Ι

# Introduction

For centuries the supply of news has been protected from market forces. Various institutional arrangements have provided protection by subsidizing the provision of news. Direct government grants or subventions have been relatively rare. Although at various times during the nineteenth century political patronage of the press was commonplace in Britain and the United States, rarely was it sustained. Instead, subsidies were largely indirect. A classic example, about which much has been written, is postal subsidies for the distribution of newspapers. Postal subsidies have a long history stretching back to seventeenth-century England. A group of post office officials called the Clerks of the Road could frank newspapers for domestic and foreign distribution, which were then free from postage. For this service they charged newspapers a small fee, which they pocketed personally.<sup>1</sup> In the American colonies and later in the United States, the Post Office also subsidized the distribution of newspapers.<sup>2</sup> With successive developments in telecommunications, such as telegraphy and radio broadcasting, new institutional arrangements were devised that protected the supply of news. The twin subsidies of cooperation and exclusivity and the way in which state action and business activities shaped these subsidies are the focus of this book. Looking closely at the processes by which newspapers obtained news provides a clearer sense of how the supply of news was funded.

<sup>&</sup>lt;sup>1</sup> K. Ellis, *The Post Office in the Eighteenth Century: A Study in Administrative History* (London: Oxford University Press, 1958), p. 48; J. Greenwood, *Newspapers and the Post Office, 1635–1834* (Reigate: Postal History Society, 1971); H. Robinson, *The British Post Office: A History* (Princeton, NJ: Princeton University Press, 1948), p. 117; S.E. Whyman, "Postal Censorship in England 1635–1844," p. 9. www.psc.gov.uk (retrieved January 6, 2013).

<sup>&</sup>lt;sup>2</sup> R. John, *Spreading the News: The American Postal System from Franklin to Morse* (Cambridge, MA: Harvard University Press, 1998); R. Kielbowicz, *News in the Mail: The Press, Post Office, and Public Information*, 1700–1860s (New York: Greenwood, 1989).

2

Cambridge University Press 978-1-107-03364-1 - The International Distribution of News: The Associated Press, Press Association, and Reuters, 1848–1947 Jonathan Silberstein-Loeb Excerpt More information

The International Distribution of News

Cooperation subsidized the supply of news in two ways. First, by cooperating, newspaper publishers could share with each other the costs of gathering news. During the 1850s and 1860s, the promise of reduced telegraphy costs encouraged newspapers around the world to form associations to collect news. These associations occupied the top of the news pyramid. They supplied reports of breaking news to newspapers and other news outlets such as newsrooms and later radio stations. In turn, these reports either formed the basis for further reporting or were reproduced verbatim. The British Press Association (PA), established in 1868, is the oldest surviving news association. The American Associated Press (AP), incorporated in 1892, grew out of several regional news associations that emerged across the United States during the 1840s, 1850s, and 1860s. In these associations the cost of collecting the news was apportioned among the members of the association according to their respective use of the news reports. The assessments levied on the newspapers were in turn used to meet the costs of supplying the news.

The second way in which cooperation subsidized the supply of news was by facilitating exclusion. Joining together to form an association was like forming a country club. The members of the association owned the organization. They produced, or paid for, its product, namely the news reports, and they restricted access to it. The most important assets of an association were not its offices or technology, but its members.<sup>3</sup> The newspaper publishers who controlled these associations could either privilege themselves or disadvantage their rivals by granting them lesser status in the association, charging them more, or excluding them entirely. Cooperation among news outlets to form news associations was by definition an exercise in exclusion. No matter how inclusive associations were, certain newspapers were permitted to join and other news outlets were barred. Even those associations that admitted all daily newspapers typically disadvantaged or excluded other types of publication, such as biweekly or triweekly newspapers. Some associations were only for newspapers and refused to admit other news outlets; others admitted alternative outlets, such as radio stations, but granted newspapers preferential treatment.

