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One of the most remarkable aspects of the controversy surrounding the Federal Communication Communication's (FCC) review of US media ownership rules in 2003 was the passionate participation of the public. While hundreds of thousands of critical responses flooded into the offices of the FCC and congressional staff, public meetings across the US were packed out with citizens, largely hostile to the FCC's proposals to loosen ownership regulations and the prospect of increased consolidation. Such levels of involvement were unprecedented given the public's traditional reluctance to get involved in issues concerning the 'shape', rather than the content, of the media. This reluctance is partly due to a perception of the policy-making process as remote and overly technical, the domain of engineers, lawyers and civil servants, and partly because the media have failed to register as a key part of public policy-making as compared to health, education or taxation.

Public indifference is mirrored by the lack of media studies literature on 'the formation of public policy more generally' (Hesmondhalgh, 2005). A focus on the policy-making process is needed because, at a time of considerable change in the global media environment, new actors, technologies and paradigms are emerging that are creating new conflicts, or accelerating established ones, in media policy-making, for example in terms of national vs. supra-national levels of policy-making, public vs. corporate interests, centralized vs. dispersed policy networks, secretive vs. transparent forms of decision-making, and separate vs. converged policy fields.

For some, the trend in policy-making is towards a more 'open' and 'accountable' process involving a variety of 'stakeholders' engaged in a 'conversation' about the future of the media industries. This perspective implies a pluralist conception of a competitive, and ultimately fair and efficient, mode of decision-making and relates back to debates in public policy formation from the 1950s and 1960s. Others paint a far more critical picture, arguing that there is an unmistakably neoliberal character to contemporary policy-making which subsumes the distinctive characteristics of media goods and flows in a market-driven approach. Reflecting on the US experience, Robert McChesney argues that there has been a progressive deterioration of transparency and public participation, and a 'decisive increase in the business domination of media policy making' (2004: 48). Colin Leys notes how public policy in every area of UK public life, including what he calls 'public service television', has been adapted to suit 'the interests of corporations' (2001: 56). Media policy-making, according to this perspective, is exclusive, unequal, distorted and ultimately undemocratic.

This article aims to illuminate the dynamics of, and balance of power, in the media policy-making process in both the US and UK in order to assess the legitimacy of these competing perspectives. It is based on off-therecord interviews with a range of participants in the policy-making process, including regulators, congressional staff, civil servants, special advisers, corporate lobbyists, public interest advocates, think-tank researchers, academics and trade officials. While not exclusively concerned with a comparative analysis between the respective systems, the article will attempt to mark out some of the similarities and differences between media policy-making in the US and the UK.

Pluralism and public policy-making

Many of the assumptions about the balance of power in contemporary policy-making emanate from the rich debates in US political science that emerged in the second half of the last century. Theorists including Cater (1965), Dahl (1961), Freeman (1965) and Truman (1951) attempted to respond to wide-ranging concerns about the growing influence of interest groups on the political process and the consequences for democracy. What united them in particular was a firm belief that no one group dominated the process, which was instead marked by vigorous competition between different participants drawn from Congress, federal agencies and specialized interests. Freeman (1965: 5) called for an emphasis on 'subsystem actors', a crucial element of 'the plural patterns of power and decision-making within the national government as they mirror the functional specialization and diversity of American society' (1965: 6). Cater (1965: 17) described these highly segmented new policy spheres as 'subgovernments': compact networks of people with shared interests and the potential to challenge executive power. Freeman describes the triangular arrangement of congressional committees, executive bureaus and interest groups, which adds to the 'complex and pluralistic committee matrix within which so many decisions are reached in a decentralized fashion' (Freeman, 1965: 25). Public policy influence is therefore simultaneously dispersed and contained within these sub-systems.

These pluralists argued that any danger of undue private interest group influence would be countered by the openness of, and multiple access points into, the policy-making process, which would actually add to the stability of the system. Far from one group being able to hegemonize control, these arrangements were designed to produce consensual and particularistic policy-making bodies and coherent policy outcomes. Influence stems not only from economic power but also the prestige, profile and vision of the participants. The policy process is therefore a mirror of US society, itself described as a fairly open 'mosaic of overlapping groups of various specialized sorts' (Truman, 1951: 43).

