ENTERTAINMENT VIOLENCE AND THE FIRST AMENDMENT

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Increased concern about the effects of prolonged exposure to violent programming has prompted calls for government regulation of the broadcast media.[1] While these concerns are based on good motivations, this essay argues that such appeals are inconsistent with the freedom of expression guaranteed by the United States Constitution. In support of this simple thesis, this essay briefly argues for a reading of the First Amendment grounded in the power of communication. Having established communication as a significant principle, the essay critically assesses some of the leading justifications advanced for regulating violence on the media. Finally, this essay concludes by reviewing the relevant case law and by suggesting some approaches to entertainment violence that might be consistent with a liberal construction of First Amendment freedoms.

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[1]For a brief summary of these efforts see Julia W. Schlegel, "The Television Violence Act of 1990: A New Program for Government Censorship," Federal Communications Law Journal 46 (December 1993), 188-97.

The First Amendment and the Power of Communication[2]

The first ten amendments to the United States Constitution are commonly known as the "Bill of Rights." While this grand title sounds impressive, it creates an erroneous impression of the text to which it refers. It suggests that the first ten amendments to the Constitution clearly establish a set of freedoms and privileges guaranteed to all Americans. It suggests that there is a certain permanent quality about these protections; that these rights have a substance that can be touched. Moreover, it implies that the founders of the republic, through the process of amendment, were able to perfect and articulate a shared understanding of "freedom" which is durable enough to transcend time, bridging their age to eternity.

The problems associated with such images are obvious on close reading. The Bill of Rights does not define a set of perfectly understood and inalienable freedoms and privileges. Rather, it is a string of simple statements about rights which citizens may claim in disputes with the government. The actual protection afforded by these rights is vague and elusive, about as certain as a collection of proverbs. Even the founders of the republic were unable to arrive at a shared understanding of freedom. Oscar Handlin has observed that "the very circumstances of the adoption of the first ten amendments revealed that this was far from a comprehensive catalogue of rights. The members of the first Congress who framed these sentences did not give much thought to what should be included or excluded; expediency

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[2]My own views have on this subject have been profoundly influence by one of my teachers, Franklyn Haiman, author of Speech and Law in a Free Society (Chicago: University of Chicago, 1981).

and caprice played a large part in the ultimate decision."[3] Undoubtedly, most Americans in the late eighteenth century were committed to the abstract rights of life, liberty, and happiness; but the specific manifestations of these beliefs were neither defined nor understood from the start. Rather, a shared understanding of what these rights actually mean, insofar as that is possible, developed over the life of this nation. These rights came to have meaning only as they were exercised, challenged, and negotiated.

This evolutionary process is particularly evident with respect to the constitutional protections applicable to free expression. The pertinent guarantees are specified in the First Amendment to the United States Constitution which seems unequivocally and emphatically to proclaim that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."[4] In this single compound sentence, the Constitution defines the relationship between the government and the right of the people to criticize their government. Unfortunately, the meaning of the First Amendment is not as obvious as the words make it seem. While they appear eloquent, clear, and straightforward, they are not as transparent as some have suggested.[5] The very simplicity of these words is deceptive. They

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[3]Oscar Handlin, "Forward," in Leonard W. Levy, Jefferson and Civil Liberties: The Darker Side (New York: Quadrangle, 1973), v.

[4]United States Constitution, First Amendment.

[5]Justice Hugo Black once remarked: "The phrase 'Congress shall make no law' is composed of plain words, easily understood." Hugo Black, "The Bill of Rights," New York University Law Review 35 (1960), 874. Others have disagreed with this position. Alexander Meiklejohn has noted: "But it may, I think, be taken for granted that the words 'abridging the freedom of speech, of the press; or of the right of the people peacefully to assemble, and to

are so unequivocal that they have become equivocal: they create a set of rights so absolute that they must necessarily be limited.[6] Constitutional scholar and jurist Alexander Meiklejohn has noted that "though the intention of the Amendment is sharp and resolute, the sentence which expresses that intention is awkward and ill constructed."[7] The words embody centuries of social passion and intellectual controversy. Meiklejohn concludes that "one feels that its writers could not agree, either within themselves or with each other, upon a single formula which would define for them the paradoxical relationship between free men and their legislative agents."[8] The nature and extent of this relationship has developed only after two centuries of trying to understand the First Amendment in a variety of different contexts.

