

Media Regulation: Why, How and to What End?

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ABSTRACT: In a democracy the significance of the media as a primary information source cannot be over accentuated, but it cannot be denied on the fact that democracy requires citizens to be informed for an effective administration and governance within the ambit of egalitarianism. Undoubtedly, commercial and technology progress are continuously changing our perception, still both print and digital media play a vital role in opinion building. The administration and regulatory mechanisms are sort of adopted at various levels to improve the role of media, however the focal thrust of this paper is based on how the regulatory mechanisms are not adequate therefore again and again being refined and reformed. In essence, it is argued in this article that the rationales for regulation (why regulate?) and the objectives of regulation (with what end in mind?) have been insufficiently addressed. Hence, the sophisticated regulatory mechanisms are failed to sustain the clear goals of the mass media across the globe. With this in mind, it is both inevitable and proper that the focus of this study of media regulation is confined to a pre-eminently comparative analysis of media regulations across the world.

KEYWORDS: Cross-media holdings, media regulation, privacy, public interest

Introduction

Media plays an important role in our lives as we experience the outer world more by print and digital media than directly. The increasing demand of broadcast media suppressed the 'quality' and 'popular' print media to an extent and stood out as a prime medium across the globe. The recent trend of LIVE news and reality TV have really changed the scenario of media communication for the viewers. With this in mind, it is both inevitable and proper that the focus of a study of media regulation should be pre-eminently on television, though, as will become apparent, even television exists in an increasingly multimedia and cross media environment.

Television enjoyed a meteoric rise to its present position of cultural supremacy. In Britain sixty years ago, radio sustained as the dominant transmission medium and motion pictures were insignificant. Then TV, was managed entirely by the BBC, being viewed largely as an interesting and slightly amusing experiment. This position soon changed dramatically, given impetus especially in 1953 when the live coverage was started by the British Broadcasting Corporation, the number of audience increased tremendously. This LIVE coverage technology started by the BBC attracted the genuine mass audience for the first time for television and sales of television receivers soared. The power of the BBC both in radio and television had, however, reached its zenith, and the arrival of commercial television in 1955 marked the end of the Corporation's broadcasting monopoly.

Commercial challenges in Media Market

When the ITV appeared as a clear threat to the BBC's broadcasting domination, in an extensive period only seemed as an arrangement of power sharing bodies, with public-service values coexisting reasonably happily with the degree of commercialism introduced. As recently as 1981, before the advent of Channel 4, television in Britain was still in effect a comfortable duopoly, with power shared between the BBC and the ITV companies. In the years since then, however, the innovations in technology such as cable TV, digital terrestrial and especially Direct-To-Home service have changed the Television scenario of not only the UK but the entire world. The last twenty-five years have the extent that public service values are now at risk of marginalization. In the mid-1950s; arrival of ITV in UK may have seemed to challenge the public service ethos; perhaps the regulation of competition mechanism was to ensure the public service tradition at any cost. Fifty years later, the cleavage between public service broadcasting (PSB) and commercial television is much sharper. The commercial broadcasting enjoyed full consideration by having the monopoly in the market. We have considered in the later part the challenges to the BBC's traditional position which underline the 2004-5 review of the BBC's Charter and funding arrangements, and which, we will argue, represent a particular threat via the adoption of a perspective informed more by considerations of 'market failure'

than by any vision of public service values. The statutory reforms of the communications Act 2003, also have been considered in some detail, may be thought to tell only part of the story.

While the last twenty years have seen a growing presence for new media developing via information technology (Internet services, RSS feeds, pod-casting and the like), these have not yet challenged the ongoing dominance of television, and indeed do not necessarily share the characteristics associated with true 'mass media'. The dominant influence and reach of television is certainly not threatened as yet by such developments. Even this does not, however, indicate the full extent of change to date for, just as news gathering and distribution, and cinema, especially in the English language, are now global enterprises, so cross-media empires now span not only sectorial but also national boundaries. The ability offered by satellite technology to transmit readily across long distances, whether intentionally or in the form of overspill of transmission, often has the appearance of rendering national boundaries irrelevant. In the European context, this inevitably suggests a ground for the European Union to venture as an important global regulator. Yet, as we all consider later, especially in this article, the market paradigm in which the union operates combined with the lack of a single vision as to the extent of its constitutional powers render its regulatory role in this field more limited and uncertain than might be expected.