This picture of an open yet stable policy system relies on a conception of power as decentralized and multi-faceted: both formal and statutory (as in executive power) and, as Cater puts it (1965: 4), 'mobile and transitory' in the bargaining-led atmosphere of sub-government. Despite their emphasis on the dispersed nature of power, the pluralists did not deny that there were

inequalities in the political process, that some participants were better resourced and connected than others. The crucial point was that, in a situation of ongoing bargaining, these inequalities would cancel each other out. Critics from *within* the pluralist tradition recognized some of the limitations of the policy-making system and acknowledged the potentially de-stabilizing impact of interest group power on US public policy. In a system described by Theodore Lowi (1979: 51) as 'interest-group liberalism', the notion of sub-governments and sub-systems was now seen as too rigid and narrow to articulate the pervasiveness of private interests as they were thoroughly mobilized throughout the policy process. Hugh Heclo spoke of the 'fairly open networks of people that increasingly impinge on government' (1978: 88) and whose influence depends not necessarily on money but on knowledge of the specific policy debate. These highly specialized 'issue networks' were not replacing the more formal and consensual sub-government model but were complicating policy scenarios and increasing unpredictability with their more ad hoc, dynamic and non-consensual style.

Pluralist models of policy-making were taken up and developed by researchers who settled on the concepts of 'policy communities' and 'policy networks' as a means of capturing the precise environments in which policy formation takes place. While Grant Jordan (1990: 325) argues that there was 'no straight-line application of the US ideas to a British context', there are clear genealogical similarities between US accounts of sub-governments and UK 'policy community' models as stable forms of decision-making based on shared values among long-term participants. Since then, the policy community has proved to be a very tempting normative concept, allowing scholars to assess whether a specific policy field is based on a highly integrated, long-term, consensual and select arrangement of people (in which case it qualifies as a policy community), whether it is a more loosely organized, short-term, open and discontinuous grouping (in which case it may be considered as an issue network), or any number of intermediate structures (see Rhodes, 1990, for a typology of policy networks).

Despite the many criticisms made of the pluralist approach to policy-making and power (see, for example, Bachrach and Baratz, 1962; Domhoff, 1967; Miliband, 1973; Mills, 1956), pluralist assumptions are still largely dominant in the academic study of UK and US policy-making. According to David Marsh, contemporary 'reformed pluralism' (2002: 16–17) is marked by a continuing belief in the diffuse nature of power and the increasingly sharp competition among interest groups for an influence in the policy-making process. To what extent does the rapidly expanding field of media policy-making sustain the pluralist account of power in the policy process and what are the claims made about this process by the participants themselves?

Analysis of the media policy-making process

A dispersed process?

With the increasingly global organization of media businesses, the impact of digital technology and new platforms on media distribution, the economic

importance of content industries, and the hegemony of market-led approaches to the provision of goods and services, it is hardly surprising that media policy-making has expanded in scale and scope. The number of 'stakeholders' has mushroomed in recent years, and voices that were traditionally peripheral to media policy debates have come to play a central role, crossing both departmental and geographical borders. The traditional 'sub-system' of dedicated civil servants, legislators and select industry players has had to come to terms with the interventions of personnel from other domestic government departments, supra-national institutions and processes (like the European Union [EU] or the World Trade Organization [WTO]-administered GATS [General Agreement on Trade in Services] agreement) and finally a whole range of religious, moral, consumer, activist and voluntary groups.

