broadcasting would look to the original goals and qualifications offered for the institution and ask whether it has achieved those goals. When signing the original act, President Johnson said:

It will get part of its support from our Government. But it will be carefully guarded from Government or from party control. It will be free, and it will be independent—and it will belong to all of our people.

Television is still a young invention. But we have learned already that it has immense—even revolutionary—power to change our lives.

I hope that those who lead the Corporation will direct that power toward the great and not the trivial purposes.

At its best, public television would help make our Nation a replica of the old Greek marketplace, where public affairs took place in view of all the citizens.

But in weak or even in irresponsible hands, it could generate controversy without understanding; it could mislead as well as teach; it could appeal to passions rather than to reason.

If public television is to fulfill our hopes, then the Corporation must be representative, it must be responsible—and it must be long on enlightened leadership.<sup>4</sup>

But Johnson had more to say the day he signed the act. He discussed a future toward which the act was but the first step—a future of integrated knowledge-sharing and exciting educational opportunities:

I believe the time has come to stake another claim in the name of all the people, stake a claim based upon the combined resources of communications. I believe the time has come to

enlist the computer and the satellite, as well as television and radio, and to enlist them in the cause of education.

So I think we must consider new ways to build a great network for knowledge—not just a broadcast system, but one that employs every means of sending and storing information that the individual can use.

Think of the lives that this would change: the student in a small college could tap the resources of a great university. . . .

- The country doctor getting help from a distant laboratory or a teaching hospital;
- a scholar in Atlanta might draw instantly on a library in New York;
- a famous teacher could reach with ideas and inspirations into some far-off classroom, so that no child need be neglected.

And such a system could involve other nations, too—it could involve them in a partnership to share knowledge and to thus enrich all mankind.

A wild and visionary idea? Not at all. Yesterday's strangest dreams are today's headlines and change is getting swifter every moment.<sup>5</sup>

President Johnson's words are striking not only for what they describe—the Internet—but for what they do not describe—public broadcasting. Johnson's vision for public broadcasting has been fulfilled, and exceeded, by the Internet, and, despite the government's initial involvement in creating the Internet, the vast majority of its enriching content was created without the support of taxpayer dollars.

The time has come, therefore, to critically examine Johnson's hopes and warnings in light of our modern system of broadcasting, both public and private, as well as other forms of communication, such as the Internet. Public broadcasting was created for reasons, and if those reasons have been compromised,

eclipsed, or fulfilled through other channels, then it should no longer exist.

But beyond technical developments, there are other reasons to reexamine the relationship between public broadcasting and government. Following the Juan Williams incident, public broadcasting tried to insulate itself from political backlash. First came the January 2011 resignation of Ellen Weiss, the NPR vice president responsible for Williams's departure.<sup>6</sup> Next, in March 2011, came the resignations of CEO Vivian Schiller and NPR Foundation president Ron Schiller (no relation) in the wake of the covertly produced "sting" videos featuring NPR employees making harsh comments about the Tea Party.<sup>7</sup> A few lambs were sacrificed to placate critics, and the controversy abated.

But NPR still seems to be anxious about possible political fallout from any activity that could be characterized as bias. In October 2011, for example, NPR broke ties with Lisa Simeone, the freelance host of *World of Opera*, over her participation in the Occupy Wall Street protests in Washington, D.C.<sup>8</sup> Simeone was not even an NPR employee—her program was merely distributed by NPR to fewer than 50 stations—and her show is nonpolitical. Nevertheless, her activities were too much for the increasingly gun-shy NPR.

If NPR were a wholly private, noncommercial entity, the Juan Williams firing might have engendered some criticism, but critics would have been unable to produce a valid objection *on principle* as to whether a private, noncommercial media corporation should be associated with someone who expressed opinions like those of Williams. Similarly, but for NPR's receipt of public financing, Ellen Weiss—who had been with NPR since 1982, has been credited by many as "helping create the 'NPRness' that distinguishes NPR stories," and once was the national editor of the wildly popular *All Things Considered*—would likely still be contributing her unique talents to NPR's distinctive broadcasts.<sup>9</sup> And, although former CEO Vivian Schiller did "a remarkable job helping NPR regain solid financial footing, boosting morale, improving relations between stations and NPR, and moving the organization into the digital

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world,” she was not protected from the political axe.<sup>10</sup> As one person involved in the decision to fire Schiller said, “The idea was to placate the Hill. They needed a human sacrifice.”<sup>11</sup>

Once insulated from political pressure with a new position at NBC, Schiller tweeted that Gary Knell, NPR’s new CEO, is the “best shot to liberate pubradio from untenable reliance on fed \$\$.”<sup>12</sup> While Schiller’s tweet may be seen as the sour grapes of a fired CEO, she may now realize that public broadcasting must be freed from public financing in order to be saved. According to some sources, she has told “associates that the subsidy allows lawmakers to use NPR unfairly as a political punching bag.”<sup>13</sup> Nevertheless, new CEO Knell has adopted a two-track approach: to “fight forcefully for continued federal support and plan actively for the day when such subsidies vanish, just in case.”<sup>14</sup>

Contrast that with the attitude noncommercial broadcasters took prior to CPB’s creation: rather than fighting “forcefully for continued federal support,” they actively *refused* public funding because it would destroy their independence. Without public funding they were free to attack the current administration, lambaste public officials, and give airtime to starkly dissenting voices from all over the political spectrum. When public funding arrived, however, noncommercial broadcasters became politicized: they pulled back from harsh criticisms of current policies and they increasingly viewed issues as binary (e.g., Democrat vs. Republican) rather than multi-sided. Sometimes, as I will discuss below, their politicized nature led them to actively propagandize the American public on the current administration’s favored policies.

### **Unnecessary, Imprudent, and Unconstitutional**

While PBS and NPR produce some excellent programming, defunding a government institution hinges not only on whether good things come from it, but on whether it is needed, is prudent, and, most important, is autho-

rized by our Constitution. Public broadcasting fails all three tests.

First, it certainly is not needed. This has been amply demonstrated by the countless commercial programming outlets that better fill public broadcasting’s role—insofar, that is, as “public broadcasting’s role” still has meaning. In principle, government funding should be used to provide necessary goods that cannot or will not be provided by the market. But in today’s media market—with six iterations of the Discovery Channel alone—that rationale for government funding disappeared long ago. Indeed, public broadcasting’s popular programming creates more of a paradox than a justification—the more popular programming becomes, the *less* justified is its support by the taxpayers. As originally conceived, public broadcasting was intended to provide a forum for programming that would not be profitable for commercial broadcasting. It was thought that people needed access to the plays of Shakespeare, information about their local government meetings, operas from the Met, and enriching children’s programming that did not constantly try to sell sugary cereals and cheap toys. They needed these things and the three networks were not providing them because there was no profitable way to do so.

But all of that programming is being provided by commercial broadcasters in a way that reacts quickly to consumer demands while maintaining profitability. If you wish to find an opera, a Pulitzer prize-winning play, or educational children’s programming, the best options are A&E, Bravo, IFC, Nickelodeon, or Noggin. And none of that includes the Internet as an emerging source of cutting-edge media and innovative approaches to entertainment and education.

Second, public broadcasting is imprudent. As originally conceived, public broadcasting was meant to be free from direct government control. Understandably, that was a cornerstone recommendation of the Carnegie Commission, which produced the report that led to the modern public broadcasting system. In the summary of their 1967 report, the commission wrote, “We would free the Corporation to the

highest degree from the annual governmental budgeting and appropriations procedures: the goal we seek is an instrument for the free communication of ideas in a free society.”<sup>15</sup> The commission understood that keeping public broadcasting independent from funding battles was not merely incidental to its success, but crucial. Government-controlled media is dangerous to freedom. If government has an organizational voice in the marketplace of ideas, then that organization can indoctrinate citizens, influence elections, infringe on individual judgment, and force taxpayers to support views with which they disagree.

But public broadcasting in America has never been divorced from government control and, realistically, it never will be. In fact, as will be discussed below, the CPB was created partially to enable government to better control the content of predecessor noncommercial stations that were thought to be broadcasting radical programming. From the beginning, the desire to control the content of broadcasts was evident. For example, although the Carnegie Commission report recommended a 12-person board, with six appointed by the president and six appointed by those appointees, President Johnson submitted a bill that had the president appointing every member of a 15-person CPB board.<sup>16</sup> From the outset, public broadcasting was politicized.

And the recurring debates over funding have only increased the level of political influence. This debate has grown tiring to left and right alike, and it is imprudent to carry it any further because doing so will politicize public broadcasting even more. Watching politicians—neither objective nor balanced—argue over whether public broadcasting is objective and balanced would be hilarious were it not so futile. Not that objectivity and balance in political coverage are meaningless concepts—far from it—but one of the reasons we believe in the “marketplace of ideas” as a core justification for free speech is because we believe that no one should be empowered by the government to decide who should or should not speak based on a purely personal view of “objectivity and balance.” Nevertheless, the charge

to be “objective and balanced” is front and center in the law that created our modern system of public broadcasting.

