

PART I

Ownership and Regulation



How to Study Ownership and Regulation

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WHY BOTHER?

Outbreaks of interest in questions of media ownership or broadcast regulation have long been confined to controversies about ‘inappropriate’ media content and the use of ‘indecent’ language. George Carlin’s broadcast profanities in the 1970s and Janet Jackson’s exposed breast at the 2004 Superbowl are far more likely triggers of public concern about the structure and behaviour of television industries than a sober commitment to viewpoint or ownership diversity. But perhaps this is changing. The explosion of public anger that greeted the Federal Communications Commission’s attempt in 2003 to liberalize broadcast ownership rules (explored in McChesney, 2004) has been followed by the unprecedented spectacle of a Presidential candidate actually going to the stump armed with speeches on media ownership.

This is precisely what Barack Obama did in his 2008 presidential campaign where his

election pamphlets promised that a President Obama would ‘encourage diversity in the ownership of broadcast media, promote the development of new media outlets for expression of diverse viewpoints, and clarify the public interest obligations of broadcasters who occupy the nation’s spectrum’ (Obama, 2008). In an interview with *Broadcasting & Cable* during the campaign, Obama argued that the consolidation of media markets was leading to ‘less diversity of opinion, less local news coverage, replication of the same stories across multiple outlets’ and promised that ‘[w]e can do better’ (quoted in Eggerton, 2008).

Obama would most likely have wanted to wait a little longer before this commitment was tested. In December 2009, the nation’s largest cable and broadband provider, Comcast, agreed to merge with the Hollywood giant NBC Universal in a \$30 billion deal. The new company would control 20 per cent of all viewing hours in the US and one of every seven television channels and would have a dominant position in existing and emerging

content markets. Political battle lines were soon drawn: *The New York Times*, on one side, argued that the merger ‘could limit choices and raise prices for viewers and advertisers’ (editorial, 7 December 2009) while the *Wall Street Journal*, on the other, insisted that any evaluation of the merger was ‘a determination best made by the marketplace, not by anticorporate activists’ (editorial, 6 December 2009). Opponents of media consolidation lined up against supporters of greater deregulation, with the implications for democracy and diversity placed at the heart of the debate.

The problem for Obama was that he was immediately implicated in the networks of influence and power that surrounded the deal. The Comcast chief executive had made significant donations to the Democrats since 2006 and had helped raise approximately \$6 million dollars for Obama’s 2008 election campaign; Comcast’s VP had contributed some \$180,000 in the same period while the chief executive of General Electric, owner of NBC, was a regular visitor to the Obama White House and a member of his Economic Recovery Advisory Board (Hart, 2009). The merger was eventually waived through in 2011 and was followed by the hiring by Comcast of Meredith Attwell Baker, one of the FCC commissioners who approved the deal, as a top lobbyist. This is just one small anecdote that illustrates the extent to which the ownership and regulation of broadcast outlets are deeply political phenomena that are connected to wider concerns about how we sustain and protect democratic institutions that are able to act in something called ‘the public interest’. Put simply, there is a widely-held belief that democracy is throttled if the number of media outlets and distinctive voices is restricted – if, in other words, media power is concentrated in the hands of the few and not the many and if it is able to evade public oversight and regulatory control.

So let us suppose for a moment, as some people do, that Rupert Murdoch, the chairman of News Corporation, the transnational conglomerate that includes amongst its portfolio,

21st Century Fox, the *Wall Street Journal*, BSkyB, *The Times*, *The Sun*, Harper Collins publishing and Star Television, is a useful metaphor for the dangers of media concentration. Mr Murdoch is known not simply for his business acumen but for his advocacy of a series of neo-liberal economic and conservative social policies including his unwavering support for the US and UK ‘war on terror’ and his staunch opposition to the European Union (Cassidy, 2006). In response to Murdoch’s ability to dominate the means through which public conversations take place, the Virgin boss Richard Branson once described him as a ‘threat to democracy’ (quoted in Puttnam, 2006). Such a description rests on the conviction that media ownership *matters* and that, where it is concentrated, it represents an unacceptable challenge to pluralist principles of a diverse and competitive media system and, by extension, to the very legitimacy of a democratic system.

In this argument, media concentration is anti-democratic not simply because it undermines the ability of citizens to acquire and exchange the information and ideas necessary to take informed decisions about public life, but because it distorts the logic of the media industries themselves, transforming them from vehicles of symbolic interaction to engines of capital accumulation. Consider Murdoch’s response in 2009 to calls for a bail-out of news organizations as they struggle to cope with the combined impact of a huge drop in advertising revenue and the structural challenge posed by the internet. Welcoming the collapse of companies that fail to adapt to the new digital age, Murdoch argued that ‘they should fail, just as a restaurant that offers meals no one wants to eat or a car-maker who makes cars no one wants to buy should fail’ (Murdoch, 2009). This is the same vision of media – as commodities that measure their success simply using market criteria – as that espoused by FCC chairman Mark Fowler in the early 1980s when he described television as ‘just another appliance. It’s a toaster with pictures’ (quoted in Horwitz, 1989: 245).

But, as stated above, there is another approach to the issue of media ownership that ties questions of structure to those of performance and accountability in relation to democracy (as distinct from profitability or efficiency). Some of the founding scholars of media, communications and culture identified issues of ownership as vital to the ability of media to pursue an independent, imaginative and critical role in public life. Back in 1948, Lazarsfeld and Merton noted the importance of locating mass media within the specific social and economic structures in which they operated and argued that ‘the social effects of the media will vary as the system of ownership and control varies’ (Lazarsfeld and Merton, 2004 [1948]: 236). More significantly, they insisted that ‘[s]ince the mass media are supported by great business concerns geared into the current social and economic system, the media contribute to the maintenance of this system’ (2004 [1948]: 236). In his important 1962 book *Communications*, Raymond Williams, the great British theorist of culture and media, highlighted the emergence of new forms of media ownership that were contributing to a growing commodification of audiences and content. He argued that the ‘methods and attitudes of capitalist business have established themselves near the centre of communications’ (Williams, 1968 [1962]: 31), even in a media economy that contained a significant not-for-profit, public service core. ‘From this it becomes one of the purposes of communication to sell a particular paper or programme. All the basic purposes of communications – the sharing of human experience – can become subordinated this drive to sell (1968 [1962]: 32).