Just as cooperation produced exclusivity, the benefits of exclusivity reinforced cooperation. Exclusive access to news made it valuable. The value gained from exclusive possession of news made cooperation not only economical but profitable. In this way the subsidy of exclusivity was a double-edged sword. On the one hand, exclusive possession of news increased its value, which encouraged its collection and sale. On the other hand, if news was controlled exclusively, access to it could be constrained and the benefit of it to the public could be curtailed. Further, or alternatively, exclusive possession of the news could lead to monopoly, which threatened to make news unverifiable and potentially

<sup>&</sup>lt;sup>3</sup> On the connection between country clubs and firms, see A.A. Alchian and S. Woodward, "The Firm Is Dead; Long Live the Firm: A Review of Oliver Williamson's *The Economic Institutions* of *Capitalism*," *Journal of Economic Literature*, 26 (1988), 77.

### Introduction

subject to manipulation. Today, the dilemma between exclusion and access is particularly apparent in arguments over intellectual property. In the nineteenth and the first half of the twentieth century, so-called property rights in news were also divisive. But property rights in news were only a part, albeit a large one, of a more general debate respecting the various ways in which business practice either facilitated or impinged on the collection of news. Much of the concern centered around the interplay between the twin subsidies of cooperation and exclusivity. Those newspapers or other news outlets that were excluded from cooperation argued that exclusivity restricted trade or freedom of the press, while publishers privy to cooperation claimed that exclusivity was a necessary incentive to encourage the collection of news.

Any balance struck between exclusivity and cooperation in the market for newspapers affected the market that news associations and news agencies inhabited, and vice versa. The way in which these two markets interacted made them difficult to operate in and to regulate. The promise of reduced costs encouraged newspaper publishers to cooperate, but excluding rivals from membership in an association precluded spreading costs more widely even as it increased the value of the news reports by making access to them exclusive. Depending on the nature of their local market, newspaper publishers had different news requirements and likewise different views about the relative importance that any news association ought to ascribe to exclusivity and cooperation. News association managers had to meet the needs of their members, who were also their directors and owners, while keeping an eye on the long-term interests of the association. From a managerial perspective, debates over exclusivity and cooperation were about market value and market share. Keeping a news report exclusive increased its value to newspaper editors by restricting competition among newspapers. This in turn increased the value of membership in the association, but it also limited the share of the market that the news association could serve. If cooperation and market share were constrained to increase exclusivity and the market value of the news reports, the excluded newspapers might form a rival organization or patronize a competitor. Alternatively, by carefully controlling membership, managers could prevent the emergence of a strong competing news association or agency or encourage the existence of a weak but viable rival to stave off accusations of restraint of trade or monopoly. From the 1850s until World War I, news associations and agencies in different countries also cooperated with each other to reduce costs and serve disparate markets, but during the 1920s and 1930s, as nationalism made the supply of news less multilateral but radio increased its global distribution, the tensions cooperation had engendered in the supply of news domestically also appeared on the international stage. These difficulties did not eliminate cooperation as much as they caused a rearrangement of existing alliances.

Although at times multiple news associations existed in a few national markets, such as Australia, there was almost always a large news association, such as the PA or AP, and a rival private or publicly traded news agency, such as

4

Cambridge University Press 978-1-107-03364-1 - The International Distribution of News: The Associated Press, Press Association, and Reuters, 1848–1947 Jonathan Silberstein-Loeb Excerpt More information

The International Distribution of News

Reuters (established in 1851). Another example of a news agency is the United Press Association, which was also established in the nineteenth century and sold its news reports to the American press. These agencies were started by entrepreneurs and owned by investors not necessarily affiliated with any particular newspaper. Other news agencies grew out of vertical integration by newspaper chains, such as the United Press (UP), which was formed by and supplied the Scripps-Howard chain of newspapers in the United States, or the International News Service (INS), which was similarly formed by and served the newspapers of William Randolph Hearst. The savings achieved by cooperation were in theory obtainable from a news agency that sold news reports to newspapers at a profit, but in practice news agencies suffered from two flaws.