But the argument for government-funded broadcasting, coming mainly from the left, is confused for another reason. Given the number of CPB board members that have been appointed by Republican presidents, as well as the need to placate political enemies when funding is being threatened, there is reason to believe that the political fights over objectivity and balance have turned some aspects of public broadcasting more conservative than they would otherwise be. At least one study has found this conservative tendency in PBS and NPR, relative to other news sources.<sup>17</sup>

Finally, public broadcasting is constitutionally problematic, at the least. Nowhere in the Constitution is any power given to Congress to fund the production of media. Moreover, under the First Amendment, public broadcasting is in a state of constitutional limbo—assailed constantly for what it says, yet regarded as having certain First Amendment protections even though Congress is under no obligation to fund such voices in the first place. Fundamentally, the existence of state-funded media companies cannot be squared with the First Amendment. The constitutional quagmire that results is what one would expect when moving so far beyond the carefully enumerated powers of Congress. The Founders knew that government production of “media” (as we say today) was unnecessary and imprudent. Thus, they made a choice over 200 years ago to give Congress no such powers. We should heed their insight.

In the pages that follow I will elaborate on those points. The first two sections explain the basic history, organizational qualities, and funding structure of public broadcasting. The next section addresses the politicized history of public broadcasting that has so tormented the institution since its inauguration. I then address constitutional issues, both structural issues concerning the scope of congressional powers and rights issues under the First Amendment. Finally, I discuss bias and viewpoint exclusion.

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## Early History

The concept of public broadcasting—defined here as media broadcasts that receive some or all of their funding from the government—is as old as broadcasting itself. In fact, in many countries public broadcasting is all there is. During the formative years of radio, countries largely chose one of two paths: (1) over-the-air broadcasting was seen as essentially public, and a state-run corporation was needed to ensure that the “public” bandwidth was operated at the highest level of intellectual and aesthetic taste (e.g., the BBC); or (2) broadcasting was essentially a private endeavor, and the government’s main job was to issue licenses that divided the frequency spectrum in an orderly fashion. Countries in Western Europe chose the first path. Almost uniquely, the United States chose the second, paving the way for privately owned commercial broadcasting.

*Noncommercial* broadcasting in the United States arose initially through state-run colleges and universities. In 1914 University of Wisconsin engineering professor Edward Bennett set up a personal wireless transmitter and applied to the Commerce Department for a license.<sup>18</sup> Eight years later the station debuted its first news program.<sup>19</sup> Today, Wisconsin Public Radio consists of 30 stations throughout the state.<sup>20</sup>

The United States Radio Act of 1927 required broadcast stations to operate in “the public interest, convenience, and necessity.”<sup>21</sup> Other than this charge, neither the 1927 Act nor the Communications Act of 1934 provided for any noncommercial licensing of broadcast stations. In 1945 the Federal Communications Commission (FCC) reserved part of the frequency spectrum for educational programming (from 88.1 to 91.9 in the FM band) and created a license for “noncommercial, educational” radio stations.<sup>22</sup> The Pacifica Foundation was the first entity to take advantage of noncommercial licensing, starting station KPFA in 1949. Educational television was given reserved frequencies and a noncommercial license in 1952.<sup>23</sup> Noncommercial broadcast licensees had to be either public agencies or a

“nonprofit private foundation, corporation, or association,” and, in addition to other constraints, they could not broadcast traditional advertisements.<sup>24</sup>

In 1952 the Fund for Adult Education, a subsidiary of the liberal Ford Foundation, created the National Educational Television and Radio Center. Although originally not involved in the production of programming, by 1954 the center was producing limited amounts of programming and distributing it to local affiliates via mail.<sup>25</sup> The first major *federal* appropriation for public broadcasting came in 1962 when President John F. Kennedy signed the Educational Television Facilities Act, which allocated \$32 million to build educational television broadcasting facilities.<sup>26</sup>

Apart from military broadcasting during and after WWII, such as Radio Free Europe and Radio Liberty, the Educational Television Facilities Act was the federal government’s first foray into funding the production of broadcast media that did not have a foreign policy rationale. As the name implies, the money mostly went to set up production facilities throughout the country, some of which, like New York’s WNET, still exist today. Importantly, however, the focus was still largely on *educational* television, as the name suggests. The term “public television” was not coined until the Carnegie Commission report of 1967.<sup>27</sup> This helps explain the continuing conflation of “educational broadcasting,” “noncommercial broadcasting,” and “public broadcasting.” Throughout the 1960s, however, most *noncommercial* broadcasting was provided *without* federal funding, largely through contributions from entities such as the Ford Foundation.

By 1963 the privately funded National Educational Television and Radio Center began to focus completely on television, changing its name to National Educational Television (NET). The Ford Foundation invested large sums of money in educational television—at its peak nearly \$100 million a year—and the foundation moved strongly to dominate the noncommercial television market. NET’s private backing enabled it to take a strong stance

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against taxpayer financing. To NET, public interest broadcasting consisted of programming that challenged the establishment by showing citizens the true face of poverty, war, race relations, and other controversial topics.

NET stopped broadcasting as a separate entity in October, 1970, the day after PBS first went on the air.<sup>28</sup> Despite being pushed out of service by PBS, NET had an important role in the history of what today we call “public broadcasting.” First, for a brief time it was a valuable foil to PBS. Although NET would later receive limited CPB funding as the Ford Foundation reduced its support, its history of private financing demonstrates that government need not fund noncommercial television.

And second, NET’s controversial documentaries and hard-hitting exposés—like *Who Invited U.S.?*, *The Poor Pay More*, *Black Like Me*, and *Inside North Vietnam*—while raising the ire of many, did not create recriminations against public officials, organizational penance, or citizen backlash. As public funding increased, however, the need for political savvy increased. Eventually, NET’s controversial programming helped contribute to its downfall. NET’s perceived “anti-administration” broadcasts helped spur the creation of CPB itself, which then supplanted NET, thanks largely to its government funding and its “playing ball” with its government sponsors. NET also left its mark on modern public broadcasting in one other way: New York City’s Channel 13, which had strong associations with NET and would eventually merge with it, would become WNET, the largest producer of PBS programming.<sup>29</sup>

## The Modern System Arrives—Funding and Organization

The Public Broadcasting Act of 1967 created the Corporation for Public Broadcasting, the ostensibly private, non-profit corporation that serves as the umbrella organization under which PBS, NPR, and local public stations are organized. In 1969 CPB incorporated PBS to oversee “program acquisition, distribution

and promotion, education services, new media ventures, fundraising support and engineering, and technology development for its members.”<sup>30</sup> PBS does not produce original programming but simply facilitates the organization of the local public broadcasting television stations. The local stations (“member stations”) are considered both the owners of PBS and its primary customers. NPR functions somewhat differently. Incorporated in 1970, NPR, unlike PBS, produces and distributes original programming. Although NPR receives less “direct money” from CPB than PBS, its “indirect” money—money that is given to local stations by CPB and then spent on NPR programming—is still significant. Nevertheless, PBS and NPR continually downplay their dependence on federal subsidies while playing up their dependence on listener support. And, truth be told, most of the funding for public broadcasting does not come from government, whether federal, state, or local, but from listeners, corporations, and foundations. Public broadcasting supporters often note how paltry the government subsidies are when the question of defunding comes up. Whatever the size of the appropriation, it clearly affects the behavior of public broadcasters, who always vehemently fight to keep their taxpayer money.

The decentralized funding structure was originally designed to insulate the CPB from political influence. Like a fountain, federal money flows down and is then recycled back to the top. CPB distributes 89 percent of its congressional appropriation to local stations and content creators (such as the Children’s Television Workshop, the creators of *Sesame Street*), usually in the form of Community Service Grants (CSGs).<sup>31</sup> CSGs are largely unrestricted grants that can be “used at the discretion of the grantees for purposes related primarily to the production or acquisition of programming.”<sup>32</sup> Purchased programming can come from NPR productions, BBC productions, or productions of other local stations such as WNET. To qualify for a CSG the member station must raise a minimum amount of nonfederal financial support and

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meet certain criteria regarding yearly broadcasting hours, geographic scope of service, and more.<sup>33</sup> After receiving a grant, some of that money is returned to PBS in the form of local station membership dues, or to NPR through purchased programming.