Media policy has rarely been confined to a single location in government. In the US, both House and Senate sub-committees have overseen the work of the FCC and the Department of Justice has long been involved in anti-trust cases. Policy in the UK has traditionally been even more fragmented (Seymour-Ure, 1987), with responsibilities still divided between, for example, the Department for Media, Culture and Sport (DCMS), the Department of Trade and Industry (DTI), the Foreign Office and the Treasury. However, 'ownership' of media policy has become increasingly blurred – all major communications policy initiatives since the New Labour government took power in 1997 have been co-authored by the DCMS and DTI, resulting in a vigorous debate about whose imprint is the more dominant. Even in the US, policy is increasingly 'splintered' as agencies like the National Telecommunications and Information Administration and the Federal Trade Commission along with the State Department and Department of Homeland Security all play an important role in shaping the US media environment (see RCFP, 2005, for a disturbing analysis of how the USA PATRIOT Act is restricting media freedom).

Policy-making is also not confined to the national level. Domestic media systems are subject to a complex barrage of rules from bilateral trade deals, regional directives and multilateral trade disciplines. For example, the behaviour of national public service broadcasting channels in Europe is monitored by the European Commission's Competition Directorate, which checks whether tight 'state aid' rules are being breached (see Tryhorn, 2005); many domestic copyright regimes have been transformed by treaties launched by the World Intellectual Property Organization; and current negotiations under the auspices of the WTO's GATS instrument are attempting to impose strict trade disciplines on domestic audio-visual industries. Many of these developments are far from complete and policy-making power remains largely nationally based, yet we are certainly seeing the emergence of new international pressure points on the media policy-making process.

The participation of an expanded number of interest groups is perhaps the greatest challenge to traditional modes of media policy formation. The influence of corporate lobbyists and trade associations is well established,

particularly in the US, but increasingly so in the UK as well. 'Pressure groups', too, have existed for a long time, but without the power and influence they now appear to wield. For example, in the USA, the Parents Television Council is credited with being a key influence on recent legislation increasing fines for 'broadcast indecency' on American networks. The Consumers Union and Consumer Federation of America are highly significant mass-membership organizations that have prioritized issues such as media ownership and broadband access to great effect. The impact of media activist groups is more surprising. In the UK, the intervention during the passage of the 2003 Communications Act of campaigning group Public Voice helped to secure a 'public interest test' in the case of major media mergers, while the court case in the US that formally derailed the FCC's ownership review in June 2004 was launched by the Prometheus Radio Project, a small collective of radio activists in conjunction with a legal team from the Media Access Project.

Many interviewees agree on this point about the increasingly crowded nature of the policy-making universe. Reflecting on his experience of legislation for web content, the head of public policy for a large international firm comments that:

> More and more stakeholders are seeing themselves as such and are seeking to represent their interests more and more strongly and in more innovative ways with the decision-makers. So there's no doubt that, say in the example of child safety online, the number of stakeholders seems to grow almost monthly. . .. There are now maybe 15 representatives of industry, a dozen children's charities, a dozen law and order agencies and different Home Office departments involved. So these things certainly do mushroom.

A lobbyist for one of the biggest radio companies in the US notes that, because of consolidation, there are fewer licence holders but 'a lot of other non-licence holders in the policy business right now'. Organized interests are complemented by the growing numbers of individuals seeking to make their voices heard. A reporter at the trade magazine *Broadcasting and Cable* in Washington DC argues that 'there is much more public involvement now in the issues that I cover. I think in part it's because people have realized how important media policy is and what an impact media consolidation has had.' One public policy advocate talks of the 'unprecedented public involvement in media policy debates. Nothing has happened like this since the advent of radio in the late 1920s and early 1930s.' This perspective is shared even by one senior vice-president at a powerful media trade association:

> I believe that the 3rd Circuit decision [overturning the FCC's ownership review] was influenced by an interesting sense of a grassroots feeling. . .. This was the first time I had ever seen a Court that was interested in 'wait a minute. There was this hearing that was held out in South Dakota somewhere' and that was part of the discussion.