This chapter pursues Williams’s interest in the relationship between questions of ownership and the media’s ability to facilitate democratic conversations by considering not just why but *how* we should study media ownership. It supplements this by reflecting on how we should make sense of the key mechanisms for shaping and monitoring this relationship: through the regulatory processes that continue to maintain oversight of the contemporary

television environment. It considers traditional perspectives on ownership and regulation by providing a typology of different methods of analysis and goes on to argue for an approach to ownership and regulation that interrogates them as systems of thought and action that privilege particular ways of thinking about and ordering the world. The chapter attempts, in other words, to make the analysis of ownership and regulation not simply necessary but actually provocative and empowering.

STUDYING OWNERSHIP AND REGULATION AS DATA

The first approach to the study of media ownership and regulation is to treat them as sources of quantitative data that, when assessed empirically and presented methodically, produce the evidential basis for further types of action (i.e. ownership rules or regulatory interventions). Data in relation to broadcast ownership may include a breakdown of different types of ownership structure, figures concerning revenue and profit, the share of the market in terms of turnover or audience, levels of concentration, details of income streams and market predictions. Data on regulation often includes listing the various mechanisms through which regulation is able to take place (for example, quotas, content rules, licensing, adherence to codes and protocols, antitrust procedures and, in the case of negative regulation, an absence of intervention) and describing their specific operations. Many studies have provided this information in an attempt to map out key features of specific broadcast environments, for example Compaine and Gomery (2000 [1979]) and Noam (2009) with reference to US media ownership, Kelly, Mazzoleni and McQuail (2004), Open Society Institute (2005) and Sanchez-Taberno et al. (1993) in relation to European ownership while Creech (2007) and Napoli (2001) have produced encyclopaedic volumes which detail all the various interventions into broadcast speech and ownership.

In the midst of the often polarized debates on media ownership described earlier, quantitative data may be seen to provide a reassuring source of certainty and retains an ability to be mathematically precise in the midst of what some argue are instinctual claims and unsupported assertions. Noam, for example, insists that 'what the world needs on the subject of media concentration is more facts, not more opinions' (2009: 34) while Compaine talks of his own 'data-mongering, stick-to-the-facts approach' (Compaine and Gomery, 2000: 21). Concentration can be pinpointed not through a vague sense that one company seems to be dominant but through the systematic use of economic analysis, most often using the Herfindahl-Hirschmann Index (HHI) which assesses market competition in a particular sector and quantifies the results. An HHI score of 1,800 or above describes a sector with high levels of concentration while a score of 1,000 or below suggests a relatively unconcentrated sector. The FCC, in its desire to relax ownership rules in 2003, employed this approach when establishing a 'Diversity Index' that measured the degree of concentration in a typical market, 'Anytown USA', which was found, most conveniently, to have a score of exactly 738 – well below warning levels.

Noam, in his 500-page survey of the ownership of contemporary US communications industries, presents data in order to negotiate between what he sees as two opposing, and flawed, hypotheses: first, the 'destined to diversity' scenario in which digital technologies are ushering in a communications cornucopia, and second, the 'doomed to concentration' scenario (2009: 34) in which the media environment will inevitably be reduced to a small handful of all-powerful fiefdoms. Instead, he argues that what we find is a media structure governed by three trends – growth in economies of scale, the lowering of entry barriers and digital convergence – that will see it split into large 'integrator' firms who dominate conception and distribution and a whole slew of specialist companies which cluster around them (2009: 39).

Noam concludes, after presenting a truly enormous amount of data, that while broadcast concentration – and more specifically multichannel concentration – is increasing, it is still well below levels 'that would normally raise antitrust action if encountered in other industries' (2009: 423). Compaine and Gomery, whose book is of a similar size and scope, are even more optimistic. Their analysis of the data leads them to conclude that the emerging media marketplace 'may be noted more for information overload and fragmentation than for concentration and scarcity' (2000: 578).

It is not just pro-market scholars who turn to data to make their arguments. Figures like Bagdikian (1990[1983]), Herman and Chomsky (1988) and Herman and McChesney (1997) all provide statistical evidence to support claims of increased media concentration and commercialism. Indeed, Robert McChesney, one of the founders of the Free Press media reform group, has repeatedly called for economists and legal scholars to furnish the reform movement with evidence that can be presented to policymakers to substantiate the allegations of a link, for example, between increased concentration and reduced diversity. In his book, *Communication Revolution*, he writes that 'the movement grasped how important it was to have first-rate credible media research' and noted that there was a pressing need 'for traditional quantitative communication scholars, for economists, and for legal scholars. And these scholars needed to work with us so that they didn't get swallowed up by baseless presuppositions' (2007: 172). Economists like Chang (2011), Gentzkow and Shapiro (2006) and Waldfogel (2007) have certainly taken up this challenge.

Quantitative data, therefore, is very much in fashion in the analysis of media ownership and in the discussions that guide policymakers and regulators in responding to any problems that may arise from concentrated ownership or market failure. It is the 'gold standard by which policy judgments are made' (Napoli and Karaganis, 2007: 56) and is at the

heart of the ‘evidence-based approach’ of the FCC and the British communications regulator Ofcom, both of which rely heavily on consumer research, market data, investment reports and econometric analyses. Indeed, Ofcom’s annual *Communications Market* reports are probably the most valuable source of data for any analyst of the British media.

There are two problems, however, with this fetishization of what has come to be known as ‘media metrics’, described by pro-liberalization campaigners as ‘objective measures in contrast to subjective barometers’ (Thierer and Eskelsen, 2008: 9). First there is the fact that such data is far more likely to be demanded of or supplied by commercial organizations. According to Napoli and Karaganis (2007) in their persuasive call for a ‘federal data agenda for communications policymaking’, policymakers tend to draw their data from a narrow range of elite sources. ‘Today, communication policymakers rely heavily on the datasets developed by commercial data providers for their clients and the investment community, and, therefore, neglect their own substantial data collection capabilities and responsibilities’ (2007: 56). Second, while a data-driven approach is designed theoretically to insulate media policymaking and regulatory domains from partisanship and bias, there is little to suggest that a call to ‘objectivity’ will necessarily undermine the use of selective facts and subjective judgments. Countervailing ideas can just as easily be marginalized, ignored or buried, as happened when FCC officials refused to distribute a piece of research that demonstrated a link between increased consolidation and decreased amount of local news (Associated Press, 2006). Indeed, the Diversity Index employed by the FCC in 2003 to measure degrees of concentration in local markets was eventually discredited by the Appeals Court for relying too heavily on quantitative methods and for not paying enough attention to issues of content and the impact of different types of speech. It seems that not everything in the media environment can be easily quantified.