The decentralized, two-tier structure of public broadcasting creates a labyrinthine mess that makes hard numbers difficult to come by. In the words of Rep. Doug Lamborn (R-CO), “The funding is so convoluted and opaque [that] we asked the Congressional Research Service to look at the books, and a senior analyst got back to us and said it was like a spaghetti bowl—those were his exact words.”<sup>34</sup> The convoluted structure also helps insulate the system from political attack. First, by funneling everything through CPB, NPR can credibly claim that it “receives no direct federal funding for operations.”<sup>35</sup> Plus, the byzantine, decentralized funding helps screen those involved in public broadcasting from allegations of state support. For 30 years, for example, William F. Buckley, Jr., claimed correctly that *Firing Line* received no direct federal funds, obscuring the fact that the Southern Educational Communications Association was the middle man.<sup>36</sup> Second, dispersing CPB grants among recipients in all 50 states protects CPB from political pressure. Members of Congress can accurately claim that public broadcasting money goes directly to their state and helps create jobs, thus making it all the more difficult to defund CPB.

A 2007 Congressional Research Service report found that 15.6 percent of funding for both public television and radio comes from CPB distribution of congressional appropriations.<sup>37</sup> The report does not explain, however, how this number was calculated. Whatever the amount, the remainder of member stations’ revenue generally comes from listeners (fund drives), corporations (donations and underwriting), foundations, and funds dispersed from member stations’ own local and state governments.

The fungibility of money makes it all the more difficult to pinpoint the exact size of the federal monetary footprint in public broad-

casting. For example, member stations pay both programming and service assessments to PBS, which are essentially dues paid for access to the National Program Service, a service consisting of “approximately 2,300 hours of programming and related promotion.”<sup>38</sup> Member stations also pay PBS for “interactive, development, and copyright administration.”<sup>39</sup> In fiscal year 2010 these dues amounted to approximately 38 percent of PBS’s revenue (\$155 million).<sup>40</sup> What portion of those dues the local stations paid from their grants from CPB, however, is difficult to determine. Stations receive varying amounts of money from CPB and pay varying membership dues based on a highly complex algebraic formula.<sup>41</sup>

Wisconsin Public Radio and Television offer some interesting case studies of member stations. One of the oldest public broadcasting systems, and one of the most vibrant, Wisconsin Public Television received 13 percent of its fiscal year 2010 revenue from CPB via Community Service Grants and 20 percent of its funding from “General Purpose/State Funding,” with the rest coming from viewers, grants, corporations, and earned income from sales and productions.<sup>42</sup> Thus, a total of 33 percent of its 2010 revenue came from state and federal taxes. In that same year, Wisconsin Public Radio, which consists of 10 stations, received 7 percent from Community Service Grants and 21 percent from “Direct State/University” funding, with the rest coming from listener support, grants, and corporations.<sup>43</sup> These stations then used this money to, among other things, purchase programming from numerous sources, some federally funded (New York’s WNET; NPR; and Washington, D.C.’s, WETA) and some not (BBC).

PBS gets more direct funding from the CPB than does NPR. In fiscal year 2010, money from the CPB and federal grants amounted to nearly \$98 million, or 18.4 percent of PBS’s budget.<sup>44</sup> Again, however, it is unclear how much money from the federal CSGs to local stations is given back to PBS in the form of membership assessments, which amounted to \$185 million, or 34.8 percent of PBS’s 2010 revenue.<sup>45</sup>

A few commentators have tried to wade into



this morass to determine what percent of public broadcasting's funds come from the taxpayer. In a recent article in *American Thinker*, for example, Mark Browning puts that number for NPR at roughly 25 percent—counting federal, state, and local sources.<sup>46</sup> Using NPR's own numbers, Browning first computes the average percentage of taxpayer-supported revenue for NPR's member stations. He includes in this calculation support received from universities, which he assumes are three-fourths public, as well as tax deductions given to donating individuals, businesses, and foundations.<sup>47</sup> Cobbling these numbers together, Browning concludes that 41 percent of member station revenue is taxpayer supported. He then computes how much of NPR's revenue comes from those member stations, around 50 percent, and therefore deduces that 20 percent of NPR's revenue is either directly or indirectly taxpayer supported. He increases this to 25 percent by adding in the tax deductions of those who donate directly to NPR.

Browning's analysis, while plausible, has many contentious elements and estimations. Doubtless, the convoluted funding and organizational structure of CPB, PBS, and NPR requires such estimations. But by counting tax deductions as government support, many entities, from churches to nonprofit think tanks, could be called "taxpayer-supported," which seems odd. Responding to Browning's article, Anna Christopher, NPR spokeswoman, released a statement: "Forty percent of NPR's budget comes from station programming fees. As station budgets consist of some federal and state support, and stations in turn pay NPR, you could argue that a small—unquantifiable—percentage of that support filters indirectly to NPR. Quantifying that amount is imperfect and impossible math."<sup>48</sup>

On that, Christopher is surely right: the math is imperfect and probably impossible. Nevertheless, it is quite clear that NPR gets substantially more government funding than the 1–3 percent claimed.<sup>49</sup> But whatever the amount, the importance of that funding is demonstrated by the vigorous efforts of public broadcasters to keep it.

Finally, it should be noted that although NPR gets most of the attention, there are other public radio content providers who compete with NPR for local stations' programming dollars. Public Radio International (PRI), American Public Media (APM), and Pacifica Foundation all sell programming to stations and receive federal money in the form of Community Service Grants from CPB. Many local stations will often serve as affiliates of three or four content providers, thus creating confusion for listeners as to what NPR and "public radio" actually entails. During fiscal year 2010 the Pacifica Foundation received 12 percent of its budget, or \$1.6 million, from CPB grants.<sup>50</sup> In fiscal year 2009, the last for which data is available, PRI and APM received \$1.6 million and \$250,000 respectively.<sup>51</sup>

Whenever Congress scrutinizes public broadcasting's funding because of accusations of bias or controversial firings, they inevitably politicize public broadcasting. For 45 years, public broadcasters have tried to quietly do their jobs while staying out of Congress's crosshairs. Unfortunately for them, public broadcasting was created to be politicized.

## A Political History of a Politicized Institution

During the debates over the first Public Broadcasting Act, Sen. Norris Cotton (R-NH) told public broadcasters that they were being watched:

If this bill becomes law, . . . and if, as time goes on, we have occasion to feel that there is a slanting, a bias, or an injustice, we instantly and immediately can do something about it. First, we can make very uncomfortable, and give a very unhappy experience to, the directors of the corporation. Second, we can shut down some of their activities in the Appropriations Committee and in the appropriating process of Congress. . . . The Corporation is much more readily accessible . . . to the

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Congress, if it is desired to correct any injustice or bias which might appear.<sup>52</sup>

As Senator Cotton’s remarks show, public broadcasting was created *to be controlled by government*. Politicians will push for programming “in the public interest”—whatever that means—as part of their duty to the electorate, and they will use whatever means are available to them to fulfill this duty.

Abstract terms like “public interest” often serve to justify the creation of government entities like the CPB. Like many Great Society-era programs, public broadcasting’s roots were in high-minded sentiments. Television and radio would be used to rectify disparities in public education found in inner cities, rural countrysides, and backwater burbs by beaming high-quality programming directly into classrooms. CPB was meant to support “the full realization of our country’s educational ambitions”—and more.<sup>53</sup> Raymond Hurlbert, head of the Alabama Educational Television Commission, hoped to use the newfound federal funding to promote “nurses’ training, driver training, adult literacy, family hygiene, farming programs, and forestry.”<sup>54</sup>

Although public broadcasting was imbued with these aspirations, the tumultuous and controversial Richard M. Nixon presidency would quickly refocus public broadcasting’s attention on more mundane matters, such as continuing to exist. But Nixon was far from the only president to try to politically influence CPB. This tawdry history should not surprise anyone familiar with the workings of government—endless committees with no action, influence peddling, backroom dealings, nepotism, incumbents fearing the next election, and so forth—but it may surprise those who still believe that public broadcasting embodies the high-minded ideals present at its birth.

The Carnegie Commission report of 1967 began with a letter to the commission written by author E. B. White:

I think television should be the visual counterpart of the literary essay, should arouse our dreams, satisfy our hunger

for beauty, take us on journeys, enable us to participate in events, present great drama and music, explore the sea and the sky and the woods and the hills. It should be our Lyceum, our Chautauqua, our Minsky’s, and our Camelot. It should restate and clarify the social dilemma and the political pickle.<sup>55</sup>

It is difficult to imagine a more poetic appreciation of the power of television or one that could garner more universal support. Such generalities help create the broad agreement needed to pass a major piece of legislation. That broad agreement will inevitably be undercut by the quibbling over details that always results when broad ambitions are reduced to policy. Disagreements abound concerning what constitutes “great drama and music,” what “clarif[ies] the social dilemma,” and what “arouses our dreams”—and many of those disagreements will map directly to political persuasions. Hidden within the folds of such majestic phrases are the controversies that constantly beset public broadcasting: why should taxpayers pay for broadcasts that many find worthless, if not offensive? Can a government entity even run a media corporation without being embroiled in disputes over fairness, censorship, and favoritism? Is there a way to “clarify the social dilemma and the political pickle” that is not itself political? Can any of these questions be resolved without appealing to standards that are deeply ideological? Disagreements on these questions make up much of the history of public broadcasting and highlight the fundamental flaws in the idea of “public interest” broadcasting. But in the beginning, as is the case so often, it was all hopes and dreams.