The Revolution and the Law

The assortment of justifications in action indicate immediately a highlighted aspect for the media expert, economist, sociologists and many others, but the lawyer, arguably, must justify their interest, especially given in the hitherto dominant tradition among British legal academics of confining themselves to the cataloguing or chronicling of the legal rules in play in the absence of any contextual or conceptual analysis. Nevertheless, there is a wider scope for law available. While the law may be changed by the government of the day provided only, in Britain, that it can command a majority in Parliament, governments are concerned not only with legality, but also legitimacy. They will usually remain within bounds established by the law, but will seek also to maintain a public perception of legitimacy in their actions. They will wish to be seen as remaining within legitimate as well as legal bounds, and the former is often nebulous notions such as 'the rule of law' in determining legitimacy.

Thus the well-rounded public lawyer must have an awareness of both the detail of the law and the framework of institutional morality within which it operates. A broader concept of law is required. Similarly, the influence exercised by government ministers, or the informal accommodations they reach with the 'media establishment', take on the characteristics of law in terms of the law jobs without having any black-letter law basis. The allocation of power and its exercise, often through essentially corporatist arrangements with no apparent legal foundation, are just as much the concern of public lawyer as the courtroom process of judicial review. It is just as important that those who exercise the public power of regulation should be accountable as those who exercise the power of the media.

Same as it ever was?

Measures designed to bring about a particular model of competition were applied, though based on somewhat arbitrary fixed limits and differing approaches and in the absence of clear definition of the media market. The regulatory machine was periodically reformed, in response to the changing market and technological environment, but without the development or statement of clear objectives appropriate to new circumstances. The absence of anything approaching a serious media policy, or fundamental review of regulatory practices, was repeatedly illustrated. Though the changes to the statutory position enshrined by the Broadcasting Act, 1996 could be condemned as basically reactive, a response to the changing media market, they faced the still more serious charge of failing to iron out underlying defects in the system. In particular, the lack of clarity in regulatory objectives remained and seemed likely to be resolved pragmatically by the outcome of a possible 'regulatory turf war' between the ITC and Oftel, rather than as a result of informed, public debate. The failure of the Broadcasting Act, 1996 to integrate control of DTT multiplexes and infrastructure into calculations of broader market share seemed worrying, and short-sighted at the time, and no less so now. No aspect

of the media market can be treated in isolation in such a fast-changing environment; forty years ago it was apparent to Blumler and Madge (1967) that ‘It is essential that [the] modern communication process should be examined as a whole and not by studying certain parts in isolation’. Just as the exclusion from the relevant provisions of the Broadcasting Act, 1990 for non-domestic satellite broadcasters allowed Rupert Murdoch’s *BskyB* (Sweney and Graham 2018) to extend its overall empire, to define the shape of the British DTH satellite broadcasting market and to influence the shape of broadcasting as a whole, so failures in the regulation of DTT may have consequences not limited to that particular media sector. The implications of the spread of the *Carlton* and *Granada* (Born 2002) empires into DTT, though not necessarily problematic in itself at the time, may now seem to have been the forerunner of the newly consolidated position in the form of *ITV plc* (merger between *Granada* and *Carlton* communication) following their merger, even if the early involvement in DTT did not prove wholly successful.

In summary, the regulatory patterns established in relation to conventional television and DTT remained highly reactive in nature up to and including the Broadcasting Act 1996, with government policy and laws driven not in the route of pure objectives but rather blown by the gusty winds of change. However, this did not necessarily constitute a case for a move to lowest-common-denominator or minimalist regulation; the position was not such as to concede defeat from a citizenship perspective. Rather, it led authors such as Collins and Murrone (1996) and one of the present authors (Feintuck 2004) in the direction of a single communications regulator, best able to receive an overall idea of the media market, but, crucially, designed in such a type as to guarantee rationality and transparency in the execution of its discretion. It is interesting to note that in the late 1990s even Oftel, the new arrival on the media regulation scene, showed signs of enthusiasm regarding the nationalizing of regulation towards a single regulator model, though on a basis which excluded regulation of content, an exclusion which, given the underlying objective of regulation, would seem to risk undermining the utility of any such move.

Regulation: Why, How and to what End?

Though focused on broadcasting, the issues raised in J. G. Blumler’s agenda (Blumler 1992a) in the increasingly cross-media environment may be applied across the whole range of media. Some of the social values at stake and the threats to them have already been indicated, and the proceeding section has pointed towards some issues relevant to Blumler’s second set of concerns. The rest of this article is focused closely on Blumler’s first and third agenda items, and the remainder of this section is devoted to introducing some of the issues to be addressed before they are examined in more concrete form in later sections.

Why regulate?