Despite the ambiguous language contained in the First Amendment, there is no shortage of great works on the freedom of expression. Indeed, many of our country's greatest jurists and scholars have written extensively on this topic. Since it is impossible to offer a comprehensive theory of the First Amendment[9] or to adequately summarize this massive body of

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petition the Government for a redress of grievances' are not 'plain words, easily understood.' . . . We have inherited from the ages a bitter conflict over civil liberties." Alexander Meiklejohn, "The First Amendment is Absolute," The Supreme Court Review, ed. Philip B. Kurland, 1970, 247.

[6]See Alexis J. Anderson, "The Formative Period of First Amendment Theory, 1870-1915," The American Journal of Legal History 24 (1980), 56.

[7]Alexander Meiklejohn, "What Does the First Amendment Mean?" University of Chicago Law Review 20 (1953), 463.

[8]Meiklejohn, "What Does the First Amendment Mean?" 463.

[9]See Harry Kalven, Jr. quoted in Jamie Kalven, "Editor's Introduction," in A Worthy Tradition: Freedom of Speech in America, by Harry Kalven (New York: Harper & Row, 1988), xvii.

literature in this essay, I would like to begin by briefly describing several significant contributions to this debate. While the selection of these theorists is somewhat arbitrary, I believe that each is arguably a work of major importance. Since the descriptions which follow are necessarily abbreviated, they will obviously trivialize complex contributions. Yet, this treatment of the literature is justified, I believe, as it provides a convenient starting place in our effort to understand the extent of constitutional protection for violent expression.

In his seminal work on freedom of expression, Thomas Emerson argues that the First Amendment rests upon four main premises. Instead of a single, unified purpose, Emerson argues that the First Amendment can be understood as serving a cluster of values: self-fulfillment, advancing knowledge and discovering truth, democratic decision-making, and community building.[10] Instead of seeing the multiple rationales as a weakness, scholars like Rodney Smolla have argued that the availability of multiple justifications suggests a "transcendent importance" which protects a "richer range of expression."[11] While there may be considerable truth in this line of argument, closer scrutiny suggests many of the justifications share a common belief in the power of communication.

In The Tolerant Society, Lee Bollinger starts from the daunting premise that "a good part of the speech behavior we are talking about is often unworthy of protection in itself and might very well be legally prohibited for

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[10]See Thomas I. Emerson, The System of Freedom of Expression (New York: Vintage, 1970), 6-9.

[11]Rodney A. Smolla, Free Speech in an Open Society (New York: Vintage, 1992), 5-6.

entirely proper reasons."[12] In Bollinger's mind, such speech is, nonetheless, deserving of protection because "free speech involves a special act of carving out one area of social interaction for extraordinary self-restraint, the purpose of which is to develop and demonstrate a social capacity to control feelings evoked by a host of social encounters."[13]

While Bollinger is willing to protect speech to further a communal sense of toleration, in Human Liberty and Freedom of Speech, Edwin Baker argues that speech deserves constitutional protection because "it promotes both the speaker's self-fulfillment and the speaker's ability to participate in change."[14] Like Bollinger, Baker is loathe to defend most speech based on its contribution to the marketplace of ideas or the search for truth. At the same time, Baker believes expression which contributes to an individual's self-actualization is so significant as to deserve constitutional protection.

Two more recent works have resonated with more democratic justifications for protecting expression. In The First Amendment, Democracy and Romance, Steven Shiffrin claims the the First Amendment exists to "protect the romantics--those who would break out of classical forms: the dissenters, the unorthodox, the outcasts."[15] Such voices are important, according to Shiffrin, as they provide for a diversity of viewpoints. Although less concerned with the romantics, Cass Sunstein has argued in Democracy

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[12]Lee C. Bollinger, The Tolerant Society: Freedom of Speech and Extremist Speech in America (New York: Oxford University Press, 1986), 9.