The first concerned transparency. Newspaper publishers that patronized news agencies were perennially concerned about the profits that the agencies made at their expense, whereas cooperative enterprises, which were owned by their publisher-members, could be monitored and run on a not-for-profit basis. The problem of transparency also undermined international cooperation between news agencies and news associations. In 1925, newspapers in Britain achieved a greater level of transparency by purchasing Reuters through the PA. The model of linking the press to Reuters was subsequently exported throughout the British Empire. The second and more significant disadvantage associated with the agency model was that it could not adjust the balance between exclusivity and cooperation to adapt to market conditions as effectively as news associations. Whereas for-profit news agencies were encouraged to charge newspapers for the privilege of having the news exclusively, news associations run by and for newspapers and on a not-for-profit basis could start small and provide leading newspapers throughout the country with exclusive access at no extra charge to encourage participation. As the market matured, associations could control membership to contrive competition, whereas private for-profit news agencies were locked into different relationships with their subscribers and shareholders. Likewise, if rivals became too powerful, or if concerns over restraint of trade increased and the specter of regulation loomed large, associations could expand their membership to suit the environment.

Through competition policy, intellectual property law, and telecommunications regulation, legislatures, judiciaries, and other emanations of the state, such as the British Post Office, played an active role in determining the boundaries of cooperation and exclusivity. In general, the state in both Britain and the United States pursued an active if largely implicit policy of subsidizing the supply of news. As explained in Chapter 2, in the United States, a federalist political economy permitted the creation of agreements between telegraph companies and news associations that facilitated the creation of exclusive associations.<sup>4</sup>

<sup>&</sup>lt;sup>4</sup> R.F. Bensel, *The Political Economy of American Industrialization*, 1877–1900 (Cambridge: Cambridge University Press, 2000), pp. 289–90.

#### Introduction

5

Mechanisms for exclusion came up against state-based rules respecting competition policy, the limits of freedom of contract, and judicial understanding of news as a democratic necessity. Chapter 3 shows how state-based corporate law affected the extent to which different forms of organization were viable. In 1897, the Illinois Supreme Court found the AP in restraint of trade, which proved ruinous to the corporation, and the modern incarnation of the AP owes its existence to the New York Membership Corporations Law (1895), which legalized the association's method of organization. Federal law was also influential. The U.S. Supreme Court in *INS v. AP* (1918) granted the AP a right that protected its method of organization, whereas in *AP v. US* (1945), the Supreme Court found the AP in violation of antitrust law, which in effect transformed the association into a public utility.<sup>5</sup>

In the United Kingdom, the case of which is discussed in Chapters 4 and 5, the trend went in the opposite direction: government control of telegraphy generated a comparatively inclusive form of cooperation. Only in the interwar period, as the prevailing institutional arrangement shifted to favor broadcasting over the press, did private solutions akin to those in the United States emerge. The nationalization of telegraphy in 1868 shaped the organization of the PA, as well as the nature of property rights in news, and influenced the structure of the news market in Britain. Nationalization preserved the historical postal subsidy to the press, but it also privileged newspapers published in the provinces over those published in London. Maintenance of this regime until World War I was intended to preserve the level playing field that policy makers sought to establish by the Telegraph Act of 1868. Such regulation, although far from maintaining a level playing field, did help protect the status quo by preventing publishers from adopting private solutions to limitations hindering their abilities to collect and distribute news. As a consequence, policy intended to ensure a plurality of news outlets also rendered the apparatus for news provision relatively slow compared to methods employed in the United States.<sup>6</sup>

Telecommunications policy in Britain continued to shape the structure of the news market until World War II. Toward the end of the nineteenth century, increased use of the telephone, which was not nationalized until 1911, undermined the settlement established by the Telegraph Act of 1868. World War I brought about its demise. After the war, and despite the best efforts of the press, the long-standing subsidy for news shifted to broadcasting. The nature of the relationship between organizations that generated content and those that distributed it was central to debates about the role of broadcasting in news collection, as it had been in 1868 with the nationalization of telegraphy and the use of telephony thereafter. According to the representatives of the press, combining content and conduits for distribution in the hands

<sup>&</sup>lt;sup>5</sup> 248 U.S. 215 (1918) and 326 U.S. 1 (1945).

<sup>&</sup>lt;sup>6</sup> This order of events parallels that described by I. de Sola Pool, *Technologies without Boundaries*, ed. E. Noam (London: Harvard University Press, 1990), p. 93.

