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The Impact of Convergence on European Television Policy. Pressure for Change – Forces of Stability

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Introduction¹

Over the last decade, questions regarding the implications of digitalization and convergence have dominated European media debates. One aspect of the debate has concerned regulation: to what degree would media regulations have to be modified in order to accommodate digitalization and convergence? This particular debate took off in the mid-1990s with claims from telecommunications, computer and other industrial interests that traditional television regulation was outdated and needed to be modified substantially to fit the emerging convergent environment.

One of the main targets of the industrial interests was the differentiated regulatory regime for television. Historically, different broadcasters had been regulated differently in Europe: public broadcasters had been subject to more comprehensive regulation than private terrestrial broadcasters, while cable and satellite channels had been subject to an even lighter regime. Since digitalization would turn all networks into multi-channel networks and dramatically increase transmission capacity, it was argued, such a differentiated regime could not be sustained. There would be less need for regulation that would grant some operators, most notably public broadcasters, special protection and privileges, and few reasons why broadcasters, in contrast to other media operators, should be subject to content regulations. The logical outcome of technological convergence would instead be that all services should be regulated in the same (minimal) fashion.

The claim that convergence and digitalization required regulatory change had a significant impact. Before long, governments in many countries, as well as the EU Commission, had taken steps to review their communication policies. In 1997 the EU Green Paper on Convergence (COM 1997 623 Final) was published, claiming that substantial changes in existing regulations were necessary if European countries were to take advantage of the possibilities offered by convergence. The stakes were high, as this quote illustrates:

If Europe can embrace these changes by creating an environment which supports rather than holds back the process of change we will have created a powerful motor for job creation and growth, increasing consumer choice and promoting cultural diversity. If Europe fails to do so, or fails to do so rapidly enough, there are real risks that our businesses and citizens will be left to travel in the slow lane of an information revolution which is being embraced by businesses, users and by Governments around the world. (COM 1997 623 Final: iii)

The Green Paper indicated a number of areas where change would have to be made, and outlined new – and significantly more liberal – principles for future regulation: first, this was *minimum regulation*, implying that regulatory barriers would have to be brought down in order to encourage investments in new media. Regulatory intervention should be ‘limited and closely targeted’, as the Green Paper stated (COM 1997 623 Final: 18). Second, there was a call for more horizontal regulation, whereby common regulatory frameworks would replace the existing sector-specific regulations for broadcasting, telecommunications and information technology. The ideal was that regulations should be technology neutral: ‘regulating essentially similar services differently, particularly, on the basis of the technology used to deliver the service, could block competition, investment and the provision of services’ (COM 1997 623 Final: 19). Third, there were arguments that *competition regulation*, as a form of economic regulation aimed at regulating markets, should be used more in the

broadcasting sector – which had so far been regulated more according to cultural policy principles.² Finally, it was recommended that *self-regulation* play a more important role. The Green Paper saw issues concerned with the protection of minors and public order as areas in which self-regulation was especially relevant (COM 1997 623 Final: 30).

The Green Paper outlined three alternatives for future regulation: build on the existing regulatory framework, develop new frameworks for new services, or create a whole new structure encompassing *all* media and communication activity. Although no clear preference was stated, the tone of the Green Paper indicated that the EU Commission leaned towards the third alternative. The perspective running through the Green Paper was that regulatory adjustments would not be sufficient – a new framework had to be implemented fast if Europe and its nation states were not to be left behind in the global competition.

Towards the end of the 1990s, the EU Green Paper had been followed by similar reviews in many European countries. In Britain, a consultation document on convergence was produced by the Department of Trade and Industry (1998), and similar reviews were commissioned by Norwegian and Swedish governments (SOU 1999:55; NOU 1999:26). The tone of these reviews turned out to be somewhat more cautionary than the EU Green Paper. The latter had indicated a preference for a whole new regulatory framework, but this alternative appeared too radical for many European governments. In its consultation document the British Government explicitly rejected the idea that ‘a radically new regulatory structure is needed because convergence is with us’ and declared that it would choose ‘an evolutionary path’ (British Department of Trade and Industry, 1998: 3). The Norwegian policy review explicitly distinguished between short-term and longer-term changes (NOU 1999:26), whereas the Swedish advised for coordination and horizontal regulation of infrastructure, but not necessarily of services and content (SOU 1999:55: 259). Nevertheless, all three policy reviews expressed a general understanding that significant changes would have to take place if Europe – and each of its nation states – were not to be left behind. This understanding extended to other documents of the period. ‘As a peripheral country, we must be in the leading edge of the development’,³ stated, for example, the Norwegian action plan for the information society (somewhat optimistically) in 1996 (Norwegian Ministry of Transport and Communication, 1996: 11).

