**Should press be liable or not?**

Recent years have increased legal accountability of producers and advertisers for providing SAFE products and RELIABLE information to customers. A government influences a wide range of market operations from licensing requirements to contract actions. That control announces and enforces determined norms of quality.

Each of these regulations is designed to protect consumers from being hurt or CHEATED by defects in the goods and services they buy. This matter, when producers look to the law rather than to the market to establish and maintain new standards of quality (of their goods), shows, that modern market has an ability of selfregulation. But it also shows another unbelievable feature: consumers are both incapable of rationally assessing risks and unaware of their own ignorance.

Companies and corporations all over the world are systematically inclined to SHIRK on quality and that without the threat of legal liability may subject their customers or other people to serious risk of harm from their products if it could save money by doing so.

According to this point of view, for most goods and services, consumers are POWERLESS to get producers to satisfy their demand for safe, high-quality products! The unregulated market lets unfair producers to pass on others the costs of their mistakes.

Legal liability is ready to correct these "market failures" by creating a special mechanism (feedback), regulating relations between producers and customers. Unfair producers should be punished and their exposure is increasing.

One market,however, has completely ESCAPED the imposition of legal liability. The market for political information remains genuinely 2 free of legally imposed quality obligations. The electronic mass media are subject to more extensive government regulation than paid media, but in their role as suppliers of political information, nothing is required to meet any externally established quality standards.

In fact, those, who gather and report the news, have no legal obligations to be competent, thorough or disinterested. And those, who publish or broadcast it, have no legal obligation to warrant its truthfulness, to guarantee its relevance, to assure its completeness.

The thing is: Should the political information they provide fail, for example, to be truthful, relevant, or complete, the costs of this failure will not be paid by press. Instead they will be borne by the citizens. Should the information intrude the privacy of an individual or destroy without justification an individual's reputation again, the cost will not be borne by producer of it.

This side of "activity" of producers of harmful or defective information (goods, services, etc) practically is not acknowledged. Producers of most goods and services are considered worlds APART from the press in kind, not just in degree. Holding producers in ordinary markets to ever higher standards of liability is seen as PROCOMSUMER. Proposing holding the press to any standard of liability for political information is seen as ANTIDEMOCRATIC. The press is constitutionally obligated to check on the government.

Most of policymakers justify legal liability for harms, caused by goods and services and quite limited liability for harms, caused by information. Liability for defective consumer products is PREDICATED on a market failure. As for "unfair" producers, power of possible profits PREVENT consumers from translating their true preferences for safety and quality into effective demand. So, customer preferences remain outside the safety and quality decision-making process of producers. Today, it'll be a new mechanism to force producers to follow customers true preferences.

Lack of liability for defective or harmful political information can be predicated only on a different kind of supposed market failure not a failure of the market to SUPPLY the LEVEL of safety that customers want but its failure to supply the amount of political information that society should have. Some experts say, that free market has tendency to produce "too little" correct information, especially political information.

The thing is: political information is a public good and it has many characteristics of a public good. That is a product that many people value and use but only few will pay for. Factual(real) information cannot easily be restricted to direct purchasers. Many people benefit who do not pay for it because the market cannot find the way to charge them. As you can see, providers of political information try to get as much profit as possible spreading it, so they HAVE TO supply "too little" info. Otherwise the market FAILS!

Here is another reason. Some analysts consider that the market also fails because of low demand. Even if suppliers could "earn all their money", they wouldn't provide the socially optimal amount of info! Private demand for political info will never be the same as social demand. And it will never reflect its full social value.

If it were true, that political information was regularly underproduced by the market, there would be cause for serious concern that might well justify generous sibsidies in the form of freedom from liability for the harms they cuase for information providers. But a proper look at modern market shows that producers of political information have developed a wide range of strategies for increasing the benefits of their efforts to solve the public good problem.

The most obvious example of a spontaneously generated market solution to the public good problem is ADVERTISING. By providing revenue in proportion to the relative size of the audience (for radio & TV) or the readership (for magazines & newspapers), advertisers play a SIGNIFICANT role in the internalizing process. In effect, the sale of advertising at a price that varies according to the number of recipients permits information producers to appropriate the benefits of providing a product that many people value but few would pay for directly. Advertising has an effect of transforming information from a public into a private good. It makes possible for information providers to make profits by satisfying the tastes of large audiences for whose desire to consume information they are unable to charge directly.

Thus, customer of goods or services and citizen of any country are in the same conditions. Like customers citizens may have (and they have) different preferences for political information, but citizens do not value information about politics only because it contributes to their ability to vote intelligently and customers do. Like customers citizens' tastes differ in many ways and that generate wide variations in the intensity of their demand for political information.

Since it does not appear to be true, that political information market is blocked by an ongoing problem of undersupply, the conventional justification for granting the press broad freedom from legal liability for the harms it causes must give away! It does not necessarily mean that the economic case for legal sanctions has been made. Although it seems the market could be relied upon to supply "enough" information. So that subsidies in the form of protection from legal liability are not needed. Personal responsibility and legal accountability would be 100% if the information market could internalize to producers not only the benefits but also the costs of their activities & failures. As for victims, they'll get one more chance to avoid the harms happened from the production of defective information.

Legal accountability for harm is desirable in a market that systematically fails to punish "unfair" producers for defective products. This kind of failure occurs in two quite different cases:

) The first occasion has to do with the market's responsiveness to the demands of consumers. The failure occurs when customers are unable to detect defects before purchase or to protect themselves by taking appropriate precautions after purchase, when they are unable to translate their willingness to pay for nondefective products into a demand that some producers will satisfy and profit from. It also occurs when suppliers are unable to gain any competitive ad vantage either by exposing defects in their rivals' products or by touting the relative merits of their own. 2) The second kind of market failure is an inability to internalize harm to bystanders third parties who have no dealings with the producers but who just happen to be in the wrong place at the wrong time when a product malfunctions. Even when these kinds of failures occur, legal accountability is problematic if it in turn entails inevitable error in application or requires the taking of such costly precautions that they cover up all benefits.