STUDYING OWNERSHIP AND REGULATION AS NORMATIVE MODELS

A contrasting approach to tackling questions of ownership and regulation is to be found in the pursuit not of empirical data but of normative models, ‘ideal types’ of ownership structure or regulatory behaviour. These are most often expressed in terms of arrangements that best facilitate democratic practice, for example with the liberal market conception that the media collectively should act as a ‘watchdog’ where its prime role is to ‘monitor the full range of state activity, and fearlessly expose abuses of official authority’ (Curran, 2002a: 217). In this case, forms of media ownership and regulation are required that guarantee both autonomy from the state and free and fair competition in the allocation and distribution of resources. Similarly, a pluralist perspective on ownership holds that media should articulate the widest possible range of views in order to allow citizens to seek out and act on all viable information as they participate in public life. In both cases, rules may be necessary to break up unaccountable and unacceptable concentrations of power that distort or undermine the ability of media to achieve these noble objectives.

The legal scholar Ed Baker hints at such an ownership model when he provides three main reasons for opposing concentration. First, he insists that we will arrive a more ‘democratic distribution of communicative power (2007: 6) with a *dispersed* distribution structure that allows for a breadth of voices and representations in order that no one voice is excluded. Second, he argues that the ‘widest possible dispersion of media power reduces the risk of the abuse of communicative power’ (2007: 16), and notes how the Italian premier, Silvio Berlusconi, has amassed significant economic and political power through his domination of the Italian media. Finally, he claims that a more egalitarian media structure is likely to improve quality and reduce the risk of market failure

as it will check the urge of concentrated organizations to put profit and shareholder value above all else. There are, he concludes, ‘fundamental democratic and significant structural economic reasons’ (2007: 53) for introducing rules that will disperse media ownership and consolidate the democratic benefits of a pluralistic media system.

Indeed some of most lucid accounts of the relationship between a competitive media system and a robust democracy are to be found in official justifications for precisely these ownership rules. Consider this statement by the then Conservative government when reviewing British media ownership rules back in 1995:

A free and diverse media are an indispensable part of the democratic process. They provide the multiplicity of voices and opinions that informs the public, influences opinion, and engenders political debate. They promote the culture of dissent which any healthy democracy must have. In so doing, they contribute to the cultural fabric of the nation and help define our sense of identity and purpose. If one voice becomes too powerful, this process is placed in jeopardy and democracy is damaged. Special media ownership rules, which exist in all major media markets, are needed therefore to provide the safeguards necessary to main diversity and plurality. (Department for National Heritage, 1995: 3)

Even the FCC in its attempt in 2003 to *relax* broadcast ownership restrictions nevertheless insisted on the normative importance of retaining measures to promote viewpoint diversity in the interests of democracy. Despite the huge implications of the advent of the internet and new sources of plurality, ‘[w]e therefore continue to believe that broadcast ownership limits are necessary to preserve and promote viewpoint diversity. A large number of independent owners will tend to generate a wider array of viewpoints in the media than would a comparatively smaller number of owners’ (2003: 11). These views are shared by many scholars writing on the significance of media ownership rules, for example Barron (2000), Doyle (2002) and Overbeck (2007).

A related way in which scholars have approached ownership and regulation has

been to identify the normative bases of traditional public policy approaches to these questions. Philip Napoli, for example, talks of the ‘enduring normative principles’ (2001: 21) that underlie communications policymaking: concepts such as localism, diversity, universal service, competition and the public interest. McQuail (1992, 68–77) discusses freedom, equality and social order as mobilizing principles for attempts to regulate media systems, while Tom Gibbons highlights values such as free speech, independence and accountability (1998: 35–54). We could add to these lists a whole host of other normative commitments – to pluralism, citizenship, welfare and social justice as well as to efficiency, productivity and profitability – and assess the ways in which different ownership structures and arrangements impact on these commitments.

Other scholars are keen to enshrine these kinds of normative principles in actual designs for democratic media practices. Georgina Born, for example, develops a ‘normative architecture’ (2006: 116) in which a range of communicative conversations may be fostered by the peculiar possibilities of a public service, non-profit broadcaster. The ability to stimulate these different dialogues is related not just to questions of ownership but to the characteristics of particular platforms (whether terrestrial television or the internet) in establishing ‘dialogical flows between the sociocultural majority and minorities, or dominant and subordinate groups (2006: 116). James Curran has devised a ‘working model’ (2002a: 240) of a democratic media system that is stratified by different forms of ownership. At the core of his system, is a public service broadcaster responsible, above all, to its viewers and listeners (like, Curran argues, public service channels in Germany and Scandinavia with their broadcasting councils and democratic representation). This core is surrounded by four ‘peripheral’ media sectors – civic, professional, social market and private spaces – which, taken together, will guarantee not only the communicative rights of minorities but ‘act as a restraint on the over-entrenchment of minority concerns

to the exclusion of majority pleasures' (2002a: 241). While this is a distinctively European-looking project, William Hoynes has sketched out a vision for public broadcasting in the US which requires re-thinking the 'core mission of public broadcasting in the digital age' (2007: 375; see also Center for Social Media, 2009). Hoynes suggests that public broadcasting should adopt a remit that clearly distinguishes itself from commercial broadcasting and instead focuses on local programming as well as independent news and current affairs.