New technology has often fuelled arguments for regulatory reform. In the 1980s, the introduction of satellite television was presented as a factor necessitating a whole new regulatory regime for broadcasting (see, for example, Skogerbø, 1996; Syvertsen, 1992). In the early and mid-1990s technological innovations and the arrival of ‘the information society’ were presented as arguments for accelerating competition in telecommunications

(see Storsul, 2002). The arguments about convergence from the mid and late 1990s had much in common with these earlier debates in the sense that technological change was portrayed as a powerful driving force making social and regulatory change inevitable. Also on these previous occasions, there were claims that new technology undermined the system of regulatory differentiation, and that there was no longer need for a system that granted some broadcasters a special position. In reality, however, technological change is a less powerful motor than many observers assume. While specific regulations are adjusted continually, the structure as a whole is resilient to change. The general pattern is that arguments for regulatory reform will be met by arguments for continuity and the mobilization of actors with vested interests in existing structures. The outcome depends on the balance of power between these two camps, not on the technological possibilities alone.

In this article, we examine both the arguments for change and the forces of stability and continuity. The main thesis is that despite momentous change in technology, regulatory differentiation persists in the era of convergence. Broadcasting services that control

crucial resources and are considered important for the public remain more strictly regulated, whereas the regulatory principles launched in the 1990s – minimal regulation, horizontal regulation, competition regulation and self-regulation – have had more influence over the regulation of new services. Indeed, we argue, actual regulatory institutions have changed more than the services they control. In Norway, three separate media regulatory bodies merged into one from 2004, whereas in the UK, Ofcom was established in 2003 as a single regulatory body for the whole communications sector, both media and telecommunications. Although reforms of regulatory institutions may indicate changes in regulations, as Doyle and Vick (2005: 90) argue in their review of the UK regulatory framework, '[s]imply creating a single regulatory body does not guarantee regulatory "convergence"'.

The main theses in the article are backed up by an analysis in five parts, each investigating policy measures within one key area of television regulation. First, we analyse how regulation of public broadcasting has developed in the light of digitalization and convergence. Second, we turn to the question of how the licensing system for private broadcasters has withstood the pressure for change. The third and fourth parts focus on content regulation: how has the system of positive content obligations (pluralism, democracy and culture) and negative content restrictions (advertising, protection of minors) been adapted to fit the emerging convergent environment? The fifth part of the analysis concerns so-called bottleneck regulations, i.e. regulation of limited resources that could create new monopolies. In a final section we summarize the argument and discuss the various forces influencing broadcasting policy, paying attention not so much to the forces of change as to the forces of stability and continuity. We point to institutional legacies, politics and cultural values as three factors that in particular modify and limit the impact of technological change. Our contention is that institutional and regulatory arrangements are, as a whole, resilient to change, and that the forces of stability are often underestimated in media policy research.

The analyses in the article draw on evidence from the EU, the UK and the Scandinavian countries Norway and Sweden. Britain, Norway and Sweden share the core characteristics of the European model for analogue television, implying, among other things, that public and licensed broadcasters retain strong positions. The three countries surveyed all have a policy for digital switch-over: Britain and Sweden have been early movers in digitalizing the terrestrial networks, whereas in Norway a licence for the development and operation of the digital terrestrial network was issued in 2006. All three countries are also subject to regulation on the European level.⁴ The market situation differed, however: the UK had a large home market with substantial export of television services, while the two Scandinavian countries were net importers of programming. The competitive situation also differed, as the broadcasting monopolies remained in Norway and Sweden until the 1980s while competition was introduced as early as 1955 in Britain.

Public Ownership and Licence Fee Funding of Public Broadcasters

In Europe, public broadcasters have played a crucial role politically and culturally, as well as in capturing high audiences. The British Broadcasting Corporation (BBC) has, since its inception in the inter-war period, served the public interest with a combination of informative, educative and popular programming. Its Scandinavian counterparts, the Norwegian NRK and the Swedish SVT among them, have similarly forged strong relationships with the general public. The historical position of the public broadcasters was clearly acknowledged in the policy reviews of the mid-1990s. It was even argued that public service broadcasting could become even more important in a multi-channel environment (British Department of Trade and Industry, 1998: 33; NOU, 1999:26: 163; SOU, 1999:55: 276). Nevertheless, despite the acknowledgement of the social role of public broadcasters, the main thrust of the documents pointed in a different direction – towards inevitable and

mounting problems for the traditional institutions. No measures were outlined that would secure public broadcasters renewed prominence; instead the evidence that was listed pointed toward marginalization. The policy reviews argued that the licence fee would be difficult to uphold due to diminishing market shares, that the institutions would face problems in realizing value-added services to the same degree as their commercial competitors, and that they would have trouble collecting the fee from customers who would receive television from networks other than broadcasting (e.g. over the internet) (NOU, 1999:26: 161–2; SOU, 1999:55: 201–2).