This paints a picture of a policy domain littered with participants and pulled in different directions by competing interests. To what extent is this perception true and, more importantly, how does it impact on the power of a policy 'centre'? First, there is no necessary relationship between the number of participants in a decision-making process and the eventual decision that is taken. Being a 'stakeholder', identifying yourself as someone who has an interest in the outcome of a decision, is in no way a statement about your

power. The explosion of 'stakeholders' is more likely related to the expansion of the media industries than it is to their ability to change the balance of power in a decision-making situation. As a member of a Washington DC think-tank puts it, 'the fact that there is so much more legislating taking place is the key to understanding why there are so many more lobbyists and lobbying'. Second, when it comes to specific media policy issues, there is little evidence that we are dealing with a more devolved policy structure. 'Ultimately', argues a senior policy adviser to the UK government, 'policy-making reflects the structure of the industry rather than the other way around'. In the case of distribution-led media industries, this suggests a high degree of centralization and control. This is borne out by the adviser who complains that:

> . . . as a sector, it [media policy-making] is amazingly insular and small. Another part of my job involves working in other stakeholder areas and there are very few industries and sectors [like media] where everybody knows each other and everyone worked together at one stage.

This seems particularly to be the case in the UK where the 2003 Communications Act was driven by a handful of figures inside Downing Street (most notably Ed Richards inside the Number 10 Policy Directorate) in close consultation with relevant ministers and special advisers. This is borne out by the inclusion of rules in the legislation that allow foreign ownership of television channels and, in particular, permit Rupert Murdoch to expand into terrestrial television – decisions that emanated, after heavy lobbying, from 'behind the heavy front door of No 10' (Bell, 2005). 'My sense of it', recalls a very experienced contributor to UK media policy debates:

> . . . was that there was an agenda being run by a very small tightly knit clique of people, who were to some extent prepared to listen, but only within the very narrow bounds of their own idea of what should be done. So they had pretty clear parameters, they were prepared to listen to outsiders within those parameters, but actually I think it was more of a lobbying and PR effort.

A slightly larger group of politicians lies at the core of media policy-making in the US, but one that is especially vulnerable to corporate persuasion. According to a public policy advocate on media issues:

> The most important players in communications policy are the members, and especially the chairmen, of the Energy and Commerce Committee on the House side and the Commerce Committee on the Senate side. All of whom are heavily lobbied by industry players. . .. They are the ones that make the laws and the FCC tries to enforce them. The FCC can only operate within the parameters set by Congress. Most members of Congress haven't got any idea about communications policy. They get beyond the surface-level discussion of the issues and they are completely lost. So you're really talking about 30 to 40 members of Congress on House and Senate side in total who understand the issues well enough to legislate on them.

There is, therefore, an important distinction to be made between the size of the pools that surround the decision-making process – inhabited by an increasingly volatile mixture of civil servants, private and public lobbyists, regulators, individual citizens, politicians and academics – and the core members of this process who may choose to swim in the pools but who retain their own interests. This is summed up by the head of public policy of a major UK broadcaster who argues that:

> . . . media policy is paradoxical. Because the media affect everybody, politicians and policy-makers care more about media policy than they do about steel policy or car policy. So in one sense everybody consumes it but, in another sense, the number of people making decisions is fairly small. . .. *The decision-making is tight but the influence is broad.*

Debates and disagreements do take place in the process of policy formation but both the terms of these conflicts and their eventual resolution in specific policy instruments remain in the hands of a small decision-making elite.

A transparent process?

If there is a general perception that the number of stakeholders has increased, there is an even stronger belief amongst many participants that the media policy-making process (and, to a certain extent, media regulation) has become more open and accountable. Much of this is due to technological innovation, especially the emergence of the internet as an informational tool. Congressional hearings are streamed online with easy access to speakers' transcripts, notices of forthcoming hearings and details of relevant legislation. Access to both current FCC investigations and past FCC decisions has been transformed by the internet. Every piece of correspondence and every meeting that relates to a particular proceeding is recorded online and any member of the public can contribute to FCC rule-making through its electronic filing system. As one corporate lobbyist puts it, 'We are in the digital era where anyone, through either the FCC's website or a public interest website, can chime in to any process.' 'Everything', according to a senior FCC official involved in ownership policy, 'is out in the open. We are the most transparent agency that I know of.'