[13]Bollinger, 10.

[14]See C. Edwin Baker, Human Liberty and Freedom of Speech (New York: Oxford University Press, 1989), 69.

[15]Steven H. Shiffrin, The First Amendment, Democracy, and Romance (Cambridge: Harvard University Press, 1990), 5.

and the Problem of Free Speech that the First Amendment should be construed to encourage public discussion of contemporary issues.[16]

Given my own interest in communication studies, I find merit in all four contributions on the freedom of expression as each is predicated on the power of the communicative act. To my way of thinking, the First Amendment is built on the simple proposition that communication is uniquely and distinctively human. In fact, I would go so far as to argue that the ability to communicate is one of the defining and distinguishing qualities of personhood.[17] The willingness to engage another person, to offer reasons and exchange perspectives, demonstrates respect for both the person and the power of reason. In contrast, an unwillingness to communicate suggests that another person is less than human.[18] On this point, Henry Johnstone persuasively suggests that "only the sort of person whom we would characterize as inhumane would take pleasure in a life spent controlling the behavior of others through non-argumentative means, and only an idiot would willingly obey him."[19]

The aforementioned works by legal theorists merely illustrate different aspects of the communicative act. For example, Sunstein suggests that informed dialogue and discussion is necessary to have an active public

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[16]See Cass R. Sunstein, Democracy and the Problem of Free Speech (New York: Free Press, 1993), xvi-xx.

[17]For more on this perspective see Wayne Brockriede, "Arguing: The Art of Being Human," in Practical Reasoning in Human Affairs, edited by J.L. Golden and J.J. Pilotta (Dordrecht, Holland: Riedel, 1986), 53-67.

[18]See Douglas Ehninger, "Argument as Method: Its Nature, Its Limitations and Its Uses," Speech Monographs 37 (June 1970), 101-10.

[19]Henry W. Johnstone, Jr., Validity and Rhetoric in Philosophical Argument: An Outlook in Transition (University Park, PA: Dialogue Press of Man & World, 1978), 107.

sphere. Shiffrin thinks that lone voices have the power to effectuate change. Baker believes that the First Amendment protects the right to communicate as a way of empowering the individual. Bollinger argues that it is necessary to teach a respect communication to teach tolerance. While the theorists differ in their treatment of the communication, I believe communication plays a key role in all four analyses of First Amendment freedoms. Working from this commitment to communication, the next section of this paper considers the regulation of entertainment violence.

Reconsidering the Case for Regulation

A wide range of proposals have been advanced to regulate entertainment violence over the years. While there is concern about the printed word, most of the proposals have focused on broadcasting due to its pervasive nature. Rather than considering the specifics of each of these proposals, it is possible to address all of them collectively by considering some of the common justifications underlying each of these initiative. While there are some important difference among these arguments, it seems that three common justifications have been advanced in support of regulation.

The first argument for the regulation or violence argues that certain classes of speech falls outside of the protection of the First Amendment. While this may seem a curious claim, several significant constitutional scholars have subscribed to this view. Alexander Meiklejohn, a great champion of the First Amendment, believed that the framers intended to protect political expression pertaining to self government.[20] Accordingly, Meiklejohn strenuously objected to any effort to suppress debate on public

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[20]See Meiklejohn, "The First Amendment Is an Absolute," 255-57.

issues, even if such debate was potentially dangerous. In marked contrast, Meiklejohn was unwilling to extend an equivalent level of protection to lesser forms of non-political expression. A similar view, it should be remembered, was espoused by former Solicitor General and Supreme Court nominee Robert Bork who argued that a majority of the community might legitimately regulate non-political speech. In Bork's mind, "art and pornography are on a par with industry and smoke pollution" and could be regulated accordingly.[21]

If the First Amendment's protection is limited to political expression, then the government could constitutionally regulate all forms of entertainment except for political satire or humor. Arguing from this premise, Ernest Van Den Haag has suggested that the legal obstacles to regulating violence might be overcome if "the courts finally interpret the First Amendment to refer to cognitive speech only--to information and descriptive communication of ideas or facts--and no longer to symbolic and pictorial expression, such as drama, poetry, or art, which are intended to address emotions, or to entertain, rather than purely to inform and address the intellect."[22] Such reasoning would clearly legitimate government efforts to limit the broadcasting of violence.