Many of those hopes and dreams had been coalescing since FCC chairman Newton Minow’s famous “vast wasteland” speech, a speech cited by “American Rhetoric” as one of the top 100 political speeches of the 20th century.<sup>56</sup> Delivered to the National Association of Broadcasters on May 9, 1961, the speech famously characterized the offerings of commercial television as a “vast wasteland.” Apparently having little love for Lucy, Newton

bemoaned the “procession of game shows, formula comedies about totally unbelievable families, blood and thunder, mayhem, violence, sadism, murder, western bad men, western good men, private eyes, gangsters, more violence, and cartoons” that was being offered by commercial television.<sup>57</sup> He decried also the “screaming, cajoling and offending” commercials. But, “most of all” he lamented the “boredom.”<sup>58</sup>

Minow’s speech and the Carnegie Commission helped lay the path to a government-funded public broadcasting system. When he signed the Public Broadcasting Act of 1967, President Johnson was fully aware of what he was creating. Johnson and his wife had been in the radio business since 1943 and, like nearly everything in his life, he had never fully divorced his involvement in broadcasting from the distribution of political and personal favors. Johnson’s affiliate, KTBC, although held in his wife’s name, received many favorable interventions from the future president—from “fast-tracking a request to the FCC” to “securing an affiliation with CBS.”<sup>59</sup> In other words, Johnson fully understood the political aspects inherent in running a media corporation and he “never intended the system to be completely independent from his own personal and political goals.”<sup>60</sup>

By the time the Carnegie Commission issued its report, National Educational Television, the privately funded, noncommercial precursor to PBS, was annoying the Johnson administration—indeed, it seems that annoying and prodding those in power was its very *raison d’être*. Given that “mission,” here’s how a NET pamphlet published in the mid-’60s explained NET’s view of public financing:

Picture the furor in the House of Representatives—or the Senate, for that matter—the morning after this independent network, supported by the people, had presented a candid documentary on segregation, or socialized medicine, or birth control, or our policy toward Spain or Red China. In one area, at least, the non-commercial broadcaster would

become more bullied, more ineffectual, more timid than his commercial colleague.<sup>61</sup>

Programming that questioned the establishment was common fare for NET. In 1967, for example, it aired the British documentary *Inside North Vietnam*. Coming at the height of the Vietnam War, the program contradicted Pentagon claims that the United States had confined itself to military targets. Congress got involved when 33 members signed a letter protesting the airing of the documentary, showing that political pressure could be exerted even without purse strings to pull. Robert Lewis Shayon, the groundbreaking radio producer and TV critic, wrote that the incident demonstrated

the importance of funding public TV in such a way that it is not subject to annual Congressional appropriations. Suppose that John White [president of NET], when he faced his decision, had been scheduled to appear before a Congressional Committee to ask for next year’s program money—or, for that matter, that any affiliate had to weigh its decision whether to carry the NET program before requesting Congressional appropriations.<sup>62</sup>

But the Johnson administration had no plans to include the liberal NET in the fledgling system of public broadcasting. The Carnegie Commission’s prime mission, in the words of Robert Hudson, a senior vice president of NET, “was to find a way for financing ETV [Educational Television] stations, and always its choices were to find politically acceptable ways of channeling Federal funds to them . . . [But] NET and its board never had a chance of qualifying as such an institution.”<sup>63</sup> It was simply politically unacceptable.

Like NET, the Carnegie Commission did not ignore the importance of an independent source of funding, and neither have numerous commentators and politicians who, since the founding of CPB, have decried the short-term

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appropriations process in which the CPB is always mired. In fact, the commission stated that “the ordinary budgeting and appropriations procedure followed by the government . . . was not consonant with the degree of independence essential to Public Television.”<sup>64</sup> Members of Congress, however, have consistently regarded an independent source of funding as an attempt to avoid congressional oversight that they have a duty and prerogative to maintain. After all, every congressionally funded entity wants to be exempt from the responsibility to justify itself to Congress.

President Nixon was understandably a big believer in the power of television. In 1952 he quite possibly saved his political career by introducing America to his black-and-white cocker spaniel “Checkers,” and his sweaty performance in the 1960 presidential debate against Kennedy is often cited as a reason for his narrow loss in that election. He clearly understood both the useful and destructive power of television. By the time Nixon gained office in 1969, he had become quite paranoid about the “liberal media.” He instructed aides to watch the networks and produce reports detailing how he was faring.<sup>65</sup> The administration even threatened private media companies, with CBS receiving the brunt of Nixon’s ire. After the 1972 election, White House aide Charles Colson phoned the president of CBS News to tell him that, because the network didn’t “play ball” during the first term, the administration would “bring you to your knees in Wall Street and on Madison Avenue.”<sup>66</sup> Colson vowed that the White House would “break your network.”<sup>67</sup>

Given his attitude toward private media, it is hardly surprising that Nixon tried to control public broadcasting. And whatever he couldn’t control he would destroy. For his first CPB appointment, he repaid a political debt by placing *Reader’s Digest* director Albert L. Cole on the board. Cole would act as his beachhead into the organization. Over the next few months, the administration would work hard to get the most pro-administration message it could out of the public’s hard-earned money.

Nixon, like Johnson, hoped that a funded, but controlled, CPB would put NET out of business. In a memo, Cole thought the relationship between NET and the Ford Foundation inappropriate because “He who pays the piper [i.e. the Ford Foundation] calls the tune.”<sup>68</sup> Nixon agreed, and suggested that an increase in CPB’s funding for 1970 be made contingent on “the establishment of an independent producing unit.” That “independent producing unit” would become PBS.

But decreasing NET’s influence by increasing CPB’s could produce unpredictable effects. Clay T. Whitehead, soon to be director of the Office of Telecommunications Policy, explained this problem and the administration’s goals in a 1969 memo:

The Corporation for Public Broadcasting has been encouraging competition with NET primarily by grants to the better noncommercial stations around the country to develop their own programming that would be suitable for nationwide distribution. NET is unhappy that their domination of the field is disappearing and apparently resents the intrusion of the Corporation.

From the standpoint of the President’s objectives, the grants to individual stations cut both ways: the people who run the education and public television stations around the country tend to be relatively liberal, but the geographical diversification probably would promote an overall less liberal emphasis than the New York City centralized NET. Funding a separate production unit to “compete” with NET would not be a complete bed of roses either, since the liberal bent of people in the performing arts is well known. However, we could presumably have a hand in picking the head of such a major new organization if it were funded by the Corporation.<sup>69</sup>

The “major new organization” would be PBS. Originally conceived as primarily a routing system for program exchange, PBS would

eventually fulfill its purpose and displace all challengers, particularly NET.

Throughout 1969 the Nixon administration tried to develop a relationship with public broadcasting in which CPB officials understood that increases in funding would not come without certain concessions. Nixon aides had been in conversations with Frank Pace, Jr., CPB's chairman of the board, and they'd apparently reached an agreement that would eventually get rid of NET. A memo from assistant to the president Peter Flanigan to Whitehead described one such meeting with Pace:

In accordance with your instructions, I made it clear to Pace that the proposed \$5 million increase in the funding for the Corporation was contingent upon the creation of new program production facilities to replace National Educational Television. . . . It was agreed that while NET would be used until the new facilities are in operation, the degree of its funding would not increase: rather the funding would decrease to zero over the next two or three years. Pace agrees with these conditions. He points out however, that there are limitations on his ability to control total programming and broadcasting policies of non-commercial stations. Non-CPB financed programs produced by NET and others may have anti-Administration content. In addition, noncommercial stations which have received CPB grants may carry anti-Administration programs. I told him we were aware of that problem. I stated our position as being that government funding of CPB should not be used for the creation of anti-Administration programming or for the support of program-producing organizations which use other funds to create anti-Administration programs. Mr. Pace agrees with this and appreciates the additional support that will be forthcoming for CPB.<sup>70</sup>

But perceived "anti-Administration programs" kept coming. In November 1970 NET

aired a documentary entitled *Banks and the Poor*, which documented the difficulty that poor communities have trying to get loans from banks. The documentary was starkly critical of bankers and the rich, and it ended with a discussion of the connections between bankers and members of Congress, closing with a final shot of a list of nearly 100 members of Congress with banking connections scrolling in front of a picture of the Jefferson Memorial.