Thus, public broadcasters occupied an ambiguous position in the policy debates. On the one hand, the social role of public broadcasters was acknowledged, but on the other hand, policies were in place intending to limit their range and scope. Indeed, the EU Green Paper stated that close regulatory monitoring was necessary to ensure that public broadcasters did not engage in anything that could be ‘achieved by normal market activity’ (COM 1997 623 Final: 29). The basic premise for the EU policy was that the public funding of public broadcasting could be maintained, but only to finance the type of services that were strictly within the public service remit.⁵ The British, Swedish and Norwegian policy reviews were less clear on this point, but also here it was implied that technological convergence would mainly serve to diminish the role of public broadcasters.

A decade after the Green Paper was published the EU Commission has indeed adopted principles that could limit the actions of public broadcasters. These include demands that nation states clearly define the remit of public service institutions, that public funding be limited to what is necessary to fulfil the public service mission, and that state subsidies be transparent and not used to subsidize commercial activities (Hujanen, 2005: 61; Syvertsen, 2004: ch. 8). The combined impact of these measures has not, however, marginalized public broadcasters; on the contrary, the signs are quite encouraging from the public broadcasters’ point of view. First, public broadcasters clearly retain substantial – and in several cases improving – market shares, at least in the countries of northern Europe where the public service tradition has been most resilient. By 2004, the public broadcasters still dominated the national television markets in Britain, Sweden and Norway.⁶ Second, most European countries, including the UK and the Scandinavian countries, uphold some form of licence fee or public funding, and few governments have actually abolished or are seriously discussing the abolition of the licence fee.⁷ Third, the social and political legitimacy of public broadcasters remain strong in national and European politics. Although the private broadcasters regularly challenge the right of public broadcasters to provide popular programming and develop attractive digital services, national parliaments and the EU Commission have on several occasions defended their rights to do so⁸ (Levy, 1999; Papathanassopoulos, 2002; Steemers, 1999; Syvertsen, 2004).

This situation is partly due to the adaptability of the public broadcasters themselves, but also reflects the strong defence campaign carried out by the broadcasters and their allies. Political and cultural interests, not least within the national and European Parliaments, have fought relentlessly against any actions that might curb the scope and lessen the importance of public broadcasters (Hills and Michalis, 2000: 452–5; Levy, 1999: 140 and 95–7; Syvertsen, 2003). This campaign has been successful in the sense that public broadcasting is still being treated as a special case which demands special regulation and more substantial protection than other media industries.

Licensing of Private Terrestrial Broadcasters

The licensing arrangements for private broadcasters constitute the second main element of the traditional analogue regime for television in Europe. As early as 1955, so-called Independent Television (ITV) was introduced in Britain as a private service with public

service obligations, and similar services (TV2 in Norway and TV4 in Sweden) were set up in Scandinavia in the early 1990s. This scheme of private–public cooperation has been justified with reference to the limited frequencies available for broadcasting, and obligations were imposed on the broadcasters in return for their right to use frequencies. Also the basis for these provisions was predicted to change in the wake of convergence. The arguments for change in this area were based on two premises: first, that the increased distribution capacity of digital networks would make it less legitimate to impose licensing obligations on privately owned market actors; and second, that more effective use of frequencies and alternative means of transmission would make licensing arrangements superfluous from a practical point of view (see, for example, British Department of Trade and Industry, 1998: 33; NOU, 1999:26: 143–4; SOU, 1999:55: 276). The licensing arrangements for private broadcasters indeed appear more vulnerable to change than the publicly owned broadcasting system. Licensed private media companies never enjoyed the same level of political support as the traditional public broadcasters. New technologies provided a welcome argument for opponents of these regulations. Change, however, comes slowly and the interests opposed to the licensing arrangements have not succeeded in abolishing these. In Sweden and the UK, licences are still required for the free private channels broadcasting in both analogue and digital terrestrial networks (Ofcom, 2004a; SOU 2004:39). In Norway, the licensing system has strong political support and the Norwegian Parliament has insisted that the licensing system should remain in place when networks are digitalized (Innst.S. n. 128, 2003–2004). Norwegian TV2, which holds the private analogue licence, has argued against this, claiming that their privileged position will vanish in the digital era, and that TV2 should be allowed to change from being a free-to-air public service channel to a pay channel. Following intense negotiations an agreement was reached securing that TV2 will remain free-to-air in the digital network at least until the end of 2009 (Norwegian Ministry of Culture and Church Affairs, 2006). Thus, also in this case, there has been political and cultural support for existing policy measures. Minimum regulations have not replaced sector specific regulation and differentiation persists: private licensed broadcasters remain less regulated than public broadcasters, but more regulated than other private operators. So far, the issue seems not so much to be the elimination of the licensing system as such, but more an awareness that the obligations imposed upon broadcasters may have to be lessened as television channels proliferate and the value of the licences diminishes (Ofcom, 2004b). The private licensing system enjoys strong political and institutional support, especially among the political elites who are concerned not to see their area of influence diminish (see, for example, Innst. S. n. 128, 2003–2004; Norwegian Ministry of Culture and Church Affairs, 2006). But, as the Norwegian situation illustrates, the system relies on the attractiveness of the licences and assumes that there will be applicants for new or renewed licences when existing licences expire.