Some of the justifications for regulating have already become apparent in the previous discussion; in particular, the threats of monopoly and of increasing commercialism should be clear. However, at the very heart of our approach is that it seems unwise for prescriptions such as for a remodeled BBC to be considered in the absence of establishing, or re-establishing, a coherent theoretical basis. Having identified a number of different historical traditions in media regulation, it is now necessary to attempt to summarize the particular justifications for regulation currently in play, all of which, in one form or another, have already been flagged up earlier in this or the previous context. In essence, the irregularities can be regulated under the following heads:

- i. Effective communication
- ii. Diversity, both political and cultural
- iii. Economic justifications, and
- iv. Public service

How to regulate?

If, and only if, meaningful rationales for regulatory intervention can be determined is it possible to move on to a policy-making process which identifies objectives, and establishes techniques for

achieving them. It may be advisable for a degree of regulatory emphasis to be shifted to focus on market structure, and perhaps behavioral aspects of control of delivery mechanisms, given the significance of technological ‘gateways’ in the new, digital markets. However, when focusing on this new area, the policy must remain vigilant of the extensive market and public service contexts and be conversant by clearly recognizable objectives, coming out of clearly defined rationales for intervention.

The Outcomes of Regulation

It seems reasonable to assess the success or failure of regulatory policies by comparing the outcomes achieved with whatever objectives for regulation may be derived from the underlying rationales for regulation. In terms of the four rationales for media regulation set out earlier (effective communication, diversity, economy and public service), some preliminary conclusions can now be drawn, focused for the moment on the second, diversity, and here ‘diversity’ will be used to refer both to pluralism of ownership and its contingent relationship to diversity in the political orientation of media output. From this perspective, it might be concluded that regulation in Britain has to date failed, at least in relation to the press. In addressing this issue, however, regulators and policy-makers must remain aware that if the ultimate objective is a freely available citizenship-enhancing diversity in media output, it is democratically legitimate (and probably necessary), if deeply politically unfashionable to employ the kind of imperative, content-oriented controls to which Hoffmann-Riem (1996) refers.

There is no doubt that structural and behavioral modes of regulation fit more easily with the dominant market paradigm, yet in relation to citizenship-related objectives, they should only ever be reviewed as a surrogate for devices aimed directly at the true goal-diversity. The question is whether regulations still continue to set the agenda or whether reform of legislative framework and institutional structures of regulation has offered support for a reassertion of public service values in broadcasting, or more broadly the public interest related to citizenship associated with the media as a whole. Unsurprisingly, based on what we have set out above, our clear answer to this later question has to be ‘no’. This conclusion, though regrettable, is not at all surprising given the wide range of different influences to which different legislations are intended to incorporate responses. Though the removal of some of the detailed thresholds and limits established by the law are probably to be welcomed in recognition of the rapid pace of market change in the media, it is not at all certain that the broad deregulatory framework with which it has been replaced offers cause for confidence in terms of protecting public interests.

Conclusion

An acknowledgement that pluralism in ownership is not an end in itself but merely instrumental in the furtherance of citizenship objectives might have provided a stronger anchor for regulation in the tidal wave of change. In addition, the application of an unambiguously citizenship-oriented approach may have also helped in the interpretation of both broadly stated assertions of public interest justifications for regulation, and the complex, technical provisions contained in the existing laws. At the most practical level, it can be argued that Ups and Downs in the context of the public service and public interest agendas for the mass communication cannot be simply evaluated by reference to listening or viewing figures. Even if viewing figures for public service television decline significantly in the face of competition from commercial broadcasting in the multichannel context, there may be still ultimately be sound democratic arguments for maintaining a strong PSB (Public Service Broadcasting) presence.

While the economics and statics of broadcasting may tend to emphasize and value the measurable, it is also necessary to measure and protect what is democratically valuable in the PSB tradition. In essence, it seemed to some that the regulatory system was doing little more than legitimize the outcome of market tendencies within the media, being left with more symbolic than substantive significance. Though tinkering at the margins, the ‘system’ continued to allow high degrees of concentration within and across different sectors of the media and demonstrated little if any

likelihood of establishing and/or moving towards clear public policy objectives. Because of the market forces, it was very difficult to establish an alternative mechanism through the regulatory system which was very reactive, therefore offering a best flimsy protection to citizenship values. As was suggested in earlier content, it may be that a conceptual leap was needed. In this it is acknowledged that the essential democratic role played by the media demands a move away from a general model of ownership towards a model impending ‘stewardship,’ in which those who control the mass communication, and especially essential facilities such as technological gateways, are placed under responsibilities, actively enforced by regulators, to serve not only their individual or commercial interests, but also those of all present and future generations of citizens.

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