In a memo to Cole, Flanigan said that the program was "another example of NET activity that is clearly inappropriate for a government supported organization."<sup>71</sup> He also asked, "Would you do me the favor of letting me know the extent to which NET has been supported by CPB in 1970 and the amount of the budgeted support for 1971[?]"<sup>72</sup> Flanigan slyly added, "I am directing this inquiry to you in that I think it comes better from you to the board and the management of the Corporation than from the White House. Therefore, I'd appreciate you treating this inquiry in that light."<sup>73</sup>

Cole responded by trying to clarify the relationship between CPB and NET:

The Corporation doesn't really give money to NET in anywhere as large amounts as the Ford Foundation does. They contribute about \$16 million a year, which is a good deal more than the U.S. Government did up until very recently. The Government should really provide enough funds to the CPB so that no one else needed to contribute further and there should be a prohibition against having the Corporation accept money [from] any organization or any group that might affect the quality of programs that are sent out.<sup>74</sup>

In its own way this memo is truly astonishing. No reading between the lines is required: The CPB was seen by those in the Nixon administration as a vehicle by which the administration's voice could crowd out dissenting voices, and the conversation went so far as to discuss prohibiting other groups from contributing money that would allow dissenting voices to compete.

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**To increase the momentum toward an eventual defunding, the White House “encouraged speculation” about MacNeil’s and Vanocur’s salaries. As a result, a controversy erupted over the high salaries paid to public broadcasters.**

Over the next few years the administration grew increasingly angry with the CPB. When news reached Nixon that Robert MacNeil and Sander Vanocur, two journalists that he reviled, were hired to anchor weekly newscasts, he was “greatly disturbed.”<sup>75</sup> “The President . . . considered this the last straw,” wrote Jon M. Huntsman, the staff secretary, and “it was requested that all funds for Public Broadcasting be cut immediately.”<sup>76</sup> In order to increase the momentum toward an eventual defunding, the White House “encouraged speculation” about MacNeil’s and Vanocur’s salaries, which resulted in other reporters eventually requesting the information from CPB. A controversy erupted over the high salaries paid to public broadcasters.<sup>77</sup> A memo from Whitehead described the next plan of action:

We plan to do two things in the next few weeks to continue to call attention to balance on public television. . . . We will quietly solicit critical articles regarding Vanocur’s salary coming from public funds (larger than that of the Vice President, the Chief Justice, and the Cabinet) and his obvious bias. We will quietly encourage station managers throughout the country to put pressure on NPACT and CPB to put balance in their programming or risk the possibility of local stations not carrying these programs.<sup>78</sup>

Nixon then vetoed the next CPB funding request. Although Congress overrode the veto, it caused board resignations that, through replacements, allowed Nixon to fully politicize the board. Now stuck with the CPB for the time being, the administration had decided that an effective way to control the message was to push for fewer news and public affairs programs and more educational programming. That allowed the White House to take the high ground in the ensuing debate and decry public broadcasting for moving away from the original goals set out in the Carnegie Commission’s report.

When the Watergate scandal unfolded, Nixon’s attention was diverted from public

broadcasting. Yet ironically, PBS decided to cover the Watergate hearings gavel-to-gavel, a move that has often been cited as a watershed moment in public broadcasting history. More important to that history, however, was how Nixon left public broadcasters gun-shy about any programming that could be perceived as controversial. The influence of executive board appointments and discretionary funding had become clear. If Watergate allowed public broadcasters the pleasure of picking over the slowly decaying corpse of their worst enemy, it also demonstrated that hard-hitting news coverage highly critical of a current administration would be allowed only when the administration was preoccupied with other matters.

While Nixon was tightening his grip over public broadcasting, there was not much programming that the CPB could hold up to demonstrate its usefulness. But as the 1970s progressed, public broadcasting began to have hits—*Masterpiece Theater*, *Mister Rogers’ Neighborhood*, and *Sesame Street*, for example. Those gave CPB “poster boys” that have proven to be both revenue generators and a political smokescreen.

At the same time, PBS undertook one of its mainstay programming ventures: multi-hour, cerebral documentaries running in conjunction with the publication of companion books. With heightened political pressure on public broadcasting coming out of the Nixon administration, these series proved safe, popular, and profitable. The first one, Kenneth Clark’s *Civilisation*, was originally produced by BBC in 1969. Later shows included Jacob Bronowski’s *The Ascent of Man* (1974), Carl Sagan’s *Cosmos* (1980), and Ken Burns’s *Civil War* (1990), *Baseball* (1994), and *Jazz* (2000).

In 1977 PBS aired *The Age of Uncertainty*, a 13-hour documentary discussing the problems of capitalism, featuring famed Keynesian economist John Kenneth Galbraith. A Harvard liberal who had served as President Kennedy’s ambassador to India, Galbraith was among the most famous social scientists of his day. He was a strong advocate for what he termed “new socialism,” steeply progressive income taxes, government management of the economy, large-scale public programs, and the like.

W. Allen Wallis, a free-market economist President Gerald R. Ford had appointed as chairman of the CPB board, was troubled by what he believed was Galbraith's unbalanced documentary. Although Wallis would resign from the CPB in 1978, saying he was "disgusted" with the mismanagement of the organization, he had already put in motion the production of Milton Friedman's documentary *Free to Choose: The Importance of Free Markets to Personal and Political Freedom*.<sup>79</sup> The program would go on to be one of PBS's most popular series: the companion book sold over one million copies. Due to PBS politics, however, the production process proved to be anything but smooth.

According to Wallis, the "public broadcasting people regarded Friedman as a fascist, an extreme right-winger."<sup>80</sup> Despite Friedman's having won the Nobel Prize in economics in 1976, "they didn't want to have anything to do with him."<sup>81</sup> Galbraith, by contrast, was considered a "middle-of-the-road person."<sup>82</sup> Friedman himself remarked on this sentiment: "From the point of view of the people who were running PBS, Galbraith's series was politically correct and mine was incorrect."<sup>83</sup>

Given the PBS executives' views on Galbraith's "middle-of-the-road" views, no one at PBS was actively looking to give airtime to an opposing viewpoint. Just as *The Ascent of Man* did not need a response from creationists, Galbraith's views needed no response from "fringe" economists. Thus, *Free to Choose* was spearheaded and produced not by PBS and not with public money, but by Robert Chitester, a libertarian manager of the PBS station in Erie, Pennsylvania. Chitester had been upset at what he saw as the one-sided treatment given to Galbraith's "new socialism" in *The Age of Uncertainty*. Although *The Age of Uncertainty* aired with 3- to 5-minute counterstatements from dissenters, the rest of the 55 minutes was devoted to Galbraith's undiluted call for various forms of central planning. Yet when Chitester first proposed *Free to Choose* to PBS executives, they asked him how he "intended to have balance in the program."<sup>84</sup> He responded, "I don't intend to have any balance, in light of the thirteen hours given to Galbraith."<sup>85</sup> During the filming of the se-

ries, Chitester flew PBS executives to London to observe the production process. As the executives critiqued the episodes and offered notes, Chitester "had the sense that they were going to be as tough on this project as they could possibly manage to be."<sup>86</sup>

Friedman and Chitester tried to preempt criticism by devoting *more* than half of the series to critics of Friedman's ideas. The last half-hour of the first nine episodes featured Friedman defending the ideas sketched out in the first half-hour against attacks from socialist economists and other dissenters. The entire tenth episode was a cross-examination of Friedman's views by Lawrence Spivak of NBC's long-running *Meet the Press*.

Yet despite Chitester having produced a show that spent more time criticizing itself than pushing unopposed ideas, when the series finally aired, the resistance from PBS executives continued. Unlike *The Age of Uncertainty*, *Free to Choose* was not given a choice prime-time slot. Whereas Galbraith had given Americans his view of capitalism on Tuesdays at 9 p.m., as part of the core PBS schedule, Friedman was slotted at 10 p.m. on Fridays, a poor time slot outside of the core PBS schedule.<sup>87</sup> After Chitester and Friedman raised objections, PBS agreed to move the series to 9 p.m., still outside of the core schedule. As Friedman's wife and coauthor Rose recalled, "PBS did not cooperate. In New York [where scheduling was different], they showed it opposite the Super Bowl. But after complaints from contributors, they showed it again," but still relegated it to a Sunday-afternoon time slot.<sup>88</sup> Finally, after getting enough complaints about the time slot, the series was re-aired on Tuesdays at 10 p.m.