Positive Content Obligations: Pluralism, Democracy and Culture

Above, we have described how doubts were raised in the mid- and late 1990s about the future of structural (finance, ownership and licensing) regulation of public and licensed broadcasting. Doubts were also raised about the accompanying practice of imposing content requirements on these broadcasters. Such requirements have historically included obligations to cater for all groups and interests and provide high quality information, culture and entertainment. Typically, the Swedish private licensee TV4 is obliged to provide ‘a diversity of programmes of high quality’, ‘news programmes produced by TV4 for at least 30 minutes a day’, and ‘programs for children under 12 years throughout the year’ (Swedish Ministry of Culture, 2004). With a growing number of channels, it was argued that such detailed requirements would be both unnecessary and difficult to enforce (NOU

1999:26: 165).

Several years later, however, there are few indications that the system of content requirements has been undermined and that minimal horizontal regulation is replacing separate regulation for each media sector. A horizontal framework regulating electronic distribution networks was put in place with the new telecommunication directives in the early 2000s, but this was made less extensive than originally intended (Directive 2002/19/EC; Directive 2002/20/EC; Directive 2002/21/EC; Directive 2002/22/EC; Directive 2002/58/EC; Directive 2002/77/EC). Initially, the EU Commission had intended the new regulatory package to include content regulations and provide a common regulatory framework for both telecom and broadcasting, but this idea was met with strong opposition from member states and their pro-public service broadcasting lobbies (Hills and Michalis, 2000). Both on the European level and in the various nation states, the idea of a liberal horizontal framework covering all services, eliminating the need for sector specific content regulation, was explicitly rejected already in the discussion of the convergence reviews (COM 1999: 108). A large segment of the European Parliament and many member states supported content regulation and argued that this was instrumental to upholding the social and cultural significance of broadcasting (Levy, 1999: 140). By 2007 extensive content requirements are still in place all over Europe for traditional analogue channels, and a differentiated system remains. The 2003 British Communications Act is a case in point; here the highest level of public service obligation is imposed on the BBC and some licensed broadcasters, whereas others are subject only to a basic level of requirements (Doyle and Vick, 2005). Also within the public broadcasting sectors, differentiation is a key principle, but here the situation varies somewhat between the investigated countries. In the UK, the BBC's digital channels are subject to more detailed programming obligations⁹ than the digital channels of public broadcasters in most other European countries (Aslama and Syvertsen, 2007; Betzel, 2003).¹⁰ The 2004 remit for the Norwegian public broadcaster NRK clearly distinguishes between core services (i.e. basic channels), which continue to be obliged to serve democracy, pluralism and culture, and other services (i.e. web, mobile services and potential new digital channels) which are not monitored with respect to whether they fulfil these principles (NRK, 2004). The new remit is an answer to the EU demand that public service obligations be clearly defined, and is an attempt to protect domestic protection and preserve cultural values without distorting competition.

Negative Content Restrictions: Advertising, Protection of Minors

In addition to the obligation to transmit valuable programming, all television channels have been subject to restrictions on specific kinds of content. In order to prevent excessive commercialization, the European television directive and national legislation have set limits to the amount and placement of advertising. Restrictions also apply regarding taste and decency, privacy, the portrayal of violence and sexual conduct, and the protection of minors (British Department of Trade and Industry, 1998: 29, 62; see also the Norwegian General Civil Penal Code [1902], and Directive 97/36/EC).