Such a crabbed understanding of First Amendment freedoms makes little sense in light of the communication oriented perspective described in this essay. Since communication is one of the defining qualities of humanity, all communication deserves constitutional protection. I believe that scholars

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[21]Robert H. Bork, "Neutral Principles and Some First Amendment Problems," Indiana Law Journal 47 (Fall 1971), 29.

[22]Ernest Van Den Haag, "What do Do about TV Violence," The Alternate: An American Spectator, August/September 1976, 7-8, quoted by Haiman, 170.

like Emerson and Smolla are persuasive in arguing that the First Amendment serves many vital purposes unrelated to the furtherance of effective self-governance. Significantly for my purposes, the United States Supreme Court has adhered to this position by consistently holding that the freedom of expression embraces the privilege to participate in all aspects of life and thus includes freedom of expression in all areas of human knowledge. As Justice White observed in Red Lion Broadcasting Co. v. FCC, "social, political, esthetic, moral and other ideas and experiences" are all crucial to any First Amendment analysis.[23]

Further, strictly limiting the First Amendment to political expression would be difficult as it is not possible to precisely distinguish between entertainment and political expression. As the United States Supreme Court observed in Winters v. New York: "We do not accede to the appellee's suggestion that the constitutional protection for a free press applies only to the exposition of ideas. The line between the informing and the entertaining is too elusive for the protection of that basic right. Everyone is familiar with instances of propaganda through fiction. What is one man's amusement, teaches another's doctrine"[24] In the words of Justice John Harlan in Cohen v. California: "It is nevertheless often true that one man's vulgarity is another's lyric. Indeed, we think it is largely because governmental officials cannot make principled distinctions in this area that the Constitution leaves matters of taste and style so largely to the individual."[25]

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[23]395 U.S. 367, 391 (1969).

[24]333 U.S. 507, 510 (1948).

[25]302 U.S. 15, 25 (1970).

The second argument commonly advanced in support of regulation is that viewing media violence causes perverse consequences. At the outset, it is necessary to qualify this argument. No one believes that criminal acts committed during the production of violent programming would be protected by the First Amendment. So too, the regulation of actual antisocial conduct falls beyond the First Amendment. The state could legitimately punish criminal behavior without running afoul of the freedom of expression. The more difficult questioning is whether the violent programming itself might be regulated because of a tendency to produce bad consequences.

The easiest way to answer this argument would be to argue that the relationship between violence and specific consequences is unproven. Indeed, this is the central claim of several prominent essays on this subject.[26] By disputing the causal connection between the media and behavior, commentators have attempted to undermine the case for regulation. Given the heavy presumption traditionally lodged in favor of free expression, skeptics have argued that current research is insufficient to justify restrictions.

While there may be merit in some of the critiques of social scientific research, this line of reasoning is predicated on the dubious claim that only harmless or inconsequential speech is worthy of constitutional standing. This defense of violent programming claims, quite literally, that the only speech deserving First Amendment protection is the innocuous or trivial. Expression is defended by demonstrating that it is either devoid of

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[26]See, for example, Thomas G. Krattenmaker and L.A. Powe, Jr., "Televised Violence: First Amendment Principles and Social Science Theory," Virginia Law Review 64 (1978), 1123.

consequences or by claiming that social science has failed to demonstrate the connection.

It would, of course, be somewhat disingenuous to argue for an expansive conception of freedom of expression because all communication has consequences while simultaneously arguing that the consequences cannot be demonstrated in a particular instance. Embracing the position that communication deserves protection requires the advocate to concede that some communication might produce unintended or undesirable results. However, rather than seeing this as an argument for regulating violence, the fact that communication has consequences is precisely why it is deserving of protection.