A focus on the normative and conceptual is valuable in allowing us to imagine democratic ownership structures and regulatory practices (or to criticize structures and practices that are not) from the point of view of firmly-held values and perspectives. There is little doubt, for example, that the media reform legislation passed in Argentina in 2009 and finally validated by the courts in 2013 – which, in its commitment to diversify the airwaves by assigning one-third of licenses each to community organizations, state broadcasters and private companies' (Reporters without Borders, 2013), is strikingly similar to Curran's model outlined above – was partly informed by a vision of what a democratic media system should look like. There is, however, always a danger that by choosing not to focus on empirical data, some normative accounts lack verifiability, or more precisely, relevance to particular political and economic contexts. Of course, there is no reason why normative accounts should be counterposed to empirically-based studies, and, indeed, many of the texts quoted above combine normative reflections with at least some detail about specific media environments. Georgina Born best expresses this approach in her anthropological analysis of a changing BBC (Born, 2004), and later concludes that scholars:

need to break down the boundaries between normative theories and the design of democratic institutions, including media systems suited to democratic pluralism. From a policy perspective, we need to take political philosophies seriously – to

realize that they offer tangible bases on which to construct institutional arrangements; but also to acknowledge that our existing institutions embody political philosophies that themselves deserve scrutiny and updating. (2006: 119)

STUDYING OWNERSHIP AND REGULATION AS IDEOLOGICAL PROCESSES

This leads us to a third way of studying ownership and regulation: not as the mere embodiment of quantitative data nor as the receptacle of theoretically sophisticated normative positions, but as systems of thought and action that are related to specific ways of ordering the world. From this perspective, attitudes towards conglomeration or competition, for example, are revealing for the wider ideological positions that they point to (for example, about the market as an enabler of productive symbolic activity); the advocacy of particular regulatory mechanisms and objectives is far from a simple technical or administrative matter, but is connected to values and priorities that are by no means natural or inevitable. This is an approach adopted by a whole number of critical communication scholars who identify forms of media ownership and regulation as central devices for securing consent to 'market-driven politics' (Leys, 2001). For Ben Bagdikian, whose book *The Media Monopoly* (1990 [1983]) was one of the first to combine data on media concentration with a sociological analysis of media influence, ownership is a mechanism for managing the exclusion of certain voices from political power. Media ownership, he argues, is connected to the ability 'to treat some subjects briefly and obscurely but others repetitively and in depth', a seemingly 'normal and necessary' (1990 [1983]: 16) journalistic practice that skews public opinion in the interest of powerful corporations.

Many other figures have followed in Bagdikian's footsteps, updating and refining his initial arguments in the face of sustained pressure from critics (such as Compaine and

Gomery, 2000 and Thierer, 2005). In the field of media ownership, notable contributions include Herman and Chomsky (1988) and their development of a 'propaganda model' in which concentrated ownership plays a significant role, as well as the work of Robert McChesney (1999, 2004) who argues that struggles over media ownership have long been battles over the soul of American democracy. With reference to media policy-making and regulation, there is a rich seam of literature that explores the ideological basis of policy and regulatory decisions that serve to naturalize capitalist property relations and systems of thought, including Aufderheide (1999), Braman (2007), Freedman (2008), Horwitz (1989), Schiller (1999) and, perhaps most persuasively, Streeter (1996), who argues that policymaking is an ideological means of resolving differences and enforcing order in the communications environment and beyond: 'underlying all the (very real) disagreements and debates is a relatively constant structure of expectations that limit discussion, not by coercion, but by way of the subtle but profound power of interpretation' (1996: 117). The rest of this chapter seeks to highlight this interpretive activity by calling for an analytical emphasis on *agency* and a recognition of the significance of *interests* in three particular ways: by treating media ownership and regulation as subjects for debate (rather than as a given); by examining dominant arguments in ownership and regulatory debates; and, finally, by focusing conceptually on processes of inaction and silence at the heart of these debates.

HIGHLIGHT OWNERSHIP AND REGULATION AS TOPICS FOR DEBATE

The classroom debate has long been one of the most popular ways of clarifying complex issues: organize students into different groups, ask them to propose contrasting arguments and to marshal the appropriate evidence, and then assess the strengths and weaknesses of

all sides. Applied to media ownership and regulation, this approach can be extremely useful in that it refuses to take established starting positions – for example about the desirability or undesirability of regulation – for granted. When Rupert Murdoch announced to the Federal Trade Commission that 'the government needs to clear the path for companies to invest and innovate – by reducing unnecessary regulation and eliminating obstacles to growth and investment' (Murdoch, 2009), we should treat this both as a claim that needs substantiating as well as an expression of a particular, neo-liberal world view. Similarly, when Robert McChesney challenges the idea that we are witnessing a period of deregulation and that instead we are seeing 'government regulation that advances the interests of the dominant corporate players' (2004: 19–20), we should check the evidence and consider this statement in relation to his commitment to a form of radical democracy. Indeed, we should investigate both claims side by side in order to achieve a grounded understanding of contemporary arguments concerning regulation.

A stimulating debate along these lines was hosted by the openDemocracy website (www.opendemocracy.net/) where, broadly speaking, three positions were set out in relation to the question of media ownership: that we are seeing decreasing levels of concentration that pose no threat to media pluralism and diversity; that we are seeing *increasing* levels of concentration that represent a disturbing trend; and that a focus on levels of concentration is unwarranted and insufficient to explain the dynamics of the contemporary media.

The first position was most forcefully put by Ben Compaine (2001) and David Elstein (2002) who argued that, given the impact of new technologies and the increased number of media sources and outlets, ownership is becoming more dispersed, control of media markets more fragile and the dangers of oligopoly more distant. Compaine presents evidence (2001: 2) that the influence of the fifty largest media corporations in the US increased only fractionally from 1986 to 1997 and that while

some sectors are more concentrated, particularly those like daily newspapers that are in decline, the general picture is of more choice and more competition. Compaine also argues that media ownership is generally 'extremely democratic' (2001: 4) because of the ability of shareholders to apply pressure on management and that, while not perfect, existing patterns of ownership provide audiences with more than a reasonable amount of diversity and quality. Elstein, a former head of programming at BSkyB, concurs with this view that the market has facilitated choice and quality and that the idea of omnipotent media moguls seriously underestimates the extent to which these entrepreneurs face uncertain technological futures, regulatory impediments and high-risk investments. 'The global media game' he concludes 'is far more complex than a simple David and Goliath story' (2002: 7).