The issue of content restrictions did not figure prominently in the political debate about convergence. Still, the general implication was that as the number of channels proliferated and the boundaries between television and other services became less clear, the need for detailed content regulation would diminish and self-regulation would be more appropriate. This would especially be the case for potentially harmful content in new services (see, for example, British Department of Trade and Industry, 1998: 23; NOU, 1999:26: 99; SOU, 1999:55: 95). The contention was that advertising restrictions and other limitations would become difficult to enforce in practice as digitalization brought new possibilities for product placement, integrated advertising and split-screen solutions (Syvertsen, 2004: 199–200; see, for example, COM 2002 778 Final).

This is perhaps the one area where cultural and political interests have been the least resistant to accepting that technological developments require political change. In particular, consumer interests and educational and parental interest groups have relentlessly argued that regulation is necessary to protect individuals from commercial and harmful content. In all three countries there have been regular public outcries over new services that are seen to be morally or commercially exploitative, and there have been strong sentiments in favour of continued regulation (see, for example, EURALVA, 2006; Forbrukerombudet, 2006; Konsumentombudsmannen, 2005).

A decade after the convergence reviews were published, it is clear that a differentiated regime remains the preferred mode also when it comes to content restrictions in the EU. In 2003 a review of the EU Television Without Frontiers Directive (Directive 1997/36/EC) was initiated to take account of convergence, and the 2005 proposal (COM 2005 646) suggests both liberalization and new forms of regulation. Liberalization is suggested in the area of advertising where it is proposed to allow product placement under certain conditions and liberalize the rules for placement of advertising breaks. For television services in general a two-tier approach is advocated: it is suggested to subject all television services, including on-demand (non-linear) services, to a minimum level of regulation pertaining to, for example, the protection of minors and identification of commercial communication. Traditional scheduled broadcasting services (now termed linear broadcasting) should continue to be liable to extensive regulations.

The differentiated regime, where core (linear) services are clearly regulated and monitored while new and more marginal services are subject to fewer obligations and restrictions, resembles the traditional regime where different media have been subject to different content restrictions based on their assumed cultural impact.¹¹ The proposed EU directive is not yet adopted, but it is interesting to note that both the attempts at liberalization (product placement and advertising breaks) and the suggestion that all services – including on-demand services – should be subject to minimum regulation, have been met with counter-arguments and protests.¹² This reflects the divided sentiments in the political debates: new media companies are arguing against regulation whereas political and cultural interests defend state intervention in the interest of consumer protection and the protection of minors. It is also interesting that in several other areas, including the internet, self- and co-regulation has been introduced in order to facilitate the protection of minors, and to raise awareness about safe use of digital media for teachers, parents and educators (COM 2004 341 Final). Thus, current media policy is not just about minimizing regulation, but also about introducing new – if rather soft – regulation in some areas.

Bottleneck Regulations

The fifth and last type of regulation that was questioned in the debate about convergence in the mid- and late 1990s were the so-called bottleneck regulations. A prime example of regulation of bottlenecks in broadcasting has been must-carry obligations, whereby private cable operators have been obliged to transmit public television, licensed private channels and local television. The justification for these obligations has been that cable networks constitute geographical monopolies, and that it was in the public interest to ensure all citizens had good reception of domestic and public broadcasting. Digital networks increase transmission capacity, and the convergence reviews discussed the need for continued must-carry obligations. Whereas the EU Green Paper argued that such a need was rapidly diminishing (see COM 1997 623 Final: 20), national policy reviews were more hesitant. The Swedish review argued that existing must-carry provisions should be maintained, whereas the Norwegian Commission was divided (SOU, 1999:55: 256–60; NOU, 1999:26: 146–7). The arguments for sustaining must-carry regulations were both political and cultural; the implication being that without regulation,