In the UK, the 2004/5 DCMS-led BBC Charter review process has been trumpeted as a model of transparency. Again, technology was central: 13 seminars, organized by an 'expert panel' set up by the government to reflect on the future of the BBC, were webcast and a dedicated website provided containing transcripts, research findings, a summary of responses to the public consultation and other background information. But here openness was seen not simply in technological terms but as a means of ensuring the widest possible participation and debate. One of the civil servants responsible argues that it was quite different to previous reviews, given the level of public consultation, survey research and analysis carried out to 'make for a better informed outcome'. Another senior policy adviser emphasized the need to recognize and confront the specific atmosphere in which the review was taking place: following the run-in between government and BBC over the existence of weapons of mass destruction in Iraq that culminated in the publication of the Hutton report in January 2004 which criticized BBC newsgathering and absolved the government of blame.

> The way in which to embrace a change agenda is to do it relentlessly in the open, acknowledging Hutton at every twist and turn and making sure it is clear that it is discounted. . .. Precisely because it has been such a stable open process, with an incredibly wide range of views brought in . . . because it has been relentlessly open, no one in any of those seminars is talking about Hutton. They just don't. It's not relevant.

This form of 'transparency from above' – making sure that policy is following a 'change agenda' and that Hutton is 'discounted' – is replicated in the same adviser's comments about the passage of the 2003 Communications Act.

> [Our approach was] a very inclusive one, which is that once government is clear about how it wants to construct a debate, to carry that debate as much as possible in public. So the communications bill went through an extensive series of consultations. No one could say at any point that there hadn't been the widest possible involvement. Indeed, the industry complained massively of consultation fatigue which, I have to say, was also part of the policy, that we would much rather them complain of too much consultation rather than to say that there wasn't enough.

Once again, transparency *follows* the decision about how to 'construct' the debate, i.e. a decision on what issues are, or are not, permissible which, in the context of the 2003 Act, included a determination to secure 'lighttouch' regulation, increased foreign ownership of broadcasting and a liberalized radio market. A commitment to transparency does not, in itself, undermine the control of the policy agenda and may be more likely to legitimize the process in the eyes of the public. One critic of the legislation argues that the plethora of advisory groups, feedback loops and consultations (embodied by the UK regulator Ofcom's launch of dozens of consultations in its short life):

> . . . are meaningful to the extent that, if there was an overwhelming response from the public in one direction or another, which was in direct contradiction . . . [to] the way that the government wants them to go, it would be very difficult for them to hold that line. So I think in that sense, they are an exercise in validating democracy, rather than real transparency or openness.

A further shortcoming of this approach to transparency is that, while key parts of the media policy process may be better publicized, the actual details of how decisions are reached remain far more obscure. One trade reporter in Washington DC admits that, while the 'FCC is more open than other regulator agencies in providing public access or information to the public about what media companies have asked the FCC to do . . . they are less accessible in talking about their internal deliberations'. This is perhaps even more of a problem in the UK, where there is no Administrative Procedures Act, which forces at least some degree of accountability on the US decision-making process. Indeed, one of the main exemptions of the recently introduced Freedom of Information legislation in the UK concerns material that relates to the formulation of government policy. Participants may be invited into the room but there are no requirements to reveal how seriously their views are taken or the means by which decisions are finally made. A highly experienced corporate lobbyist, who works on both sides of the Atlantic, argues that a degree of 'intellectual transparency' is needed.

> [There is a problem with] the procedure of white papers and green papers. Mr A said, Mr B said that, Mr C said this, Mr D said that and then they say we have decided this. How did you get there from a, b, c, d? No indication. I think there should be a requirement for analytical pathways so that the decision-makers must say how they got there from the evidence put in front of them. . .. If you read some of the green and white papers, it's a nod to this guy and to this guy, as if to prove that somebody showed up and then they say, 'and we decided'. How the hell did you get there?