These arguments were rebutted by commentators who argued that the expanding market power of a handful of transnational media corporations (for example Time Warner, Disney, Sony, Viacom and News Corporation) distorts competition, undermines independent journalism and restricts diversity. According to Robert McChesney, the growth of these media conglomerates that have cross-media interests in the world's largest media markets has led to a situation in which these 'giants do compete ferociously, but they do so under the rules of oligopolistic markets, meaning they have far greater control over their fate than those in truly competitive markets' (2001: 1). This concentration of economic and symbolic power is disastrous for democracy, not simply because it restricts the number and variety of information sources but also because it provides unaccountable media owners with extensive political influence. Witness (once again) the rise of former Italian prime minister Silvio Berlusconi who would not have reached that position 'if he did not dominate a massive media empire that enabled him to manufacture a political party' (Curran, 2002b: 3). Curran also argues that, *contra* Compaine's claim (2001, 4) that media businesses tend 'to be run not to promote an

ideology but to seek profit', media concentration is likely to promote the dissemination of 'conservative or market-friendly positions, but more rarely their antithesis' (Curran, 2002b: 3). McChesney (2002) illustrates this point with reference to the generally compliant press coverage in the US of the decision to go war in Iraq, the Enron scandal and the 2000 presidential election, all of which privileged official sources and lacked critical perspectives and non-routine voices. The logic of McChesney and Curran's arguments is that restrictions on media ownership are therefore necessary to curb concentrated media power and to foster a more open and *genuinely* competitive environment.

David Hesmondhalgh (2001) provides a critique of both sets of arguments and an alternative focus to one on ownership. Whilst accusing Compaine of neglecting the negative consequences of media conglomeration and marketization, he also criticizes McChesney for painting an 'inaccurate and unrecognizable picture of complete corporate control and uniform output' (McChesney, 2001). Instead, Hesmondhalgh argues that media producers enjoy sufficient autonomy allowing them not to follow meekly or consistently the dictates of owners and executives and that even following a ratings-led perspective is likely to enable the production of challenging and alternative forms of content just as it is also likely to lead to the emergence of trivial and sensationalized material. An emphasis on ownership alone fosters an instrumentalist approach (on both sides of the argument) that marginalizes more difficult questions concerning the management of 'risk and uncertainty within the media business' (Hesmondhalgh, 2001). The unpredictability of audiences and the high degree of failure means that a certain amount of innovation and creativity is built into media production in such a way that media content cannot be reduced to questions of ownership alone. Furthermore, the emphasis on news and current affairs in the debates on ownership misses out on the role of other formats and genres and diminishes the importance of popular culture. Finally, the fact that

there is 'no necessary link between oligopoly and reduced diversity' (Hesmondhalgh, 2001) – witness the explosion of niche musics presided over by both large and small corporations – suggests to Hesmondhalgh that 'there are other factors, besides ownership, at work in explaining media output' (Hesmondhalgh, 2001).

Hesmondhalgh makes some valuable points about the contradictions of media power but his insistence that we need to move on from a focus on ownership is more problematic. Firstly, as we shall see later, this is a view shared by proponents of ownership liberalization who wish to de-prioritize concentration as a controversial issue. Indeed Compaine is quite happy to use Silvio Waisbord's nuanced argument, that *despite* unwelcome concentration there remain political opportunities and 'spaces for conflict and change' (Waisbord, 2002: 1), as evidence of the innate dynamism and diversity of media markets. Secondly, it is not the case that those who harp on about ownership claim that it explains everything about media performance. McChesney (2004: 208), for example, repeatedly points out that there are many factors that shape media output apart from ownership but he argues nevertheless that a public policy emphasis on stimulating competition within media markets by curbing excessive concentration is needed precisely in order to facilitate diverse, creative, unexpected and antagonistic content. Thirdly, for all those interested in an independent, critical and relevant media system, is it the right time to move on from an interest in ownership, particularly when the relaxation of media ownership rules continue to be debated by policymakers and regulators in both Britain and the US?

The lively debate hosted by openDemocracy is a productive way of engaging with foundational propositions concerning media ownership. It reminds us that ownership matters not only because of the largely unaccountable political and economic power that accrues to those individuals and corporations with extensive media interests, and not only because they are able to deploy their market

power to act as influential cultural gatekeepers, but also because administrations and regulators in the UK and US have been particularly absorbed with trying to relax media ownership regulations over the last ten years. If media ownership is only a peripheral influence on media content, why are politicians, policy-makers and media moguls so preoccupied with it? Debating what are often presented as fixed positions is both a stimulating and an analytically rewarding way of reflecting on approaches to ownership and regulation.

EXAMINE MOBILIZING ARGUMENTS

As well as treating ownership and regulation as subjects for debate, we should interrogate very carefully the arguments of elite actors in the contexts *in which they are proposed*. This involves focusing on those documents and processes where arguments are most forcefully mobilized: in corporations' annual reports, parliamentary transcripts, submissions to consultations and reviews, contributions to regulator or industry panels, evidence to inquiries and so on. Of course, not all information is made public and the often subterranean connections between lobbyists and government, in particular, make it difficult to identify all relevant and influential interventions (see Freedman, 2008: 93). It is, nevertheless, worth highlighting the claims of key participants involved in specific ownership-related issues and this next section focuses on four of the most significant justifications articulated by advocates of liberalization in their campaigns to scale back broadcast ownership regulations.

The most common argument is technological: that in a brave new world of digital developments and consumer choice, there is little need to worry about oligopoly or a lack of diversity. The dizzying speed of technological innovation and market adaptation make redundant most attempts to control artificially the structure of markets or the preferences of consumers. This is especially true for television where spectrum scarcity, the phenomenon

that provided the historic justification for regulating broadcasting, has been largely abolished in the digital age of virtually limitless bandwidth. ‘Given the overwhelming wealth of both broadcast and non-broadcast media options available to consumers today’, argued some of the largest entertainment companies in the US back in 2003, ‘the factual underpinnings of the spectrum scarcity rationale of broadcast regulation ... no longer are valid (if they ever were)’ (Joint Commenters, 2003: v).