Needless to say, the experience left Friedman skeptical of PBS. "There is no doubt," he later said, "that the PBS bureaucracy would have been happier if they had never aired the show. Having accomplished their purpose of demonstrating their evenhandedness by showing me as well as Galbraith, PBS has since been unreceptive to ideas."<sup>89</sup> Ten years after the original *Free to Choose*, for example, PBS would not update any of the original episodes with new interviews and content.

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The *Free to Choose* saga could be seen as an instance of what many have termed “tokenism.” When attacks on public broadcasting come from the political right, public broadcasters deflect criticism by pointing to isolated programs like the Friedman series—“tokens”—aimed at disarming critics. And in this same vein it should be noted that conservative or libertarian programming has tended to be privately funded rather than funded by the CPB.

Over the years, many on the right have expressed a variety of frustrations in dealing with public broadcasting. In 1983, for example, when PBS ran the 13-hour *Vietnam: A Television History*, the series was widely criticized for portraying a one-sided view of the conflict. It highlighted American atrocities while ignoring crimes of the Vietcong and North Vietnamese Army. In response, Reed Irvine, head of Accuracy in Media, a conservative media watchdog group, sought to provide a rebuttal. Although he received limited public funding—\$30,000 from the National Endowment for the Humanities—it paled in comparison to the \$1.2 million that *Vietnam: A Television History* received.<sup>90</sup> Like *Free to Choose*, Irvine’s rebuttal, called *Television’s Vietnam: The Real Story*, aired with accompanying criticism and commentary.

One of the earliest PBS “tokens” was of course William F. Buckley, Jr.’s, *Firing Line*, long used to assuage critics who charged PBS with bias. Buckley was said never to have felt fully included in the “PBS family.”<sup>91</sup> Bill Moyers, the long-time PBS figure, “[was] acceptable” in a way that he was not.<sup>92</sup> Whereas Moyers’s work is constantly promoted by PBS affiliates, “New York station WNET never ever mentions *National Review* in any of its promotional literature.”<sup>93</sup>

Still, tokenism may have led public broadcasting to be more conservative than it would otherwise have been. In fact, some regard the ‘80s as a period when PBS took on a right-wing tilt, one it still has. Given that funding controversies were usually created by Republicans, PBS executives have responded by trying to assuage the political right. This, coupled with 12 years of Republican CPB board appointments, means that PBS is likely more conservative than it would be if left to its own devices. Certainly

commentators like the *National Review*’s John McLaughlin were seen often on PBS. At one point, writes James Ledbetter, “just watching the revolving door between public broadcasting, conservative institutions, and the Reagan White House was enough to make one dizzy.”<sup>94</sup> Still, others believe that this Republican influence did little to correct public broadcasting’s generally perceived left-wing bias.<sup>95</sup> Whatever the truth about such a tilt, the potential for political pressure in either direction is inherent in the very arrangement, and it is this fact, especially, that should galvanize opposition to public broadcasting.

As in previous administrations, funding and programming battles during the Reagan administration further pushed and prodded public broadcasting from above. Reagan’s first budget tried to cut CPB funding in half.<sup>96</sup> Congressional resistance created a standoff, but the \$220 million appropriation that had been authorized beginning in 1984 was reduced substantially, all the same.<sup>97</sup> Funding would not again reach \$220 million until 1989.<sup>98</sup>

During this period Reagan also used public broadcasting to promote his policies. In 1983, for example, the network produced *The Chemical People*, a two-part anti-drug documentary hosted by Nancy Reagan as part of her anti-drug campaign. The president also made sure to pack the CPB board with friendly appointees. The most effective appointee was Sonia Landau, who was elected chair in 1984. Fellow board member Jose Rivera recalled that “when Reagan appointees hit the board, for the first time we heard things like, ‘the administration’s view is not being totally represented.’”<sup>99</sup> Whether correcting a bias or creating a bias, the top down pressure was clearly felt.

Throughout the ‘90s, various members of Congress threatened to defund public broadcasting. In his “Contract with America,” for example, House Speaker Newt Gingrich included a pledge to defund the CPB altogether.<sup>100</sup> Prior to that, debates over funding in 1992 led Congress to pass an amendment to the broadcasting act that made Congress the ultimate arbiter of balance and objectivity. The amend-



ment requires the CPB's board of directors to monitor compliance with the "objectivity and balance" requirement by "provid[ing] reasonable opportunity for members of the public to present comments to the Board regarding the quality, diversity, creativity, excellence, innovation, objectivity, and balance of public broadcasting services, including all public broadcasting programming of a controversial nature, as well as any needs not met by those services."<sup>101</sup> The Board is also required to review "on a regular basis, national public broadcasting programming for quality, diversity, creativity, excellence, innovation, objectivity, and balance, as well as for any needs not met by such programming."<sup>102</sup> Finally, the Board must "prepare and submit to the President for transmittal to the Congress a report summarizing" the efforts to meet the requirements of the act. Thus, an institution that was originally conceived of as requiring independence from politics was further enmeshed in political squabbles.

In 1994 PBS stirred up controversy by airing a six-hour dramatic adaptation of Armistead Maupin's *Tales of the City*, starring Olympia Dukakis and Laura Linney. The program, an adaptation of the first novel in Maupin's eight-book series, told a story of life in 1970s San Francisco and included gay and transgendered characters. Seeming to presage the future popularity of untempered dramas like *The Sopranos*, *Breaking Bad*, and *Mad Men*, *Tales of the City* was the most popular dramatic series ever aired on PBS. Millions of viewers enjoyed "the kind of adult American drama they can't find on commercial television," and many of them pledged money in support.<sup>103</sup> By airing a popular, culturally relevant program that arguably had no place on commercial television of the time, it seemed that PBS was fulfilling the original mission of public broadcasting.

Criticism of the series was not long in coming, however. The Reverend Donald Wildmon of the American Family Association railed against the show's depictions of nudity, drug use, profanity, adultery, and homosexuality.<sup>104</sup> He produced a 12-minute video of "highlights" for members of Congress, illustrating what he took to be the show's transgressions.

In response, Georgia's state legislature passed a resolution condemning the series and withdrawing nearly \$20 million in support for a new broadcasting facility for Georgia Public Television.<sup>105</sup> In the end, PBS's excitement for the cutting-edge show and its plans for producing sequels based on the next books in the series were undercut by fears of defunding. Years later, when the sequel aired on Showtime, there was little public complaint.

Prior to the Juan Williams controversy, the most significant recent episode of political influence occurred in 2005 when a Clinton appointee to the CPB board, Republican Kenneth Tomlinson, attempted to balance PBS's political slant with right-leaning programming.<sup>106</sup> The main source of Tomlinson's ire was *Now with Bill Moyers*, a program that Tomlinson claimed "does not contain anything approaching the balance the law requires for public broadcasting."<sup>107</sup> Amid accusations that he had used illicit forms of pressure, including hiring outside consultants to monitor alleged bias, Tomlinson resigned.<sup>108</sup> Today, with the controversy over Williams's dismissal, the cycle continues.

These stories are not aberrations; they are the expected outcome of government-run media companies. Perhaps this is one of the reasons the Framers of the Constitution did not give Congress the power to create media companies.

## Constitutional Arguments

Constitutional arguments against public broadcasting take two forms: (1) the limited powers of Congress do not allow for the creation of media entities, and (2) due to their public funding, public broadcasters have unstable First Amendment rights that are consistently being encroached upon through funding battles and other top-down pressures.

### Public Broadcasting and Enumerated Powers

The Framers wisely did not give Congress the power to create, fund, or underwrite media companies. Congress's power to *regulate* the broadcast airwaves, however, has been justified

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primarily under the Commerce Clause, which authorizes Congress, in relevant part, “to regulate Commerce . . . among the several States.”<sup>109</sup> A 1933 Supreme Court decision gave this constitutional justification a passing mention: “No question is presented as to the power of the Congress, in its regulation of interstate commerce, to regulate radio communications. No state lines divide the radio waves, and national regulation is not only appropriate but essential to the efficient use of radio facilities.”<sup>110</sup>

But that justification for the regulation of *preexisting* private enterprises is hardly applicable to the *creation* and *funding* of the CPB. The Constitution was written in plain and understandable language, and it takes a tortured reading of the words “regulate,” “commerce,” and “among,” to conclude that Congress has a power to create television and radio entities. Even the implied powers granted by the Necessary and Proper Clause—which allows Congress the powers “necessary and proper” for carrying into execution its enumerated powers or ends—gets us no closer to a federal power to produce, distribute, or underwrite television and radio programs.