The biggest threat to transparent policy-making, however, derives from the continuing and intimate relationship between key corporate interests and government policy-makers, a relationship whose bonds are rarely exposed to the public. This is partly a structural connection of the sort identified by Mitchell (1997) in his analysis of the 'conspicuous corporation'. Business does not simply share common class interests with a political elite, corporations also 'devote more attention and time to policy issues of concern to them, hire more lobbyists, commit more money in support of their political activities and goals, and have more mobility than other organized interests' (Mitchell, 1997: 220). It is not the case that lobbyists necessarily operate in secret, nor indeed that they always get their way, but that corporate interests increasingly circumscribe and swamp the policy-making sphere.

This is, of course, far more of an issue in the USA, where lobbyists have long operated as a key part of the policy-making process. Many of the lobbyists interviewed describe themselves as 'educators', saving legislators time and money through the provision, when requested, of important data. Their role as 'persuaders' is significant but harmless: 'What you're attempting to do is to take the body of fact as it exists and present it in a favourable fashion,' as one senior vice-president put it. Arguments about regulatory and policy capture are dismissed – indeed, the outcry over consolidation and indecency shows that the notion that 'legislators are simply marching to the industry's beat is far from true'.

However, recent figures revealing that the communications industry alone spent more than $1.1 billion lobbying federal government from 1998 to 2004, and that some 398 personnel passed through the 'revolving door' between government and industry during that time (Centre for Public Integrity, 2004), suggests another reading of the situation: that such setbacks are exceptions to the normally highly consensual relationship between government and media businesses. Policy-makers in Washington *do* have decisions to make but this is normally a case of arbitrating between rival commercial interests: they 'umpire the lobbying contest and approve the final agreed consensual lobbying outcome' (Tunstall and Machin, 1999: 51).

From the campaign for commercial television in the early 1950s to the British Media Industry Group in the mid-1990s that pushed for liberalization of ownership laws, corporate lobbyists have also been active in the UK for some time. Their influence, however, was constrained by the existence of a mixed media economy and a residual commitment to public service broadcasting. Now, given the neoliberal perspective of the current Labour government, they find themselves operating in a far more welcoming environment and the 2003 Communications Act was a particularly fertile period for lobbyists. For example, recent papers released from government archives reveal that representatives of Rupert Murdoch's Sky Television met with ministers six times during the short passage of the communications bill in 2003. They show that 'Mr Murdoch secured private reassurances from ministers during heavy lobbying that he would be able to buy Channel Five if he wanted to' (Leigh and Evans, 2005). Such an outcome is perhaps not surprising, given the

enormous resources available to Murdoch as well as his long-established relationship with Tony Blair.

A more resourceful example of lobbying concerns the UK independent television production sector whose trade association, Pact, claims success for introducing 66 points into the communications bill, the first draft of which made no reference at all to independents. An imaginative and persistent lobbying campaign aimed at securing the expansion of independent production focused on wining and dining parliamentarians ('I almost lived in the Cinnamon Club around the corner from Westminster for about nine months,' recalls one participant) and met with a positive response from a government that was receptive to arguments about granting a higher profile and more financial autonomy to the independent sector. Responding to the government's desire to secure a more competitive media system, the campaign deliberately focused on themes of creativity and innovation.

> It was a deliberate strategy. We could see where the government wanted to go on this and, in fact, I think it was a recognition of what our sector does. But what we did was make sure we crafted the language better. So the whole thing about creative competition, freeing up markets, freeing up global competitive [flows], these were all things that we wanted to do but we recognized that this played into a government agenda as well.

This suggests that a successful lobbying campaign depends on resources and political influence, but also on a sense that the issue connects with the broad ideological stance of key policy-makers. Lobbying is therefore not necessarily about *overt* corruption but also about common values. As one commentator on policy puts it:

> We are not talking about huge amounts of money being poured into almost bribing senior officials into taking the right line. I think it is more a question of pushing at an open door, building up the arguments that are sympathetic to their natural instincts.

Either way, the idea that contemporary media policy-making is a model of transparency and accountability is flawed. The limited public involvement and parliamentary and congressional scrutiny that does take place is marginalized by a relationship between industry and government that is marked by its intimacy, lack of transparency and shared objectives.

A logical process?