Conceiving of quality as a function of accuracy, relevance and completeness, consumers of political information are not in a strong position when it comes to detecting quality defects in the political information they receive. Revelance may well be within their ken, but since they are quite unable to verify for themselves either the accuracy or the completeness of any particular account of political events. In addition, since political information usually comes bundled with other entertainment and news features that sustain their loyality to particular suppliers, consumers are not inclined to punish information producers by avoiding future patronage even when they commit an occasional gross error.

Nevertheless, competition among journalists and publishers of political information tends to create an environment that is in general more conductive to accuracy than to lies or half-truths. Journalistic careers can be made by exposing others' errors, and they can be ruined when a journalist is revealed to be careless about truth. These realities create incentives for journalists not to make mistakes.

Moreover, the investment that mainstream publishers and broadcas ters make in their reputations for thoroughness and accuracy attests to the market's perceived ability to detect and reward suppliers of consistently highquality information. Information suppliers that cater to more specialized tastes play a significant role. These alternative ways of getting info are often probe apparent realities more deeply, interprete events with greater sophistication and analyse data more thoroughly than the mainstream media are inclined to do.

In doing so, of course, their principal motivation is to satisfy their own customers. But while pursuing this goal, they constrain (even if they do not completely eliminate) the mainstream media's ability to portray falsehood as truth or to OMIT key facts from otherwise apparently compelete pictures.

The array of incentives with respect to at least the general quality of political information, with which the market confronts information providers creates systematic tendencies for them to provide political info that is accurate and complete. Or perhaps it would be slightly more precise to say that the market unfortunately does not appear systematically to reward producers of falsehood or half-truth information yet, according to their activities. So that consumers of political information don't need the club of legal liability to force information providers to provide them with quality information.

The analysts ought not to be read as an asserting that the reason the market for political information works well is that it provides just the right kind and quality of information to each individual citizen and that each individual citizen has identical preferences for info about government. Indeed, the premise of this argument is that the market works because citizens (or customers) do not have identical preferences and producers exploit that fact by finding to cater to and profit from the varying demands of a diverse citizenry. An implicit assumption provides the normative underpinnings for the analysis. Obviously, the full implications of this assumption cannot be worked out here.

The claim that the market in general "works" shouldn't be understood as a claim that the information it generates is uniformly edifying and never distorted. As you know many information producers pander to the public's appetite for scandal and still others see to it. These facts do not warrant the conclusion that the market doesn't work.

More significantly, it seems inconceivable that any system of government regulation including a system in which information producers are liable for "defective" information could in fact systematically generate a flow of political information that consistently provided more citizens with the quality and quantity that met their own needs as they themselves defined than does the competition in the marketplace of ideas that we presently enjoy.

This analysis suggests that the workings of the market create situation in which consumers of political information do not need the threat of producer liability to guarantee that they are systematically getting a TRUSTWORTHY product.

But consumers are not the only potential victims of defective information and market incentives are not always adequate to protect NONCONSUMER victims from the harm of defective information. Innocent bystanders, such as pedestrians hit by defective motorcycles, are sometimes hurt by products over whose producers they have no control either as consumers or competitors. Persons, who find themselves the unwitting subjects of defective information, stand in an analogous position.

For example, a story about sexual assault might be very interesting for public and might serve well the public interest in being informed about the police efforts or criminal justice system.

But the victim's name is NOT NECESSARY to its purpose and its publication both invades her privacy and broke her safety. In cases like this, it's not so easy to have confidence in market incentives. The harm from the defect is highly concentrated on the single defamed or exposed individual.

Now, it's time to ask the major question: Should the press be permitted to externalize particularized harms? Why should not the press, like other business entities, be liable when defects in its products cause particularized harm to individual third parties who have few means of self-protection at their disposal?

According to the Constitution, defamed public officials or rape victims should have access to massmedia for rebuttal. As for everyday practice, the press is not always eager to give space to claims that it has erred. There are two objections, why the press shouldn't be responsible for the harm of such kind: accountability to a more demanding legal standard would compromise its financial viability and undermine its independence.

These objections are too SELF-SERVING to be taken completely seriously: The financial viability argument is no more persuasive when the product of the press harms innocent third parties than it is when other manufacturers' malfunctioning products harm bystanders. As press doesn't underproduce information, thus "freedom" from liability can't be defended as necessary subsidy. The "financial viability" objection points toward the imposition of liability for harm.

The need to maintain the press's independence from government does provide support for the press's objection that liability threatens them unduly. But it's hard to sustain the claim that government's censorious hand would lurk behind a rule that required the press to compensete individuals. It is not obvious that enforcing a rule that simply prohibited publishing the names of rape victims would signal the beginning of the end of our cherished press freedom.

Asking whether the press should be more legally accountable than it is now for publishing defamatory falsehoods about individuals or revealing rape victims' names touches a number of difficult, highly discussed questions. In spite of the fact, by recasting a portion of the debate over legal accountability and by focusing attention on the disparity of legal treatment between producers in the information market and those in other markets for goods and services, it does seem possible to gain some fresh and possibly useful insight.

The reality seems to be that, with respect to the quality and quantity of political information, free competition in the marketplace of ideas performs admirably, with inventive ways of overcoming market failure and with flexibility in adapting to a countless consumers preferences.

In light of this reality it ought not to be amiss to suggest that when neither the threat of increasing a supposed undersupply nor the looming shadow of government censorship is implicated, the massmedia should be liable for egregious errors.