cable networks could easily be dominated by foreign and commercial services, and viewers' choice could become more limited (NOU, 1999:26; SOU, 2003:109). While sentiments were divided over must-carry obligations, the convergence reviews were unanimous in their concern that new technologies might create new bottlenecks (COM 1997 623 Final: 15). Standards for set-top boxes, systems for encrypting signals and subscriber management (conditional access), and new interfaces for selecting programmes and channels (portals and electronic programme guides), could all be used by powerful actors to achieve market control. The British convergence review argued that in order to avoid monopolization, regulation was needed for conditional access systems and other digital services (British Department of Trade and Industry, 1998: ch. 4). The Scandinavian reviews showed similar concerns and the Norwegian review argued specifically in favour of regulating access control, potential gatekeeper functions in the set-top box, as well as electronic programme guides (NOU, 1999:26: ch. 10.1; SOU, 1999:55: ch. 12). Again, the political and cultural arguments carried weight, and bottleneck regulation has neither been strengthened, nor lessened, in the digital era. Instead, it appears that differentiated regulation remains the preferred solution. Cable companies are still obliged to carry public service channels in all three countries investigated, whereas new bottlenecks of high assumed significance to the public are subject to extensive regulatory frameworks. The prime example is digital terrestrial networks, for which elaborate licensing systems are set up in Norway and the UK, and state ownership is imposed in Sweden (Storsul and Sundet, 2006). Indeed, the public debates over digital terrestrial television were dominated in all countries by political and cultural concerns, and existing public broadcasters have played a prominent role in securing that these networks be introduced and publicly regulated (Galperin, 2004: part IV; Storsul and Sundet, 2006). New bottlenecks with less assumed significance for the public have been regulated more lightly. National governments as well as the EU have been reluctant to interfere in the issue of standards, in case regulation would hamper the development of new products and services (Näränen, 2003). Electronic programme guides have been subject to soft, if any, regulation. In the UK, a code of practice has been introduced in order to secure public service broadcasters a prominent position in programme guides (Ofcom, 2004c); in Norway provisions for public control have been made but not implemented,¹³ whereas in Sweden, the regulator is currently surveying the issue (Swedish Ministry of Culture, 2003). As a rule, it appears that competition regulation is perceived to be the best mechanism to prevent market dominance through bottleneck control in emerging markets.

New Technology and Political Change

We have seen that the reviews on convergence that appeared in the mid- and late 1990s were quite in compliance with one another in defining the challenges to media regulation. The documents proposed similar regulatory measures for the communications sectors: minimum regulation, competition regulation (instead of cultural policy regulation), horizontal regulation (instead of sector specific regulation) and more use of selfregulation. In general, a lighter regulatory regime was proposed. This call for change was in line with the interests of emerging and dominant industrial actors, most notably large media conglomerates and telecommunication companies looking for business opportunities in a deregulated broadcasting market (SEC, 1998). Typically, in its response to the Norwegian convergence review, the incumbent telecom company Telenor stated that 'Telenor supports the principles the EU Commission has proposed for all further regulatory change'¹⁴ and argued strongly in favour of minimum, horizontal regulation, and for the reduction of regulatory measures specific for broadcasting (Telenor, 1999).¹⁵ Among the allies of the industrial interests were a range of academics and consultants who wrote books and held workshops at business conferences about the revolutionary

potential of new and converged media (see, for example, Gates, 1995; Gilder, 1992; Negroponte, 1995). Underlying their arguments was the assumption that large-scale technological changes would, by necessity, lead to substantial changes in regulation. This assumption, as we have pointed out, frequently surfaces in media policy debates; in both the 1980s and 1990s new technologies fuelled arguments for reform in broadcasting and telecommunications. Indeed, over the last three decades, there has been a continuing focus on factors pointing towards change in communication policy. Technological innovations are constantly portrayed as challenges to existing structures and institutions and these institutional arrangements are in turn portrayed as vulnerable to technological change. This is despite the fact that both institutions and regulatory arrangements have shown resilience and adaptability to new technological possibilities. Few (if any) scholars would subscribe to the blatant technological determinism that can be found in political and business rhetoric. Media scholars recognize that although technology has an impact on the available options, other factors strongly influence the policy process. The dominant perspective is that the causal relationship between society and technology goes both ways. While early debates tend to emphasize the endless possibilities inherent in new technologies, political, economic and institutional factors influence which possibilities will be encouraged and which will be found detrimental or irrelevant (Braa et al., 1999; Flichy, 1995; Gibbons, 1998; Mansell, 1996; Syvertsen, 2003, 2004; Williams, 1974, 1983; Winston, 1998).¹⁶ Nevertheless, most policy studies still take the challenge of the new and the prospects for change as their starting point. This reflects a general trend in media studies, which is that many researchers take their cue from topical and potentially dramatic issues surfacing in the public debate, rather than from theory or the existing body of knowledge within their specific field.¹⁷

In this article we have discussed to what degree the predictions launched in the 1990s debates on convergence have been realized. Our examination has shown that the regulatory regime for television remains extensive and that continuity seems to be a more precise description than radical change. To the degree that changes have taken place, the main pattern seems to be that one differentiated regime has replaced another: traditional television and widely broadcast content remain more strictly regulated than other services, while the emerging individualized services are regulated according to minimal (competition) regulation principles. In the light of these empirical observations it is interesting to discuss stabilizing factors and factors pointing towards continuity in more detail. Which factors moderate and limit the impact of technological change?