Decisions made about the structure of complex symbolic media forms like press and broadcasting are made, in the eyes of many policy participants, with a Gradgrind-like commitment to facts. As few are able to agree on the meaning of foundational principles like diversity, pluralism, the 'public interest' and localism, US policy-makers in particular are turning to what they see as more reliable empirical methods. According to one corporate lobbyist, the FCC is 'economics-driven now . . . anyone who wants to try and make an impact files economics studies now'. 'We really are driven by the experts: the economists,' agrees a senior FCC staffer. This reflects an instrumentalism at the heart of US media policy-making, that decision-making about the media, like any other area of public policy, should be guided by scientific, rather than abstract, principles. While policy-makers are still prepared to turn to

deliberative polling and focus groups to provide background information, they too are far from immune from the attractions of hard *data*. Ofcom, the new super-regulator that has an increasing influence on policy, boasts of an 'evidence-based approach' – using techniques like consumer research, market data, market intelligence and technology research – even for rather amorphous concepts like 'public value' and of course 'public service'.

This empirical approach is theoretically designed to insulate the media policy-making and regulatory domains from the partisan politics and 'biased' opinions that surround them. A common complaint made by corporate lobbyists in particular is that policy-making is skewed when politicians and members of the public with no expert knowledge but strongly held beliefs, start to interfere in the process. 'It's frustrating', argues a lawyer for a well-known DC legal firm:

> . . . because when there is so much public and congressional involvement, you start to get away from dealing with the facts and reality and the real essence of policy and instead are dealing with trying to knock down a lot of myths and misperceptions out there.

The broadcast ownership debate, reflects another lobbyist, 'turned out to be emotional once it went to Congress . . . for those who had staked out their territory as being anti-deregulatory, the facts didn't matter.' A logical procedure had become *irrational*.

Those involved at the FCC in drawing up the liberalizing ownership rules are, not surprisingly given the Appeal Court's rejection of its proposals, particularly bitter about the involvement of the public.

> X: We have this attachment to our television and we think we're expert because we spend so much time watching it, just as individuals. . .. People feel they have a lot of expertise.
>
> Y: They feel like they understand the topic . . .
>
> X: They don't have the time or the information to engage in that [necessary] level of intricacy on this and that's why there is an expert agency to do this. And that's why these decisions aren't made by referenda.

This 'lack of expertise' effectively disenfranchised the hundreds of thousands of individuals who wrote to the FCC in protest at the prospect of increased consolidation.

> X: The vast majority of comments that said 'I'm against big media' are not helpful at all on the merits and don't add anything to the debate . . .
>
> Y: The difficulty in trying to use [those comments] is that we're looking for comments that are well supported in evidence . . .
>
> X: Agencies have to make decisions based on the facts and it's not terribly helpful to ask the average person 'What do you think of this?' because they will give you an overly simplistic answer. It's not their fault but they can't possibly know all the stuff that goes into making those decisions.

This is an extraordinary admission of failure of public policy: that when the public responds in unprecedented numbers, they are deemed to be

'unhelpful'. Pro-deregulation studies conducted for the FCC by a handful of economists proved to be more influential than the convictions of hundreds of thousands of citizens. The public are, however, both illinformed *and* a nuisance. Several corporate lobbyists complained that the involvement of ordinary people made their jobs more difficult.

> It used to be with legislation and at the FCC you could get stuff done quietly and there wouldn't be anyone opposing to get it sort of done. It can't be done any more. And I'm not saying that was a good way to do things, but I think that we have now gone the other way, to the other extreme, where the average citizen has no idea of the substance, but they're told a way in and it tips the balance.

Those lobbyists who believe that public policy is more effective without the public should not be unduly worried as the furore over ownership rules was, in many ways, the exception that proves the rule. Corporate lobbying continues to be highly effective, gratefully received by policy-makers and generally protected from the irritations of public 'intrusion'.