6

Cambridge University Press 978-1-107-03364-1 - The International Distribution of News: The Associated Press, Press Association, and Reuters, 1848–1947 Jonathan Silberstein-Loeb Excerpt More information

The International Distribution of News

of one organization violated principles of free trade and amounted to unfair competition. The threat of the BBC, which attempted to purchase Reuters on the eve of World War II, and concentration of the newspaper industry in the hands of a few press barons, prompted publishers to adopt American solutions to problems of news collection. After the Supreme Court's decision in 1945, the AP and the PA looked alike.

In organization and operation, news associations and agencies lacked the managerial hierarchies characteristic of the large manufacturing firms that also emerged during the nineteenth century, but in Britain and the United States, government policy affected the structure of the news industry in much the same way as it affected other areas of economic activity. The similarities and differences between the structure of the news market in the United States and the United Kingdom reflected long-standing policy paradigms and institutional arrangements. In the United States, news agencies and associations were large, vertically and horizontally integrated, and loosely regulated. The history of American news agencies and associations began with attempts to centralize and coordinate production and pricing, followed by the pursuit of economies of scale and scope, and resolved in oligopoly.7 Antimonopoly market regulation was the distinguishing feature of American policy. By preventing restraint of trade and enforcing price competition, policy makers sought to establish free markets and free competition. In the United Kingdom, the state allocated authority to entrepreneurial firms, encouraged loose combinations, and discouraged predatory mergers to shield small firms.8 Loose organizational arrangements, comparatively greater state intervention, and cooperative self-government characterized the British market. During the nineteenth century, the attempts of small British firms to limit competition in large markets through agreement were often ineffective, but in the news business the influence of government policy ensured that similar attempts were successful.9

Domestic regulation not only constrained the national operation of news agencies and associations but also affected the way in which they operated overseas. Throughout the British Empire, Reuters encountered the same difficulties it confronted in the British Isles. As shown in Chapter 6, the so-called

<sup>7</sup> L. Galambos, "The Triumph of Oligopoly," in D. Schaefer and T.J. Weiss (eds.), *American Economic Development in Historical Perspective* (Stanford, CA: Stanford University Press, 1994), pp. 241-253.

<sup>8</sup> F. Dobbin, *Forging Industrial Policy: The United States, Britain, and France in the Railway Age* (Cambridge: Cambridge University Press, 1994), pp. 3–4.

<sup>9</sup> H. Mercer, Constructing a Competitive Order (Cambridge: Cambridge University Press, 1995), p. 32; T.A. Freyer, Regulating Big Business: Antitrust in Great Britain and America, 1880– 1990 (Cambridge: Cambridge University Press, 1992); L. Hannah, The Rise of the Corporate Economy (London: Methuen, 1983), p. 11; L. Hannah, "Mergers, Cartels and Concentration: Legal Factors in the U.S. and European Experience," in N. Horn and J. Kocka (eds.), Recht und Entwicklung der Großunternehmen im 19. und frühen 20. Jahrhundert (Göttingen: Vandenhoeck & Ruprecht, 1979), pp. 306–16; L. Hannah, "Managerial Innovation and the Rise of the Large-Scale Company in Interwar Britain," The Economic History Review, 27:2 (May 1974), 253.

## Introduction

imperial news agency found it difficult to sell its news at a profit throughout the empire. In Australia and South Africa in particular, Reuters encountered considerable resistance from the press. For Reuters, like so many British companies, India served as the principal source of overseas profit. To compensate for its lackluster performance selling news, Reuters diversified its business before World War I. During the war, these businesses failed. Only after the war did the company establish a profitable business supplying commercial information and news. It also pursued a new strategy abroad and at home. To overcome the unwillingness of newspaper publishers to support the agency's profitability, and to encourage transparency, Reuters sought to bring the newspapers of the empire into partnership with it. It did this first in South Africa, then in Britain, Australia, and India. After the formation of the Reuters Trust in 1941, the principal newspaper associations of Australia, India, and New Zealand became partners with the newspapers of the British Isles.