First of all, institutional legacies clearly limit and moderate the impact of technological change. The strong institutional legacies of the public and licensed broadcasters have in particular served as a buffer against more dramatic regulatory change. In the recent debates, the British BBC, the Norwegian NRK and the Swedish SVT all had vested interests in the existing structure and struggled to defend their positions. As Hills and Michalis (2000: 452) point out, '[t]he public service broadcasters and their regulators reacted vigorously to the lack of attention in the Green Paper to culture, community and citizenship', and a forceful lobby campaign ensued. Many of the responses from interested parties to the Green Paper stressed the cultural aspects of television regulation, especially public service, and argued in favour of more gradual regulatory reform (Levy, 1999: 140; SEC, 1998).

Thus, rather than weakening the vertical regulatory model, the convergence Green Paper and the reactions it provoked seem to have strengthened the existing regimes (Hills and Michalis, 2000). The defence of public broadcasting gained more momentum, and in at least two of the cases surveyed here, the UK and Norway, public broadcasters have been explicitly selected to play the role of digital pioneers. The BBC and the NRK both experiment vigorously with new digital applications and exploit adjacent forms of

commercial revenue (Steemers, 1999; Syvertsen, 2004: ch. 8). To Norwegian and British governments, at least, the state-owned broadcasters appear to be the most flexible and appropriate instruments for realizing national digital ambitions. Private broadcasters, in contrast, neither have the capital nor are willing to take the risks involved in developing innovative content and services. Institutional legacies are also important for explaining why both public and licensed

broadcasters remain protected by regulation. In a situation where cross-media ownership is flourishing and expected to increase with digitalization and technological convergence, an intended marginalization of public broadcasters does not command much political support (Celsing, 2004). Existing regulation is not too efficient in curbing media concentration, and individual institutions, such as public broadcasters, have proved easier to regulate than entire markets. Consequently, contrary to the arguments that public broadcasters would be marginalized, arguments abound that they are becoming too dominant and powerful (see, for example, Collins, 2002).

Politics is a second factor that moderates and limits the impact of technological change. Liberalism has gained influence over the last decades and has brought with it an important push towards deregulation and 'new public management', which in turn fits well with calls for minimum and horizontal media regulations. The neo-liberal agenda of the convergence Green Paper has nevertheless been met with resistance as issues such as harmful content, interoperability and affordable access have gained prominence. We have seen that new distribution technologies of high assumed significance to the public, such as digital terrestrial networks, have been subject to strict regulation in many countries. These issues point towards new forms of regulatory intervention. Näränen (2005) traces these re-regulation shifts back to the increased power of the European Parliament, as well as the political changes in the governments of member states.

In latter years governments have shown more willingness to intervene in controversial regulatory matters. In Norway, the government for the first time in 2002 awarded a radio licence to a challenger rather than an incumbent, the reason clearly being that the incumbent had neglected its public service obligations and underestimated the need for political legitimacy and support (Enli and Sundet, 2004). New sanctions have also been introduced; in 2005 the same government – also for the first time – introduced a system of financial penalties for broadcasters that do not value their public service promises (Norwegian Ministry of Culture and Church Affairs, 2005). This is yet another indication that politics matter, and that broadcasters cannot rely on markets alone. Governments are clearly keen to retain political power over broadcasting and do not bow easily to arguments about new technology requiring a more light-touch regime.

A third stabilizing factor is the cultural values that are embedded in the television regimes. In the wake of globalization and the internationalization of markets, international organizations (WTO-GATS, EU) as well as the media industry have called for the reduction of regulations that may restrict trade and competition. This push is embraced nationally by market actors and politicians who want to take the lead in the global competition, and has in turn influenced the frameworks for new services and services on newly developed platforms. The result is a lighter regulatory regime for these services. At the same time, however, a concern for local culture and identity has received renewed attention (see Castells, 1997). A concern for local and national culture helps to legitimize public service arrangements and regulations protecting core services. This is seen, for example, in the debates about digital terrestrial television in Europe, where a prime focus was on how regulatory intervention could secure national television and substantial domestic production. Regulation was seen to be necessary to protect and promote national identity and culture in content and channels (Storsul and Sundet, 2006). Thus, arguments for regulatory reform were met with counter arguments – in these cases the counter arguments stressed the need for protecting national public television and maintaining

content regulations in core services.

