

REVIEW

BROADCASTING PLURALISM AND DIVERSITY: A COMPARATIVE STUDY OF POLICY AND REGULATION

By Lesley Hitchens

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Broadcasting Pluralism and Diversity by Lesley Hitchens examines policy and regulatory measures designed to ensure pluralism and diversity in the media sector. Particular emphasis is given to “the regulation and reform of ownership and control” of the broadcasting sector [p. v]. The study adopts both a historical and a comparative approach, focusing on the regulatory frameworks adopted in three jurisdictions: the United Kingdom, the United States of America and Australia. As the author suggests [p. i], the historical analysis is necessary, given the relevance of early policy decisions to the reforms currently being undertaken in the communications sector. The reason for focusing on these three particular jurisdictions rests on the “useful points of comparison and contrast” that these have to offer [p. 7], particularly in relation to the reform measures for media ownership [p. 8].

This book is based on two assumptions: that pluralism and diversity in the media sector can be achieved only by employing “a network of regulatory measures” which complement each other [p. 8] and that the policy measures aimed at ensuring media pluralism and diversity have been “skewed by a futile focus on the different regulatory treatment of broadcasting and the press,” rather than concentrating on the role played by the media in a democratic society [p. 8]. This difficulty could be remedied by adopting a new focus on the role played by the media in a democratic society, based on the notion of the public sphere [p. 8].

The book is structured in three parts. Part I – Introductory Matters (comprising chapters one and two) is concerned, as the name suggests, with introducing the key themes and with providing an overview of the three jurisdictions examined in this study. Part II – Regulatory Approaches (comprising chapters three, four and five) focuses on regulatory measures which play an important role in ensuring pluralism and diversity in the broadcasting sector, particularly structural regulation, content regulation and competition law. Part III – Regulatory Futures (comprising chapters six and seven) focuses on the need for regulatory measures designed to ensure pluralism and diversity in a changing media environment.

The introductory chapter emphasises the need to review the regulatory framework in the media sector, in order to secure pluralism and diversity. This review is crucial, given the important role played by the media in the democratic process [p. 6]. The chapter also provides a very useful background on the regulatory approaches to broadcasting in the United Kingdom, the United States of America and Australia, demonstrating a real insight into these systems.

Chapter two (Policy rationales and implications for regulation) assesses “the policy framework underlying broadcasting pluralism regulation” and points towards some of the weaknesses associated with the current framework [p. 31]. Particular difficulties are posed by the different approaches adopted for broadcasting on the one hand (which is subject to regulation) and the press on the other hand (which is not subject to regulation) [p. 48]. Due to “an unhelpful tendency to see the issue as one of regulation versus non-regulation”, regulatory decision-making has lost its focus [p. 48]. The author calls for a return to the real focus of regulation in this sector, concentrating on the key role played by the media in a democratic society. A preferable approach put forward in this chapter is to rely on “a more positive and coherent case” for broadcasting regulation, based on the concept of the public sphere [p. 31]. Such an approach would incorporate all forms of media [p. 49] and would provide a more satisfactory explanation for the role of regulation in safeguarding pluralism and diversity [p. 31]. In order to promote pluralism and diversity, the regulatory framework must ensure that the media is not vulnerable to pressures from the state or from economic powers [p. 58].

Chapters three, four and five examine regulatory measures necessary for safeguarding broadcasting pluralism and diversity. Chapter three is concerned with structural regulation, focusing on ownership and control regulation [p. 65]. By ensuring plurality of ownership, structural regulation is believed to lead to a diversity of voices and ideas in the media sector [p. 65]. This chapter examines in detail the regulatory history of each of the three jurisdictions. The author points towards “design problems” in each of these jurisdictions [p. 86], illustrating a common tendency in the United Kingdom, the United States of America and Australia to adopt measures which accommodate commercial interests [p. 316]. These commercial pressures also become apparent in the current regulatory environment, in the call for the relaxation or removal of structural regulation, based on the argument that the market can now provide for itself [p. 316]. The author emphasises the continuing need for structural regulation, as “differently constituted and funded media outlets bring diversity in the media environment” [p. 316]. Therefore, it is important to ensure through structural regulation, that no media outlet has monopoly over discourses within the public sphere [p. 133].

Chapter four examines the role played by content regulation in ensuring that the public has access to a wide range of information [p. 317]. This form of regulation seeks to ensure, *inter alia*, that the information available does not mislead the public [p. 316]. Alongside structural regulation, content regulation is seen to be “crucial to the proper functioning of the public sphere” [p. 203].