Neither does the Taxing and Spending Clause, also called the General Welfare Clause, grant Congress such power. Under Article I, Section 8, Clause 1 Congress may “lay and collect Taxes . . . to provide for the common Defence and general Welfare of the United States.”<sup>111</sup> For what sorts of things is Congress authorized to tax and spend money? The answer lies in the subsequent clauses of Section 8, which enumerate specific congressional powers or ends. In “Federalist No. 41,” James Madison addressed the concerns of the anti-Federalists that the General Welfare Clause would allow Congress to tax and spend in pursuit of broader ends, such as creating media companies, that are not listed in the subsequent grants of power. Madison was incredulous that such an argument would even be raised after the Framers had gone to such pains to carefully list and limit the powers of Congress. “For what purpose,” he asked, “could the enumeration of particular powers be inserted, if these and all others

were meant to be included in the preceding general power?”<sup>112</sup> One such “particular” power, for example, is to “establish post offices and post roads,”<sup>113</sup> which would be a nullity without the power to raise and appropriate funds toward those ends. But search as you will through Congress’s enumerated powers, you will find no authority for Congress to create and fund media entities, or anything even close.

### **Public Broadcasting and the First Amendment**

In addition to there being no constitutional authority to create a public broadcasting system in the first place, that system lives in a tortured relationship to the First Amendment. Public broadcasters are simultaneously government-funded employees and members of a free press—the kind that is necessary for a robust and thriving democracy. In dealing with the rights of public broadcasters under the First Amendment, the courts have produced a tangled group of opinions that cannot be reconciled with core principles underlying a limited government restrained by the First Amendment.

One of the earliest and most interesting cases illustrating the constitutional difficulties inherent in public broadcasting was decided in 1975 by the United States Court of Appeals for the District of Columbia Circuit. The case, *Accuracy in Media (AIM) v. FCC*,<sup>114</sup> dealt with a challenge brought against two PBS shows for allegedly violating the provision in the Public Broadcasting Act that requires “strict adherence to objectivity and balance in all programs or series of programs of a controversial nature.”<sup>115</sup> Hoping to make that requirement enforceable through either the courts or the FCC, AIM challenged a sex-education program and a program on the criminal justice system. The former was of particular concern to conservatives, who claimed that it “unfairly depicted the opponents of sex education in the public schools as uninformed or narrowminded.”<sup>116</sup> Judge David Bazelon ruled narrowly that the “objectivity and balance” section of the act gave the FCC “no function in [the] scheme of

accountability.” Rather “the interpretation of this hortatory language” is left to “the Directors of the Corporation and to Congress in its supervisory capacity.”<sup>117</sup> In other words, individuals cannot force objectivity and balance upon public broadcasting via the courts; instead, it’s the CPB’s and Congress’s job. Thus, Judge Bazelon essentially charged the CPB and Congress with the task of exerting the type of political pressure that has bedeviled public broadcasters since the beginning. Indeed, the opinion can fairly be read as an invitation to politicize the CPB and its programs.

In 1984 the Supreme Court decided *FCC v. League of Women Voters*, overturning a section of the amended Public Broadcasting Act of 1981 that forbade “any noncommercial education broadcasting station which receives a grant from the Corporation [CPB]” from “engaging in editorializing.”<sup>118</sup> The government had justified this restriction as forwarding the compelling governmental interest in “ensuring that funded noncommercial broadcasters do not become propaganda organs for the government.”<sup>119</sup>

Writing for the Court, Justice William Brennan emphasized how Congress drafted the Public Broadcasting Act of 1967 to protect the CPB and its subsidiaries from any direct control by government officials. The act prohibited all federal agencies, officers, and employees from having any control over CPB or local stations, prohibited the CPB itself from owning any television or radio broadcast station, and required the CPB to “carry out its purposes and functions . . . in ways that will most effectively assure the maximum freedom . . . from interference or control of program content.”<sup>120</sup>

The Court ruled the editorializing restriction unconstitutional because Congress intended to ensure public broadcasting’s independence. The independence of public broadcasting made the editorializing restriction superfluous, and thus unconstitutional. Justice Brennan wrote that “the elaborate structure established by the Public Broadcasting Act” operates to “insulate local stations from government interference,” and the provisions of the Act that prohibit meddling by federal employees in the affairs of local affiliates sufficiently mollify the threat of state-man-

dated propagandizing.<sup>121</sup> Put simply, “[g]iven the diversity of funding sources and the decentralized manner in which funds are secured, the threat that improper federal influence will be exerted over local stations is not so pressing as to require the total suppression of editorial speech by these stations.”<sup>122</sup> In other words, Congress had to rely on the CPB’s decentralized structure to eliminate propagandizing rather than a total ban on editorializing.

Justice John Paul Stevens dissented, writing an opinion that showed an understanding of how tugging at the purse-strings can influence broadcasters. “The court jester who mocks the King,” he wrote, “must choose his words with great care. An artist is likely to paint a flattering portrait of his patron. The child who wants a new toy does not preface his request with a comment on how fat his mother is.”<sup>123</sup> From these astute analogies, however, Stevens did not conclude that, because public money might influence editorial content, the government should not be funding media entities. Instead, he chose to defer to congressional judgments that “expressed a concern about the potential impact of Government funds on pervasive and powerful organs of mass communication. One need not have heard the raucous voice of Adolf Hitler over Radio Berlin to appreciate the importance of that concern.”<sup>124</sup> Indeed, one need not have. But if Justice Stevens had known the true history of public broadcasting, he would have known that the intent behind public broadcasting was precisely to create a politically influenced institution that has an “impact . . . on pervasive and powerful organs of mass communication”—an intent that was reified in oversight amendments added to the act in 1992. Instead, Stevens championed the need for “government neutrality in the free market of ideas,” seeming not to realize that government neutrality comes only when the government has no substantive foothold in that market.<sup>125</sup>

Those and other opinions make it clear that public broadcasting exists in something akin to First Amendment limbo.<sup>126</sup> Congress has no obligation, much less authority, to create and fund public broadcasting in the first place, but once it does, it cannot exert “too

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much” control. Yet threats to funding, plus executive branch pressures, are ever-present. If similar pressures were directed at private broadcasters, it would clearly violate the First Amendment. Nevertheless, broadcasters often sanitize their messages and adjust their programming accordingly.

Yet public broadcasters still manage to say many things that upset many people. The issue of bias, not constitutionality or top-down control, is usually front-and-center whenever public broadcasting enters a period of controversy. As long as public broadcasting exists, there will be someone complaining that his views are not being adequately represented, and with good reason too.

## **The Problem of Bias**

To be clear, none of the criticisms offered here turn on public broadcasting's being biased in any political direction—left, right, or what have you. The simple observation that public broadcasting unconstitutionally influences the marketplace of ideas and cannot be squared with either the limited powers of Congress or the First Amendment should be enough to require defunding it. Nevertheless, because bias is an element in nearly every discussion of public broadcasting, it warrants some attention.

The CPB's objectivity and balance requirement is certainly a laudable goal, but it is hardly self-executing. Individuals must administer and enforce this hortatory order. The result, whatever it may be, is guaranteed to be biased—or, perhaps more accurately, tilted. “Tilt” better invokes the image of a plane that contains numerous viewpoints, unlike a line, which implies only two. Public broadcasters, like all broadcasters, must choose which stories and viewpoints to air, which people to interview, and which points to emphasize. Inevitably, some viewpoints will be excluded. In the end, these are the subjective judgments for which an “objectivity-and-balance” requirement may be useful—but, as we've seen, it also may do more harm than good, leading to censoring controversy rather than airing it.

Bias is often in the eye of the beholder, of course. Someone who believes his views are being inadequately covered by a media entity that bears the imprimatur of the government will certainly feel slighted, not least because his tax dollars are paying for it. From the left to the right, stinging criticisms and studies have attempted to expose the putative bias of public broadcasting. Organizations that cover the ideological spectrum—from Accuracy in Media (AIM), to CAMERA (Committee for Accuracy in Middle East Reporting in America), to FAIR (Fairness and Accuracy in Reporting)—exist to expose perceived media bias, especially in public broadcasting. Public broadcasting invites such attacks by purporting to be a neutral voice speaking in the “public interest.” Everyone wants to control the “public's” message and, if not, to smear the messenger.