The American regulatory environment and the AP's method of domestic operation also shaped the way in which it gathered news abroad. The AP's unique competitive advantage lay in its method of organization: it secured the exclusive right to the news from its various newspaper-members before publication. Access to the news of newspapers around the United States at this early stage in the newspaper production process enabled the AP to forestall rival news organizations and made it a desirable association for American publishers to join. The association's foreign allies, such as Reuters, also had early access to the news. When, in INS v. AP (1918), the AP sought a property right in news, it did so not to prevent freeriding on its news reports, but to protect the critically important exclusive right it had to the news reports of its members before publication. This is why the decision in INS protected the AP's method of organization. Neither the AP's domestic rivals nor its foreign allies employed this method of operation. Instead, they frequently copied the news from local newspapers after publication and then sent it back to headguarters. Outside the Americas, where the AP had no members, it also gathered news by this method. After the Supreme Court delivered its decision in INS, however, AP executives felt obligated to discontinue this practice abroad. This meant that the AP was hamstrung. Meanwhile, the UP, the association's principal rival, took foreign news from published papers with impunity and began scooping the AP. As is made clear in Chapter 7, to rectify this difficulty the AP, like Reuters, sought to export its model of organization abroad, but this required altering the cartel arrangements it had maintained with its allies overseas since the nineteenth century. The banner of free trade was only a disguise for furthering this agenda. Debates over the international supply of news between the 1840s and 1940s were not about the benefits of free trade as opposed to cooperation, although outwardly this was how they were occasionally portrayed. Instead, they were about the form that cooperation ought to take. Cooperation was attacked under the guise of free trade, but it resumed under the pretense of press freedom.

8

The International Distribution of News

At root, this is a story about property told through the lens of business history. Property is said to reside not in the consumption of benefits but in control over access to them. Seen this way, excludability is the essence of property. Property rights reflect the relationships created by private claims to regulate access to the benefits of particular resources.<sup>10</sup> This book explains how businesses sought to exert proprietary control over news through private contracting. The absence of a formal property right encouraged businesses to devise methods of organization and other strategies to establish common property in news to the exclusion of others.<sup>11</sup> The state regulated these activities. The concept of a freely competitive marketplace of ideas, so cherished by the Victorians, was always a fiction. A belief that press freedom necessitated freedom from state intervention was theoretically incoherent and practically false.

<sup>10</sup> K. Gray, "Property in Thin Air," *Cambridge Law Journal*, 50:2 (1991), 294.

<sup>11</sup> See generally E. Ostrom, *Governing the Commons: The Evolution of Institutions for Collective Action* (Cambridge: Cambridge University Press, 1990).

2

# Conceiving Cooperation among American Newspapers, 1848–1892

John Sayward's scoop was big news, especially in Bangor, Maine. It ran in the Saturday issue of the Whig and Courier, published February 24, 1849 and Sayward, the paper's editor, deployed a large bold font to announce it. The "First Dispatch of Foreign News from the East!", Sayward explained, was obtained only with considerable effort. The news from Europe, which crossed the Atlantic aboard the royal mail steamship Europa, was the first foreign news ever to pass by telegraph from St. John, Nova Scotia westward. After the Europa arrived at Halifax on the evening of February 21, a relay of horses carried the news 144 miles to Digby through a recent and heavy fall of snow, the heaviest, it was said, that had been experienced in fifty years. The news did not arrive in Digby until four o'clock the following morning. There it was delayed nearly twelve hours, a consequence of the utter impossibility of breaking a passage for a steamer through the ice with which Digby Bay was jammed. Only with the full force of the engine and paddle wheels, and with the assistance of twenty men, was a channel finally made by which the steamer could pass through the gut between Bay View and Victoria Beach, out into the Bay of Fundy, and onward to St. John, whence the news was finally telegraphed to Bangor, and thence to points south.<sup>1</sup>

Sayward, however proud of his scoop he may have been, was not responsible for the journalistic effort entailed in this race for the news through the Great White North. He was but a beneficiary of an intense rivalry among the newspapers of New York City for exclusive news. During the "newspaper revolution" of the 1830s and 1840s, the penny press of Moses Beach, James Gordon Bennett, Benjamin Day, and Horace Greeley supplanted the existing

<sup>&</sup>lt;sup>1</sup> Bangor (ME) *Whig and Courier*, February 24, 1849. See also J.W. Regan, "The Inception of the Associated Press: The Pony Express that in 1849 Forwarded European News from Halifax to Digby, to be Conveyed by Vessel to St. John, and thence telegraphed to New York," *Transactions of the Nova Scotia Historical Society*, 19 (January 5, 1912), 5.