Again we see that a differentiated regime is visible where the services that are perceived to be culturally most important remain firmly regulated. In the case of new services, such as web and mobile telephony, few actors with a cultural agenda actually get involved in debates about regulation. Consequently the agenda is to a greater degree set by the industry, which desires more liberal regulation without cultural interference.

Conclusion

It is political and cultural – more than technological – concerns that have formed the established television regimes. The same concerns, combined with the institutional legacies that have developed within these regimes, serve as a buffer against fundamental changes in policy and regulations. We have argued that this is why the new principles launched in the convergence reviews have had less influence on traditional than new services. New technologies challenge existing regimes and open up new possibilities, but regulatory changes are controversial and the forces of stability are often underestimated. In research on media developments, fascination with the radical changes technology may bring should be checked against which forces of stability are at play.

Over the last three decades, the perspective that the whole system is under siege has dominated European television policy debates – also in academic circles. This outlook has underestimated the degree to which existing services have been, and still are, regulated differently. In European broadcasting, a differentiated regime has been the rule where core services, such as public service television, have been subject to more regulation than more marginal services, such as satellite television. This differentiation still persists. In 2007, traditional television and especially public service broadcasting are subject to more regulations than new services, such as on-demand services, web and mobile media.

Notes

The authors are listed alphabetically and contributed equally to this article.

1 We wish to thank Gunn Sara Enli, Vilde Schanke Sundet, the participants in the TV group of the Nordic conference on media and communication research in Aalborg, August 2005, and the participants at the CMC text seminar 2005, for valuable comments.

2 'The application of competition rules to this sector is important' (COM 1997 623 Final: 15).

3 In Norwegian 'Som utkant må vi være I forkant'.

4 This even includes Norway; although the country is not an EU member it is subject to EU regulations due to its inclusion in the Agreement on the European Economic Area.

5 The 1997 Amsterdam Protocol amending the Treaty of European Union stated that funding of public service broadcasting was to be decided by the member states: 'insofar as such funding is granted to broadcasting organisations for the fulfilment of the public service remit as conferred, defined and organised by each Member State, and insofar as such funding does not affect trading conditions and competition in the Community (C340/109).

6 In 2004 BBC1 and 2 had a 35 per cent share of the British television market, SVT1 and 2 had 40 per cent of the Swedish market, whereas NRK1 and 2 had 44 per cent of the Norwegian market (URL [consulted 7 July 2006]: Nordicom.gu.se and www.barb.co.uk).

7 In Portugal, the licence fee was abolished in 1991–2; since then the public broadcasters have received annual state grants. Spanish RTVE primarily receives its revenue from commercial sources. In the Netherlands and Flanders the licence fee has been replaced with a public grant, but funding levels remain high (Hujanen, 2005: 59–61; Papatthanassopoulos, 2002, 2007). Throughout the rest of Western Europe, licence fee arrangements are maintained.

8 See for example the decisions by the EU Commission in favour of BBC News 24 after a complaint by BSKyB (Commission Decision OJ 2000 C 78/6) and in favour of Kinderkanal and Phoenix (Commission Decision OJ 1999 C 238/3).

9 See for example the requirements that apply to the BBC (British Department for Culture, Media and Sport, 2002).

10 These pertain to issues such as subtitling for the deaf and the number of repeats. In a majority of countries, digital theme channels are not even defined in the legal remit.

11 Press and other print media have been subject to few content restrictions, whereas audiovisual media,

most notably film and broadcasting, have had stronger restrictions in terms of content. These differences can partly be explained with reference to the cultural impact these media have been assumed to have as well as the general cultural values at the time the media were introduced (Syvertsen, 2004).

12 See for example the submissions to the Norwegian Government regarding the proposed change in the directive, URL (consulted 27 July 2006): http://odin.dep.no/kkd/norsk/dok/hoering/under_behandling/043061-080092/ram003-bn.html#ram3

13 The Norwegian Broadcasting Act authorizes the Government to regulate electronic programme guides, but so far the Government has not seen this as necessary.

14 In Norwegian: 'Telenor støtter de prinsipper EU-Kommisjonens [sic] mener bør ligge til grunn for alle videre regulatoriske endringer' (Telenor, 1999).

15 See Hills and Michalis (2000) and Levy (1999: ch. 7), for further discussions of the role of telecom companies and ICT firms with strong interests in regulatory convergence.

16 See Galperin (2004), Skogerbø and Storsul (1999, 2000), Storsul (2002) and Syvertsen (1992, 2004), for earlier studies of driving forces in regulatory reforms.

17 See Livingstone (1999: 63) for a similar point.

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