While a far more inclusive language is used about the role of the public in the UK policy process, the increasing reliance on quantitative data threatens to disempower individuals in the same way and to hand the initiative to 'experts' with a direct line to policy-makers. At least one experienced UK lobbyist is concerned about the implications of this development:

> You can take a purely fact-based approach to these things, an evidence-based approach. I don't think that such an approach really exists. I don't think there is an approach that exists without some kind of subjective view being taken, whether you call that political or not. People like to take the view that we can get the policy-makers out of these kinds of areas and let competition law regulate it. But competition law is not some kind of purist theory. You are still making value judgements about what you think is the right level of competition in the marketplace.

A wholly empirical approach, furthermore, can also be very misleading, as the Third Circuit Court found in its rejection of the FCC rules. In one of many critical judgments, the Court disagreed with the FCC's conclusion that all media outlets should be weighted equally in its measurement of diversity in a particular media market. The FCC's heavily empirical Diversity Index 'that requires us to accept that a community college television station makes a greater contribution to viewpoint diversity than a conglomerate that includes the third-largest newspaper in America . . . requires us to abandon both logic and reality' (US Court of Appeals, 2004: 68). This suggests a problem, not with empirical methods in general, but with the use of selective facts and subjective judgements to support an argument that, in this case, increased consolidation would not negatively impact on media diversity.

The privileging of highly selective empirical and evidence-based approaches to policy-making fails both to de-politicize and to make any more objective the decision-making environment. Policy-making in a sphere of such cultural and political significance is bound to be highly political and the fetishizing of 'scientific' data is one means of marginalizing the public from the public policy process and safeguarding it for the economists, lawyers and executives who are in a prime position to furnish the sort of information that policy-makers are demanding.

Conclusion

This article has dealt with only a few of the major points of contention in media policy-making today. It has not examined the extent to which policy-making dynamics may vary across different media forms, nor has it discussed specific cases where conflict arises between rival firms or between private interests and government. It has only hinted at the contentious role that media itself plays in media policy-making: as a (very) occasional reporter and, more importantly, as a public relations vehicle through which powerful actors are able to communicate with each other in order to manufacture 'elite rather than mass forms of consent' (Davis, 2002: 179). Neither has it explored whether policy-makers are able to be autonomous from private interests, nor has it fully considered 'the strategic alliances made by policy-making parties with other social institutions' (Hesmondhalgh, 2005).

Instead, the article focuses on some core challenges to pluralist principles in the public policy-making process: the extent to which it is competitive, accessible, transparent and logical. The article argues that, despite the growing number of 'stakeholders', there has not been a significant challenge to the power of a central policy-making core. Key decision-makers operate in close ideological conformity with the *broad* interests of one key constituency – that of business – in a way that structures the parameters of the debate, dictates what forms of participation are most effective and conditions the balance of power in the policy process. While a range of voices may be heard, there is little opportunity to question the fundamental assumptions about the desirability of 'competition' and 'consumer sovereignty' that increasingly dominates media policy-making. The process is therefore skewed by a fundamental imbalance in both resources and influence between public and private interests or, as David Marsh puts it, 'the pattern of structured inequality that is reflected in political institutions and processes' (2002: 19). In the US in particular, corporations are far from embarrassed about their domination of policy-making. As one seasoned observer of Washington politics comments:

> [The lobbyists'] leverage is much more open, you know you see them in halls of Congress and they don't have to grease a deal in a back room because they're going to do it with a sledgehammer right there in front of every trade reporter and every Congressional hearing. . .. It's not like you have to secretly cut Rupert Murdoch a deal when you can cut him a deal and the entire industry at the front end.

Clearly, the situation is rather different in the UK, where such behaviour is frowned on and where unfettered market forces are likely to face many more obstacles. With a much stronger commitment to public service and a recent memory of social democracy, the deals are simply more likely to take place in private.

In this situation, calls to increase openness and participation while retaining the structural and ideological constraints of the current policy-making system are largely symbolic. A system dominated by the agreement of the main players on the role of market forces and the minimizing of any obstacles to private accumulation will change only when forced to do so. The bumper stickers, write-in campaigns, emails, marches, meetings and teach-ins against

the FCC in 2003/4 characterized a movement that was not invited to the proceedings but instead asserted its right to be heard. That is not a vindication of pluralism but a sign of its weakness.

Note

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