One peer-reviewed study has found a demonstrably liberal bias in some NPR programs. In his book *Left Turn: How Liberal Media Bias Distorts the American Mind*, University of California, Los Angeles, professor Tim Groseclose estimates that NPR's *Morning Edition* is approximately as liberally biased as *Time*, *Newsweek*, and *U.S. News & World Report*.<sup>127</sup> While Groseclose concludes that *Morning Edition* is considerably less left-leaning than the *Wall Street Journal's* news coverage, it is still in the middle of the pack as far as left-wing bias goes—not as liberal as the *New York Times*, and not as conservative as the *Washington Times*, but still decidedly liberal.<sup>128</sup>

Yet NPR often insists that it is balanced, even while some of its personalities, such as *On the Media's* Bob Garfield, grant that the reporters and employees of the organization “are an overwhelmingly progressive, liberal crowd.”<sup>129</sup> Former CBS reporter Bernard Goldberg has pointed out how these two assessments are at odds with each other by posing a simple hypothetical: “let's say you'd find an overwhelmingly conservative, right-wing crowd—does anyone at NPR think that would be just fine; that such one-sidedness wouldn't present journalistic problems; that such a news organization would present the news without filtering it through a conservative lens?”<sup>130</sup>

It's certainly reasonable to believe that such ideological uniformity in the input produces ideological slant in the output. As a matter of human psychology, having a strong preference for one side of a contentious issue can lead to marginalizing opposing opinions as "extreme." As the story of the battle to air Milton Friedman's *Free to Choose* demonstrates, conservative and libertarian ideas are often considered "extreme" while leftist viewpoints like John Kenneth Galbraith's are considered "middle-of-the-road."

Because the absence of ideological diversity usually results in an organizational tendency to view contrary opinions as "extreme" and thus "not worth airing," stories of bias are often anecdotes about exclusion and are thus hard to quantify. Still, anecdotes can be illustrative. Here is Goldberg describing one interaction he had with NPR:

In December 2001, my first book came out. It was called *Bias* and it was about liberal bias in the so-called mainstream media. Terry Gross, who hosts a daily interview program on NPR called *Fresh Air*, showed no interest in having me on—despite the fact that *Bias* was number one on the holy grail of liberal booklists, the *New York Times* best seller list. And that's perfectly fine. I have no right to be on any program. Terry Gross can pick and choose her guests as she sees fit.

But not long after the book came out she had a liberal professor on her show criticizing it. She never gave me a chance to defend my work. And then a full year after *Bias* came out, I got a call from NPR telling me that Terry Gross wanted me on *Fresh Air*. Why now, so long after my book came out? Because a liberal had just published a book condemning *Bias*, that's why.<sup>131</sup>

Yet, to reiterate, "liberal bias" and stories like Goldberg's are not why public broadcasting should be defunded. Rather, the story illustrates a broader point: Public broadcast-

ing generally views itself as unbiased. In fact, NPR's *On the Media* even proclaimed in a recent self-scrutinizing series of episodes that "political bias doesn't show up in the data."<sup>132</sup> But why would an organization that sees itself as unbiased be so easily manipulated into canceling shows, firing important executives, hiring token reporters, and sanitizing messages? The proper response of an organization that believes earnestly in its neutrality would be to resist this top-down meddling. But they do not resist, at least not much, and NPR will generally be on its best, most-sanitized behavior as long as boards can be packed and purse strings can be pulled.

By treading the politically safe path, public broadcasting finds itself being both more and less than it could be without the influence of public money. Its exclusion of groups from coverage seems to be driven more by the group's ability to create a political fuss sufficient to bend the ears of public broadcasters than by good journalistic standards. When more marginal groups like Scientologists, Jehovah's Witnesses, or Unitarians are excluded from programs, not enough political backlash is raised to catch the ears of CPB or Congress. Making political trouble for either CPB or Congress is perhaps the only way to get a view represented. That said, how acceptable is it for a *state-sponsored media entity* to exclude individuals who hold deep and meaningful beliefs and, worse still, make them finance their own marginalization?

Because of the state-sponsored aspect, otherwise non-issues can be turned into real problems. In the words of former PBS host Patrick Watson, "You don't balance out the astronauts with the Flat Earth Society."<sup>133</sup> Fair enough, but for a *state-sponsored media entity*, why not? Perhaps because shows like *Cosmos* are not considered "programs of a controversial nature." But according to a December 2010 Gallup poll, creationists are now 4 out of 10 Americans, and 120 million creationists hardly constitute a marginal group.<sup>134</sup> Deeming an issue "not controversial" is one of the easiest ways in which a public broadcasting outlet can push the debate in a desired direction. Global warm-

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ing skeptics have labored against the “settled science” argument for years. Perhaps one believes that global warming skepticism deserves to be marginalized within the marketplace of ideas, but it does not follow that it deserves to be marginalized by the government that represents those holding the view. It is very easy to take this position, after all, when one’s beliefs are politically popular enough to be in no danger of exclusion.

As we’ve seen, the message can be pushed and prodded from above and influenced in numerous other ways. Whatever the final output, however, someone is guaranteed to be unhappy, and with good reason. Why should people be forced to finance a message with which they profoundly disagree? As Thomas Jefferson wrote in the Virginia Statute of Religious Liberty, “To compel a man to furnish contributions of money for the propagation of opinions which he disbelieves is sinful and tyrannical.”<sup>135</sup>

## Conclusion

Public broadcasting does not need to go away, it needs to be transformed back into the noncommercial model that thrived before widespread government funding. CPB, PBS, NPR, as well as local public broadcasting outlets such as Wisconsin Public Radio and Television, have the infrastructure and funding to become successful noncommercial, nonprofit broadcasters not tied to public funds. As of 2009 NPR had an endowment of \$205 million, and PBS is actively looking to create one.<sup>136</sup> In short, public broadcasting needs to become more what it is—an avenue for solid, entertaining programming—and less what it isn’t, but pretends to be—a non-exclusionary, neutral entity that broadcasts “in the public interest.”

In 1977, 10 years after the CPB’s creation, the Carnegie Commission organized a second panel to study public broadcasting. That commission found “public broadcasting’s financial, organizational and creative structure fundamentally flawed” and concluded that the “invention did not work, or

at least not very well,” because “institutional pressures became unbalanced in a dramatically short time.”<sup>137</sup>

The commission recommended a radical restructuring of public broadcasting in order to remedy the perceived shortcomings. The CPB would be replaced by a new “Public Communications Trust” that would “provide the system with protection from inappropriate interference in the sensitive area of program making that will occur both in and outside public broadcasting.”<sup>138</sup> Also, funding would be substantially increased, with half of the proposed \$1.2 billion coming from the federal government via taxes on broadcast licenses. The commission believed its recommendations would “provide nearly automatic support from the federal government, free to the maximum extent possible from partisan politics,” and it “made funding recommendations that ensure the industry adequate levels of support generated from a variety of sources, but fatally dependent on none of them,” adding that “the dynamics of a free press and a democratic government are unpredictable enough without adding the additional complication of federal financial support.”<sup>139</sup>

But the commission held fast to the belief that the government had a large role to play in public broadcasting. Not only did the public still need enriching programs that were not driven by advertising, but technological changes required federal stewardship to fulfill “needs that cannot be met by commercial means.”<sup>140</sup> “As television and radio are joined by a host of new technological advances,” the commission claimed, “the need becomes even more urgent for a nonprofit institution that can assist the nation in reducing the lag between the introduction of new telecommunications devices and their widespread social benefit.”<sup>141</sup>

The commission’s observations about public broadcasting’s failures were as true then as they are now. Nothing came of the second report—public broadcasting remains the broken institution the commission criticized. Furthermore, in a world of dynamic private sector media entities meeting consumer needs through innovative technological changes that arrive so quickly that it is difficult to keep

up, the commission's description of an "urgent need" for government involvement seems almost comical.

Some may say that the proper solutions to the criticisms offered here were articulated by the second Carnegie Commission: Public broadcasting must be independent from both executive and legislative/fiscal control. Yet this 45-year-old prescription from the original Carnegie Commission had no traction in 1967, it had no traction in 1977, and it has no traction now. Bills to make public broadcasting independent from funding and executive control have regularly been introduced in Congress and gained almost no ground. Why? Because members of Congress and presidents are not going to create a government-funded media service that is immune to their interests and power. As presidents from Johnson to Reagan have made clear, they *want* a media entity they can control.

Moreover, why should we believe that a government funded broadcasting entity that is immune from both political pressure *and* marketplace pressures is desirable, even if it were possible? Such an entity would have free reign to publish whatever it wished without regard to politics or popularity. And all of that is apart from the fundamental constitutional problem inherent in the very concept of government-funded broadcasting.

Commercial broadcasters produce programming today that may once have been the exclusive domain of public broadcasting. In addition, the Internet is an impressive source of information from all viewpoints and all corners of the world. If viewers wish to see a symphony or opera, they turn to Bravo, A&E, YouTube, or FathomEvents. If they wish to see science documentaries or enlightening lectures they tune to the Discovery networks; C-SPAN 1, 2, or 3; the History Channel; or go online to TED. Any remaining programming on public broadcasting that is sufficiently popular can easily make the transition to commercial airwaves if the producers do not want to remain part of noncommercial broadcasting. In other words, it is unlikely that defunding public broadcasting will end *Frontline*, *Nova*, *All Things Considered*,

*Morning Edition*, or many other popular shows.

Public broadcasting, in short, has run its course as a publicly funded entity. If you love it, it's time to set it free.

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