Referring to the communication ‘abundance’ specifically facilitated by the internet, former FCC chair Michael Powell (2003) argued that:

the most striking difference between the world today and the world pre-remote [control] is that Americans now have access to a bottomless well of information called the Internet ... The time has come to honestly and fairly examine the facts of the modern marketplace and build rules that reflect the digital world we live in today, not the bygone era of black-and-white television.

Adam Thierer, an influential Washington think tank analyst and firm supporter of ownership liberalization, echoes this approach when arguing that we are currently living in a ‘golden age’ of media.

There has never been a time in our nation’s history when the citizens had access to more media outlets, more news and information, or more entertainment. Abundance, not scarcity, is the defining fact of our current media age... the question of who owns what, or how much they own is utterly irrelevant (Thierer, 2005: 161).

In the most recent FCC proceedings on media ownership, the general counsel for the National Association of Broadcasters (NAB) attacked the ‘asymmetric regulation of broadcast outlets in comparison to their [cable and online] competitors’ and called for the ‘modernization of out-of-date restrictions that do not reflect current competitive realities in the Internet age’ (Mago, 2009: 8).

Essentially, the argument is that the internet has stolen audiences, attention and advertising away from television in particular and that, therefore, the ‘rules of the game’ have changed

forever. BSkyB’s senior legal adviser, for example, argues that British regulators have ‘played down the significant increase in the use of the internet as a main source of news’ (Austin, 2009) in their decision *not* to scrap national media ownership rules. Ken Ferree, formerly head of the FCC’s Media Bureau and then a fellow at the now-defunct Progress and Freedom Foundation, declared to a 2009 ownership hearing that ‘there can be no denying that radio and television broadcast is a much less significant part of the media universe than they once were’ (Ferree, 2009: 1), leading him to ask one simple question: ‘are these ownership rules even relevant in today’s media marketplace?’ (Ferree, 2009: 1).

Liberalization is also justified on economic grounds: that the profitability of media businesses would be enhanced through the relaxation of ownership rules. This was most crudely put by Viacom president Mel Karmazin who noted that a wave of deregulation followed the Gulf War in 1991 and therefore argued for further ownership rule changes to compensate broadcasters for losses suffered after 9/11. ‘We believe acquisition opportunities could present themselves’, he said. ‘There are a lot of very leveraged companies out there. If there is a silver lining in all of this, it could be that some of our competition is not as strong’ (quoted in Freedman, 2003: 297). According to Bob Okun, a lobbyist for NBC, the economic climate for broadcasters ‘only got worse after Sept. 11. As we look to 2002, it certainly makes sense to re-examine any and all regulations that continue to hinder broadcasters’ ability to grow and survive an increasingly difficult marketplace’ (quoted in McClintock, 2001).

Reviews of media ownership rules are frequently dominated by claims by ‘old media’ companies that by continuing with existing prohibitions on ownership, traditional media businesses will be at a disadvantage in the new digital environment. This argument was made with particular vigour by CBS in the 2006 ownership review, warning that without the ability to manoeuvre freely in the marketplace, ‘we put at risk the rich American tradition of free,

over-the-air broadcasting, including its universal availability, commitment to public service and localism, and its high quality entertainment, sports and news programming' (CBS, 2006: 3). Many other US broadcast interests, particularly those representing smaller station owners, have made the same point: that liberalization is increasingly necessary to maintain 'economic viability in a market dominated by consolidated multichannel providers and other competitors' (NAB, 2006: iv). The director of Heart Television put it this way: 'By consolidating ownership, operational and technological resources, local television stations can achieve new economic efficiencies and will be able to compete more effectively in the digital era' (Barrett, 2009: 4). The British communications regulator also agrees that consolidation will allow companies to realize economies of scale and scope, to recruit the best managers and provide them with better access to overseas capital (Ofcom, 2006: 7).

A third source of pressure to change existing ownership rules is the increasingly fierce interrogation by media businesses and regulators of the link between plurality of ownership and diversity of viewpoint, a connection that is at the heart of democratic accounts of media policy but dismissed by the NAB as 'unproven' (2006: 42). Ofcom too notes that '[o]wnership plurality *does not necessarily ensure editorial or viewpoint diversity*' (2006: 6, emphasis in original) and suggests that 'it may also be the case that different sources of news offer the same perspective' (2006: 6). According to this logic, the best guarantee of diversity is not statutory restrictions on ownership but an environment in which the market is allowed to operate as freely as possible and in which competing viewpoints will be publicized as a result of consumer sovereignty and not regulatory intervention.

This links to a fourth justification for liberalization: a belief that regulation is likely only to constrain the innate creativity unleashed by market forces. This reflects a neo-liberal conception that the state should have only a limited role in directing productive activity, that innovation is best realized when left to its own

devices and that restrictions on media ownership are, ultimately, a violation of speech rights. 'My notion of the First Amendment', wrote Shaun Sheehan, chief lobbyist for the giant Tribune media corporation, in a letter to William Safire, the *New York Times* columnist and supporter of ownership rules,

is that the framers feared excesses of government and that the press would be the countervailing force, the unfettered watchdog. Without scale and with the White House gunning for its broadcast licences, could the Washington Post have pursued Watergate? The New York Times, the Pentagon Papers? The more we get back to 'Congress shall make no laws' the better we will be. (Sheehan, 2003)

Ownership rules, according to this rhetoric, conflict with basic First Amendment rights to freedom of expression and should be minimized in order to protect the speech rights of corporations. Market forces, according to this perspective, are not only *not* inimical to pluralist goals of source and viewpoint diversity but are increasingly the main guarantors of such aspirations.

Identifying the key arguments posed by pro-liberalization voices is a fantastic way not simply of bringing to life what can be rather dry debates on ownership but also of helping to know where to start in challenging these perspectives. Opponents of concentration can point to the strong strand of technological determinism that exaggerates the impact of new technologies in a particularly one-sided way, as *requiring* liberalization. Arguments that the internet has done away with the need for ownership rules aimed at ensuring media pluralism and diversity are as much ideologically driven as they are the result of technological necessity or empirical accuracy (Curran et al., 2012). 'The sceptical observer', according to Jean Seaton (1998: 123), may 'conclude that the frequently heard claim that technology "requires" this or that policy, is just a way of masking a vested interest in the handy disguise of modernity'. Those interested in ownership questions can point to conceptual debates about the democratic significance of the media and use empirical data to reject the argument that the market, as

a matter of course, gives voice to divergent groups and perspectives (see Di Cola, 2006 for research that points to a link between ownership consolidation and ‘homogenized programming’).