Chapter five focuses on the role played by competition law in providing pluralism and diversity in the media sector. Particular attention is given to merger regulations, access to infrastructure, access to content, “must-carry” obligations and the regulation of bottleneck facilities such as Electronic Programme Guides. This chapter highlights the role of such measures in ensuring, *inter alia*, that dominant market players do not abuse their position of dominance [p. 317]. The chapter also acknowledges some of the limitations associated with general competition law (given the lengthy enforcement procedures and the fact that intervention may come too late, after competition in the market has been distorted) and points towards the use of *ex ante* competition rules [pp. 248 and 317]. Nevertheless, such rules are helpful only if accompanied by effective enforcement powers.

Chapter six (Broadcasting and economic issues) examines claims that the proliferation of channels and the decline of spectrum scarcity have rendered redundant the need for specific constraints on media ownership and control, and that the media market should be regulated instead through the application of general competition law [pp. 260-261]. The author dismisses these claims by pointing out that “broadcasting does not operate like other markets” [p. 251] and “there are still particular characteristics of broadcasting which make it vulnerable to market failure” [p. 48]. As some of the market failures specific to the broadcasting sector are likely to continue, and given the negative impact that these are likely to have on the protection of pluralism and diversity [p. 260], this chapter calls for the need to maintain the specific rules constraining media ownership control [p. 261]. While general competition law perceives the public as consumers, the specific rules on media ownership and control reflect a perception of the public as citizens [p. 261]. For these reasons, the sole reliance on general competition law is seen as “insufficient for the proper protection of pluralism” [p. 262].

Chapter seven (Reforming broadcasting pluralism regulation) takes further the arguments put forward in the previous chapter, in dismissing the claims that technological advances and the proliferation of channels have rendered media ownership regulation redundant. Policy-makers entrusted with addressing the changes in the media environment should look not only at the impact of these changes on the regulatory framework but also at the need to reshape the regulatory framework in order to adapt to these changes [p. 315]. Unfortunately, policy-makers tend to overlook this latter issue and often limit their vision to “a presumption that change means removal or relaxation of rules” [p. 315]. According to the author, “a degree of scepticism must be maintained about the extent to which the market will provide the appropriate protection for the goals of pluralism and diversity” [p. 308]. This chapter establishes that the need for regulation has not been abandoned and that regulation of the broadcasting sector must be subjected to a process of rethinking [p. 308]. This rethinking process must acknowledge the “important public interest role” played by the media [p. 314]. Furthermore, pluralism and diversity must be “both promoted and protected” [p. 315] and regulators must employ the complementary application of structural, content and competition measures in order to achieve these objectives [p. 315]. In this manner, the changing regulatory environment will be adapted in order to play an important contribution in the public sphere [p. 318].

In the introduction to this book, the author argued that “if pluralism and diversity is really the concern, then it is necessary to avoid the ‘old’ and ‘new’ media divisions, in order to undertake a genuine inquiry into how the media regulatory framework should be adapted to meet the changes in media delivery and use” [p. vi]. The author makes the case to preserve regulation in the changing media environment and provides policy-makers with the necessary elements for undertaking “a genuine inquiry” into how to best adapt the media regulatory framework, in order to meet any challenges faced in achieving pluralism and diversity [p. vi].

For those new to the area of media regulation, this book provides very clear explanations of key themes in this area (e.g. arguments for and against regulation, the role of the media in serving the citizens, freedom of expression, Habermas and the public sphere, etc.), with very useful reference to further resources which explore these themes in more depth. For this reason, this book constitutes an invaluable tool for any courses in media regulation. The only minor criticism is that the wealth of resources employed throughout the book is not reflected also in the selected

bibliography, listed at the end of the book. The structured manner in which this bibliography is presented is a very useful source for further research, and an expanded list of resources would have been beneficial.

The book has a lot to offer also to those already familiar with pluralism and diversity discourses in media regulation. These discourses are analysed from a fresh perspective, based on the two assumptions specified in the introduction (that pluralism and diversity can be achieved only by the complementary application of structural, content and competition measures and that policy measures aimed at safeguarding these objectives have been “skewed by a futile focus on the different regulatory treatment of broadcasting and the press”) [p. 8]. The historical and comparative analysis of the regulation of pluralism and diversity in the United Kingdom, the United States of America and Australia, as well as the author’s real insight into these three legal systems, have a lot to add to the already established literature in this field. For these reasons, this book is an invaluable resource for anyone studying, teaching and researching media regulation.

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