Further, accepting the claim that consequences could regulate communication would empower the majority to enact sweeping restrictions. Some might object to programming that contained gratuitous violence, while others might object to violence in the news. So too, once the principle is accepted that consequences can be used to justify regulation, the state might legitimately act against a wide range of messages. The government might object to advertising for products found distasteful or unnecessary, music that challenged the dominant culture, or scenes of starving children in Rwanda and Somalia. All communication has consequences. Companies use advertising to encourage consumption. Singers use lyrics and songs to express powerful themes. Even news shows and documentaries, often claiming to offer purely objective accounts, necessarily influence viewers and shape public opinion. Taken to its logical extreme, the principle that any speech could be regulated if it had demonstrable consequences would allow wholesale restrictions on a vast range or communication. As a result,

communication would become either vacuous or innocuous, and the First Amendment's freedom of expression would be forever diminished.

A final argument offered in support of regulation is that entertainment violence undermines our community. This argument, which is considerably more subtle than the argument to consequences, suggests that prolonged exposure to violence undermines longstanding prohibitions against violence and reinforces antisocial behavior. While the end result may be the same, this argument is potentially more compelling for it is not predicated on the proof of particular consequences. As a result, the argument for regulation does not require those espousing restrictions to defend any particular set of research findings.

Accepting the viewing that communication has consequences also forces an advocate to ascribe some truth to this argument. Just as art and literature may inspire greatness, violent programming may surely contribute to depravity. We cannot, however, deny access to communication out of fear of the long-term consequences. As Franklin Haiman has eloquently argued, "If our problem is that we do not respect each other enough, that we exploit each others' gullibilities, that we resort to violence too easily, that we lust too much and love too little, I do not understand how improvement will be achieved by the censorship of communication, which is itself a coercive tool that treats us as objects to be manipulated by the censors rather than as human beings with the capacity to learn and choose for ourselves what is better and what is worse."[27]

Further, in suppressing certain forms of speech we may well deny positive effects as well. While the wanton depiction of senseless violence

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[27]Haiman, 174.

may seem to serve no legitimate end, such depictions may energize the community against death and destruction. It is hardly surprising that our government has moved to aid refuges only after the outcry triggered by the depiction of widespread death and suffering. So too, some believe that the government restricted coverage of recent military incursions for fear of alienating public opinion.

Starting from the premise that communication has consequences, it is then possible to make a strong case for a liberal construction of First Amendment freedoms. This faith in the power of communication requires that we recognize that some communication may result in unfortunate consequences. This is, however, the price of a commitment to the idea of communication. While some may lament that the price is too high on occasion, the alternatives are even more unpalatable.

Addressing Entertainment Violence as a Communicative Act

In light of the arguments advanced in the previous sections of this essay, it is not unexpected that the United States Supreme Court has looked with disfavor on government efforts to regulate entertainment violence. Given the Court's willingness to extend First Amendment protection beyond purely political expression, any scheme to regulate entertainment violence would face daunting constitutional barriers.

Although relatively few cases involving violent expression have actually reached the United States Supreme Court, a review of these cases may prove instructive.[28] An early legislative effort to address violence

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[28]See Haiman, 168.

through legislation was struck down as unconstitutionally vague. In Winters v. New York, the Court considered the constitutionality of a statute prohibiting a newspaper "devoted to the publication, and principally made up of criminal news, police reports, or accounts of criminal deeds, or pictures or stories of deeds of bloodshed, lust or crime."[29] While the Court found little merit in such expression, both the majority and minority opinions held the such publications could be penalized only if they incited an immediate breach of the peace. Further, the Court held the law in question was unconstitutionally vague: "Even though all detective tales and treatises on criminology are not forbidden, and though publications made up of criminal deeds not characterized by bloodshed or lust are omitted from the interpretation of the Court of Appeals, we think fair use of collections of pictures and stories would be interdicted because of the utter impossibility of the actor or the trier to know where this new standard of guilt would draw the line between allowable and the forbidden publications."[30] The Court made similar arguments in invalidating ordinances concerned with motion pictures.[31]

This is a particularly daunting challenge because violence is recurrent in literature, politics and even common forms of entertainment. Some of our greatest literary works, for example, address overtly violent crimes or events. Homer's Iliad and the Odyssey describe acts of war in great detail. Many of Shakespeare's most famous plays involve crimes of grotesque proportions. Modern literary classics have not shied away from such themes

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[29]333 U.S. 507, 508 (1948)

[30]333 U.S. 507, 519.