A further response to pro-liberalization arguments concerns their underlying assumptions about ownership rules themselves: that they constitute a ‘barrier’ to growth, a ‘shackle’ on investment, a ‘violation’ of free speech, and a ‘restraint’ of free trade. The equation of ownership rules with overwhelmingly negative and restrictive characteristics is designed to shift the focus away from their original intention: to promote a wider range of voices and perspectives than would be provided by market forces alone. In fact, it is more than likely that in an internet-dominated future there will still be the need for special controls to promote diversity. Given the amount of internet traffic dominated by Google, YouTube and Facebook as well as by established media companies, a broadband internet future is certain to produce new types of monopoly and new forms of exclusion that can only be tackled with purposeful and positive intervention into media markets. It seems rather obvious that if we are still committed to pluralism and diversity, then there is little point in junking the traditional mechanisms for achieving these outcomes simply because we are faced with *different* technologies. However, in order to be able successfully to rebut pro-liberalization arguments, those opposed to further liberalization need to be familiar with the detail of their arguments.

FOCUS ON INACTION AND SILENCE

At first glance, a call to focus on *inaction* in relation to the ownership and regulation of the television sector makes very little sense when you consider the hyperactivity of governments, civil servants, regulators and broadcasters around the world as they prepare to shift from analogue to digital television or to update their media ownership rules for a digital future. In the UK, for example, the

previous Labour government published a report, *Digital Britain [DB]* (BIS/DCMS, 2009) that provided the legislative framework for communications at a critical moment in the country’s digital development. *DB* was very precise in some of its recommendations: it sanctioned a small monthly levy on every fixed copper telephone line to make sure that the whole of the UK population had access to a broadband service by 2012; it further proposed to set up three pilot Independently Funded News Consortia (IFNC) schemes by 2012, one in Scotland, one in Wales and one in an English region, to deliver television news as a result of its acceptance that the main commercial channel, ITV1, will no longer be able to afford to produce regional bulletins. *DB*’s plans for radio involved an equally activist approach based on a ‘clear direction from Government’ (2009: 75) to move national FM stations over to digital broadcasting (DAB) and to shift medium wave services to FM by 2015. Many of these schemes have since either been dropped or deemed to be ‘unrealistic’ but, by any account, this is not a regulatory environment marked by sloth or by passivity, particularly given the huge number of reviews, consultations and ‘action plans’ considering, in particular, the future of broadband roll out, intellectual property television news, public service broadcasting (PSB) and media ownership rules.

These activities, however, all refer to *overt* acts of government, to the decision-making actions of policymaking bodies and to the consultative work of regulatory agencies – in other words to the public exercise of ‘official’ power. There is, however, an entirely different approach, rooted in debates in social and political science that emerged in the 1960s (for example Bachrach and Baratz, 1962; Lukes, 2005 [1974]) that seeks to locate power in less visible arenas of decision-making and indeed to focus instead on examples of silence and non-decision-making. Instead of focusing exclusively on the evidence provided by key participants, the content of white papers and regulatory orders, the detail of draft bills and Congressional acts and the flavour of

parliamentary debates, this approach examines the means by which alternative options are marginalized, conflicting values de-legitimized and rival interests de-recognized. This flows from an understanding of decision-making as an ideological process structured by unequal access to power and where power itself 'is at its most effective when least observable' (Lukes, 2005 [1974]: 1).

It is worth noting at this point that the 'liberal' narrative of non-intervention and the libertarian principles on which it is based have not disappeared in the 'hyperactivism' of recent media policy approaches. The liberal demand for non-intervention is perhaps most purely expressed by James Murdoch, the deputy chief operating officer of News Corporation, who has called for the dissolution of all rules affecting the broadcast sector: 'there is a long way to go before consumers enjoy the sovereignty that is their right. We don't need more controls to achieve that. We need a bonfire of controls. Then commerce will be free to drive out culture forward to the real "golden age" of broadcasting' (cited in Plunkett, 2005).

Indeed, this latter perspective, intimately linked to neo-liberal visions of economy and society that, as we have seen, privilege the dynamism of market forces and relegate the state to a secondary role, is far from absent in *Digital Britain*. The opening of *DB* makes it clear that meddling should be the exception and not the rule. In those cases where market forces are adequately serving customers, the 'simple position is that these sectors are working well and do not need commentary, intervention or unnecessary interference' (BIS/DCMS, 2009: 9). Furthermore, the report argues that 'an excessive focus on the sector could chill operational negotiations and decisions while participants wait to see how it all pans out' (2009: 10). Non-intervention, in other words, is the safest option, generally the default position for neo-liberal governments for whom an activist public policy approach is only needed in those areas in which 'market failure' is likely to take place, for example the provision of a universal broadband

infrastructure or the delivery of regional and local news.

Now this sounds reasonable enough at first glance but, of course, it begs the question of what constitutes an example of 'market failure', who decides this, what values are brought to bear on the decision-making process and what other options are considered in achieving regulatory objectives in relation to this particular area? The central question then concerns not the rights and wrongs of intervention *per se* (as neo-liberals claim) but the reasons for intervening in *this* area and *not* in another one. Why does a particular issue become a 'problem' that is worthy of public policy attention? Why does the building of a broadband infrastructure become an urgent 'problem' for which senior government figures attempt to find a solution while the concentration of key sectors of media does not? Why is piracy such a major issue for legislators but not falling budgets for original television programming? An exclusive emphasis on immediate and observable regulatory debates misses out on this deeper level of questioning: what are the presuppositions that govern the parameters of the regulatory process and that shape what questions are asked as well as which ones are not? Who holds *definitional* as well as *organizational* power inside policy-making and regulatory networks?