10

The International Distribution of News

mercantile press of New York. The newspaper market grew dramatically and newspaper circulation increased rapidly. Publishers of daily newspapers found that nonpartisan news, more than editorials or advertising, increased circulation, which motivated greater expenditure in newsgathering.<sup>2</sup> The average number of stories about an event published in dailies within a week of its occurrence increased from 45 to 76 percent between 1820 and 1860. Stories taking more than a month to appear dropped from 28 to 8 percent.<sup>3</sup> Editors of newspapers increasingly obtained the news before local elites, who previously benefitted from first access to the news owing to their social status. The reading rooms and coffee houses of Boston, New York, and other ports, which had served as the nexus of newsgathering in the country, were obsolete.<sup>4</sup> According to Horace Greeley, publisher of the New York *Tribune*, by 1851 the editorial was comparatively unimportant; "the telegraphic dispatch," said Greeley, "is the great thing."<sup>5</sup>

As much as the telegraphic dispatch mattered, exclusive possession of the news mattered more. Editorial minions raced for news on land and at sea. By 1831, five schooners belonging to the New York papers darted about New York harbor to obtain foreign news from incoming ships.<sup>6</sup> Scoops obtained through such enterprise were of considerable value. James Watson Webb, publisher of the New York *Courier and Enquirer*, spent more than \$5,000 annually (nearly \$130,000 in today's prices) to maintain his schooner, but claimed it paid for itself in added subscriptions.<sup>7</sup> The New York publishers' littoral engagement became a seaborne struggle, until James Gordon Bennett of the *Herald*, who spared no expense in newsgathering, and pulled even fewer punches when

- <sup>2</sup> J.L. Crouthamel, "The Newspaper Revolution in New York, 1830–1860," *New York History*, 45 (1964), 91–113; Crouthamel, *Bennett's New York Herald and the Rise of the Popular Press* (Syracuse, NY: Syracuse University Press, 1989), pp. 19–42; M. Schudson, *Discovering the News:* A Social History of American Newspapers (New York: Basic Books, 1978), pp. 17–22.
- <sup>3</sup> M. Emery, E. Emery, and N.L. Roberts, *The Press and America: An Interpretive History of the Mass Media*, 9th ed. (Boston: Allyn & Bacon, 2000), p. 110.
- <sup>4</sup> Compare with R.D. Brown, *Knowledge is Power: The Diffusion of Information in Early America*, 1700–1865 (Oxford: Oxford University Press, 1989).
- <sup>5</sup> F. Hudson, *Journalism in the United States, from 1690 to 1872* (New York: Harper & Brothers, 1873 reprinted London: Routledge, 2000), p. 548. This book, which has become a classic in American journalism history, favored the New York press and the New York *Herald* in particular. See marginalia in Annual Report of the New York Associated Press, May 31, 1873, William Henry Smith papers (hereafter W.H. Smith), MIC 22 1/7, Ohio Historical Society (hereafter OHS).
- <sup>6</sup> Editors had already used schooners to intercept news for at least several years. W.H. Hallock, *Life of Gerard Hallock: Editor of the New York* Journal of Commerce (New York: Oakley, Mason & Co., 1869), p. 12; Hudson, *Journalism in the United States*, p. 365.
- <sup>7</sup> R.A. Schwarzlose, "Harbor News Association: The Formal Origin of the AP," *Journalism Quarterly*, 45 (1968), 253–60. All prices listed parenthetically are in dollar prices from 2010 and have been calculated using the consumer price index of S.H. Williamson, "Six Ways to Compute the Relative Value of a U.S. Dollar Amount, 1790 to Present," MeasuringWorth, 2011. See www. measuringworth.com/uscompare.