[31]See, for example, Interstate Circuit v. Dallas, 390 U.S. 676 (1968).

which is appropriate as we live in violent times. The nightly news offers visual evidence of atrocities in Bosnia, terrorism in New York City, the fiery death of a religious leader in Texas, and the famed Reginald Denny tape.[32] Moreover, violence is common in popular entertainment such as boxing, football, and auto racing. It is, quite simply, impossible to imagine a definition that could consistently distinguish literary classics, legitimate political topics, and sporting contests from purely gratuitous violence. As a result, it is not surprising that the federal government has made little effort to regulate violent program content. The most recent federal legislation, the Television Violence Act of 1990, avoids questions of content control altogether while encouraging networks to voluntarily address the problem.[33] This may change, however, as there are nine bills currently pending in Congress aimed at TV violence.[34]

Four cases brought by private parties have considered whether a broadcaster can be held liable for acts of violence perpetrated by viewers caused by programming: Zamora v. Columbia Broadcasting System,[35] Olivia N. v. National Broadcasting Co.,[36] Walt Disney Prod., Inc. v. Shannon,[37] and

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[32]See Robert W. Welkos, "Violence: Tracking the Media-Violence Explosion," Los Angeles Times, 26 December 1993, calender section, 3. For more elaboration on this point see Herbert J. Gans, Deciding What's News: A Study of CBS Evening News, NBC Nightly News, Newsweek and Time (New York: Vintage, 1980), 16-18.

[33]See, for example, Paul Simon, "A Way to Curb Violence on TV," Washington Post, 15 July 1989, A20. The Television Violence Act exempts the networks from certain antitrust laws if the networks voluntarily reduce violent programming.

[34]See "Legislators Join Forces to Derail Violent Images," Houston Chronicle, 22 May 1994, C6.

[35]480 F.Supp. 199 (S.D. Fla. 1979).

[36]74 Cal. App. 3d 383, 141 Cal. Rptr. 511 (1977).

DeFilippo v. National Broadcasting Co.[38] In these cases, the plaintiffs sought to recover civil damages by arguing that the media either instigated violent behavior or that the violent behavior imitated programming.[39]

In all four cases, the defendant broadcasters effectively invoked the First Amendment as a complete defense against liability. Although the broadcasters aired the programming, First Amendment law has consistently recognized a distinction between "the statement of an idea which may prompt its hearers to take unlawful action, and advocacy that such action be taken."[40] In cases such as this, the Court has traditionally invoked a test set forth in Brandenburg v. Ohio: "The constitutional guarantees of free speech and free press do not permit a State to forbid or proscribe advocacy of the use of force or of law-violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action."[41]

It is doubtful that plaintiffs could ever satisfy the this test. In Brandenburg, a unanimous Court found that incitement could be punished only if there was a risk of "imminent lawless action." By this standard, any speech which does not advocate illegal action is wholly protected. More crucially, speech which does advocate illegal action is protected by the First

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[37]247 Ga. 402, 276 S.E.2d 580 (1981).

[38]446 A.2d 1036 (R.I. 1982).

[39]For a more detailed description of these cases see Emily Campbell, "Television Violence: Social Science vs. the Law," Loyola of Los Angeles Entertainment Law Journal 10 (1990), 436-53.

[40]Dennis v. United States, 341 U.S. 494, 545 (1951)

[41]395 U.S. 444, 447 (1969).

