

**REVIEW OF THE BOOK “MEDIA REGULATION, PUBLIC INTEREST AND THE LAW”  
MIKE FEINTUCK & MIKE VARNEY (EDINBURGH UNIVERSITY PRESS, 2006)**

*By SIMONE F. BONETTI*

This book discusses one of the most important fields of law: media regulation. In the last few years a lot of changes have taken place in the media context, and these changes have highlighted the necessity of redefining the concept of “public interest of the media”. The book provides a clear analysis, and lists the following objectives. First, it seeks to identify rationales for media regulation and the influence of the ongoing media revolution. Second, it tries to identify the various values providing justifications for regulation and, in particular, the idea of intervention on “public interest” grounds in the media context. The third stated aim is to describe the evolution of the structure of media regulation and its relation and effect on the rule of law and democracy. The last goal of the book is to identify values and institutional features for a future regulatory regime.

Media regulation is considered as a whole, namely the complex instrument via which government policy is translated into enforceable reality. The book places the theme within its historical context. In Great Britain broadcasting was conceived until the 1950s to inform, educate and entertain according to citizenship interest. Then the duopoly of BBC and ITV came into existence, but it has not fundamentally altered rules and constraints upon television. On the other hand, with the flourishing of national and local commercial television and radio, as well as with the introduction of satellite and cable broadcasting, we have entered a time of dramatic changes. This forces us to question the fundamental assumptions underpinning the above-depicted landscape of media regulation.

The book provides a clear analysis of this complexity, especially so as regards the broadcasting sector. It does this through an analysis of the legislation as well as the broader policy context. This framework depends on, and is affected by, “public interest” implications; constitutional values of freedom of communication in the United Kingdom; the market, from the ITV/BBC duopoly to the multi channel era; globalization and digital/internet technological change; the role of the BBC and the other broadcasters. In particular the British market and its regulatory regime are analysed in great detail.

The authors describe the various limits and warranties seeking to assure a plurality of ownership also within the advent of the Digital Terrestrial Technology (from 1996). The authors underscore that public interest criteria have been debated at length in the run-up to the enactment of the Communications Act 2003. Thus, in the case of broadcasting merger the public interest considerations are defined by plurality of controls, quality of the service, and attainment of the standards set out in section 319 of the Communication Act 2003 such as rules governing matters of accuracy, impartiality,

harm and offence. In case of newspaper mergers, pertinent public interest considerations are: “accurate presentation of news”, free expression of opinion, sufficiently plurality of news in newspapers. This new regulatory system is sustained by means of multi level control and the principle of subsidiarity. In particular, a new role is given to the Office of Communications (Ofcom), set up in 2003. Now this regulatory body largely exercises regulatory control over both the infrastructure of broadcasting and the content of broadcasts. These new tasks have also been exercised through other different bodies: the British Board of Film Classification, Press Complaint Commission and the Advertising Standards Authority. The authors agree, however, that these rules have not been successful in maintaining media pluralism and diversity.

Subsequently, the authors bring the analysis to the next level, by explaining the various tiers of media regulation. In doing so, they consider international, national and sub-national interventions in the media sector, and in particular the role of the EU. The evolution of the legislation in Europe and in the UK clearly demonstrates again, according to the authors, the intention to preserve the main value of “public interest” in media regulation along with the idea that effective communication depends on effective regulation of communication.

Until now regulation had been adopted in the broadcasting sector, focusing especially on the necessity to avoid cross channel interference via the allocation of separate frequencies. Modern communications technologies put this model under pressure. The authors thus re-assess the major reasons for regulating media against this backdrop. Regulating media in the interest of the media changes in nature, especially so when taking into account that new technology allows for unobstructed communication. Similarly, these new technologies appear to favour diversity and pluralism, both political and cultural. Finally, economic justifications for media regulation seem to be more compelling given that new technologies give media players and media giants the possibility to enter new markets and to reap great benefits in the country and in the world.

The book analyses the television without frontiers directive which provides important limits regarding competition, content and the protection of certain listed events. Furthermore, the book considers the impact on media law of the new EU regulatory framework for electronic communications. It describes in detail the four directives” (the Access Directive, the Authorization Directive, the Framework Directive, and the Universal Service Directive). This package forms the main basis for the regulation of electronic communication networks and services in the EU.

Finally, the authors analyse the self regulatory processes, more specifically the not readily enforceable self regulation system (in the form of Press Complaint Commission) and the more efficient “state sponsored” co-regulation system (in the form of the Advertising Standards Authority).

In the last chapter “Protecting Democratic values”, the authors describe the gradual development of media regulation as a response to the changing nature of the media sector from analogical to digital technology and then to internet broadband communications. This change also affects national rules and legislation. On the one hand, a new but not sufficient statutory framework has been set up in the UK within a new regulatory edifice in the form of OFCOM. On the other hand, the possibility to disseminate Internet broadcasts, the amendment of existing EU directives on TV without frontiers, and market liberalization are likely to lead to further development of cross border media activities. Furthermore, harmonization of law at WTO level leads to the erosion of the protection currently afforded at citizenship level – e.g. minor protection, content regulation. These changes seem, according to the authors, to affect UK regulations, because of the lack of clear concepts in Great Britain of common values such as the state, public law and public service, while those are needed in order to control for market failures in the media market.

This book is an important contribution in that it shows how an analysis of the legislation cannot merely be directed to legal aspects, but has to be considered in a much broader framework, including important values such as the public interest, citizenship and democracy. This framework is also the basis for a cross border analysis, directed to investigate and compare different state legislations. The only criticism on this book, if any, is that the authors have not sufficiently examined media regulation in the light of the rise of the Internet.