This is where a focus on inaction and non-decision-making can be highly productive in terms of identifying the 'dominant values and the political myths, rituals and institutions' (Bachrach and Baratz, 1962: 950) that structure access to power in decision-making contexts. Such an approach would involve an analysis of how the policy and regulatory agenda is formulated and objectives are framed, which voices are privileged inside and which are frozen out of debates, how participation is invited or barriers erected, and from whom information (or 'evidence') is sought. It would focus on the ideological positions that are brought to bear in shaping agenda-setting questions and suggest that regulation, far from being a simple administrative act, is instead a series of highly politicized transactions in

which certain preferences are celebrated and others marginalized (Freedman, 2008).

Silence, in this context, does not mean ‘doing nothing’ and ‘inaction’ does not suggest a lack of energy on the part of policymakers and regulators nor a reluctance in principle to intervene. Rather it refers to a strategic decision that the best way to promote hegemonic interests and to naturalize foundational values is through a *particular* role for the state. In recent years this has consisted of administrations assisting, as quietly as possible, in the rolling out of markets and market logic in the media sector. In helping market forces to operate ‘freely’ and to extend their reach, public policy, in for example the US and UK, has been crucial. From decisions on what constitutes an acceptable level of broadcast ownership concentration to their determination to secure analogue switch-off, and from their unyielding support for domestic rights holders to increase market opportunities in export ventures to their commitment to leverage existing copyright protections onto emerging distribution platforms, the British and American states have played a decisive role on behalf of key sections of their media industries. Neo-liberal commentators may call it ‘deregulation’ and present this as evidence of ‘small government’ but many critics (for example Humphreys, 1996) have long described it as re-regulation and as proof of a complex partnership between the state and private industry.

This partnership is successful to the extent that state and private elites are able to legitimize their preferences and to use their decision-making influence pre-emptively to smother any challenges (and the campaign in 2003 against the proposed relaxation of ownership rules in the US shows that this is not a foregone conclusion). Silence, in this context, refers to the options that are *not* considered, to the questions that are kept *off* the policy and regulatory agendas, to the players who are *not* invited to the bargaining table, and to the values that are seen as unrealistic or undesirable by those best able to mobilize their decision-making power. For example, in current discussions concerning the allocation

of spectrum released by digital switchover, why is it that principles of remuneration dominate and why is it that the idea of handing spectrum to community and public bodies is virtually ignored? When it comes to the future of news, why is it that the idea of introducing some sort of public subsidy is anathema to policymakers, ignoring the simple fact that news production has long been subsidized in different ways by the state?

There are many other revealing absences in the policy approach articulated by initiatives like *Digital Britain*. Why does it assume that it is only the private sector that should take a lead in ‘delivering the effective modern communications infrastructure we need’ (BIS/DCMS, 2009: 1)? Where is the research that shows a demand for making existing radio sets redundant as part of the move to DAB? Why is there no mention at all of the possibility of industry levies on pay TV operators and mobile phone providers to fund regional television news (as proposed by Barwise, 2009 and the Institute for Public Policy Research, 2009)? Whose interests are reflected by Ed Richards, the chief executive of Ofcom, when he claims that an industry levy is unlikely ‘to be an attractive proposition in the middle of a recession’ (Richards, 2009): business leaders or ordinary viewers? Why does *DB* raise the spectre of siphoning off part of the television licence fee to fund public service content but promises not to interfere with the profits of private companies? As the media economist Patrick Barwise argues (2009):

I don't think you have to be a Marxist or a paranoid schizophrenic to note that the dominant pay-TV operator is controlled by Rupert Murdoch and that this might, at the margin, influence politicians' willingness to introduce a levy on pay TV, however small and however great the benefits for the British public and the creative industries.

Here is a clear case of power being deployed inside the bargaining process not to argue against the introduction of industry levies but, far more effectively, to prevent the proposal ever being raised as a ‘serious’ policy option in the first place. It is the conception of the ‘third face’ of power raised by Lukes (2005

[1974]: 1) as being especially effective precisely because of its invisibility.

All the various proceedings, inquiries, seminars and working parties investigating ownership rules together with all the documents, reports and policies that emerge from these investigations are likely to be significant for what they exclude, for the questions they fail to pose and for the alternatives they fail to consider. It is these gaps on which those interested in securing media pluralism and diversity ought to focus.

CONCLUSION

This chapter has proposed a number of different ways of approaching questions of media ownership and regulation. It has suggested that the interested researcher may turn to empirical data to substantiate particular claims or to justify certain policy recommendations; it then turned to more normative assumptions about 'desirable' forms of ownership or institutional arrangements that may best facilitate democratic dialogue; finally, it argued that researchers should consider ownership and regulation as systems of thought that can be illuminated by treating them as inspirations for debate that reveal particular ideological positions, by focusing on the specific arguments used by elites to justify and naturalize these positions, and by revealing the lacuna in these positions – the assumptions and propositions that are marginalized and sometimes excluded from official debates.

Some readers may point to a confusion at the heart of this typology – that the chapter is encouraging us to separate out these approaches: to produce data but also to draw on conceptual models; to focus on visible instances of regulatory activity or ownership battles but simultaneously to reflect on the hidden depths of the decision-making environment; to see ownership and regulation as administrative affairs but also as ideological processes. Each of these positions may be singly justifiable but, taken together, they provide

a much more productive method of communications research. The normative without the empirical tends towards the abstract while the empirical without the conceptual tends towards the tedious. By adding in the recognition that what are all too often seen as rather bureaucratic processes are in fact systems of thought and action that, in the present climate, mobilize market-oriented values and marginalize non-commercial objectives, debates concerning ownership and regulation can be seen as crucial analytical ciphers for contemporary neo-liberalism.

In conclusion, this chapter has argued for an approach to media ownership and regulation that combines a focus on structure with an emphasis on *interests*. We need to identify whose interests are best represented in policy and regulatory debates and to highlight the mechanisms both of the inclusion and exclusion of these different interests. We need to evaluate the dominant paradigms that mark the discussion of ownership and that characterize the regulatory process but also to introduce alternative frames and new starting points. Only by combining the empirical with the conceptual and the technical with the ideological, as well as analysing both existing structures and agents of change, can we be assured of capturing the real significance of debates and movements focused on media ownership and regulation.

NOTE

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