Amendment so long as it can be shown either that the action is not imminent or that the listeners will not actually commit the illegal act. Absent a determination that a broadcaster was actually intending to incite violence, civil actions stand little chance of success.

Based on case law to date, it is clear that there are daunting constitutional barriers to the regulation of entertainment violence. Since violent programming is protected by the First Amendment, overt efforts at regulation will likely run afoul of the freedom of expression. Further, it is doubtful that the state could adopt a regulatory scheme sufficiently precise to avoid vagueness challenges. At the same time, civil efforts to hold broadcasters responsible have failed due to the "imminent lawless action" standard.

This does not mean, however, that nothing can be done about entertainment violence. Instead, it suggests the course of action outlined by the Supreme Court in Whitney v. California: "Among free men, the deterrent ordinarily to be applied to prevent crime are education and punishment for violation of the law, not abridgement of the rights of free speech."[42] In this instance, the duty to educate falls on three groups: the media, advertisers and other organized interests, and the viewing public.

At some point, broadcasters and publishers must realize that they bear some responsibility for their speech. While this responsibility may not be legally enforceable, it is incumbent that these parties realize they have a duty to consider the consequences of their actions. While it may not be possible for groups like the National Association of Broadcasters to formulate binding

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[42]274 U.S. 357, 378 (1927).

rules,[43] networks can unilaterally change programming practices. There is already some evidence suggesting that the networks may be reforming for some studies found less violence in prime-time shows during the 1992-1993 television season.[44]

At the same time, there are a variety of interests that might use their influence to reduce violent programming. Advertisers, for example, have considerable power over program content. If there were a concerted effort to link advertising dollars to programming, advertisers alone could dramatically reduce violence on network television.[45] So too, organized groups like the Catholic Church and the Parent-Teacher Association have the political clout necessary to influence programming decisions. "Because of the economics of the industry, which tries to meet the tastes of a large number of people," Emily Campbell has noted that "pressure groups have been influential in film and television."[46]

Finally, and most significantly, individual consumers must take responsibility for their own viewing practices. While many are quick to lament the deplorable quality of current programming, media users reinforce existing programming practices through their viewing habits. It is not surprising, for example, that there is so much violent programming when

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[43]In United States v. Nat'l Ass'n of Broadcasters, 536 F.Supp. 149 (D.C. 1981), a federal court held that some elements of the National Association of Broadcaster's "Television Code" might constitute a violation of the Sherman Antitrust Act.

[44]See Ed Bark, "Roughing Up Hollywood; Do We Really Want Government to Step In?" Dallas Morning News, 31 October 1993, 1C.

[45]See Ed Bark, "Violent Tendencies; Amid Threats of Congressional Action, Network Executives are Grappling with TV's Social Responsibility," Dallas Morning News, 8 August 1991, 1C.

[46]Campbell, 461.

violent programs are ranked high in the weekly Nielsen ratings. If consumers would exercise their preference power, violent programming would quickly be replaced with less violent alternatives.

Even if viewers do not change their viewing behavior, there is ample time for reflection and rebuttal. This may prove significant, as studies have suggested that additional messages can lessen the effect of exposure to violent programming.[47] Parents, for example, can contextualize and discourage inappropriate behavior that their children view on television. Events like the International Conference on Violence in the Media, which call attention to the issues associated with exposure to media violence, help educate the viewing public about this difficult question.

In many respects, these remedies may be disappointing. Calling on media conglomerates, interest groups, and consumers to change existing programming and viewing practices lacks the allure of sweeping government regulation. None of the remedies suggested in this paper are a quick fix, nor would these remedies work in all situations. At the same time, the commitment to communication implicit in the First Amendment demands that we exercise such non-regulatory policy options. If we ever come to rely on the heavy hand of censorship to police the airwaves, we will find ourselves with considerably less freedom. While some might be willing to accept such a Faustian compromise, everyone will lose some of their humanity in the process.

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[47] See, for example, Leonard Eron, "Interventions to Mitigate the Psychological Effects of Media Violence on Aggressive Behavior," Journal of Social Issues 42 (1984), 155.