

The Fairness Doctrine and Diversity in the Mediated Marketplace of Ideas

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The First Amendment to the U.S. Constitution states that “Congress shall make no law...abridging the freedom of speech, or the press.” For years, however, the Federal Communications Commission (FCC) did just that. In the name of promoting diversity, the federal government required controversial coverage for particular media outlets through the rule known as the Fairness Doctrine. Must media companies provide diverse political information or are they free to operate as they wish like other private firms? More importantly, are media content mandates an effective way to achieve diversity? These are the issues at stake with the Fairness Doctrine and similar attempts to balance what citizens need to make informed choices in a democracy and the responsibilities the media have for providing it.

The debate over media diversity requirements became particularly intense in the 1980s when the Federal Communications Commission (FCC) tried to abolish the Fairness Doctrine against the wishes of many members of Congress who fought for its survival. As the text of a 1987 congressional hearing indicates:

The debate on the Fairness Doctrine is, at its roots, a debate over government control over a public resource, the spectrum....To balance the limited number of opportunities the public has to become licensees and to provide the public with a greater number of voices, the [Federal Communications] Commission has required these broadcast licensees to act as public trustees. The Fairness Doctrine is a fundamental requirement of this public trust....The Committee does not agree with the Chairman of the Commission, Mr. Fowler, that broadcast stations should be [deregulated]...the Committee continues to believe strongly that the broadcast marketplace is not so competitive as to relieve broadcasters of their public trust obligations.¹

These words remind us of two important ideas. The first is that diversity (or a “greater number of voices”) is desirable and helps ensure the public trust. The second is that the marketplace may not be sufficiently competitive and institutional rules like the Fairness Doctrine might be necessary to promote diversity. Not everyone agrees with these principles, especially the broadcast industry. For years industry representatives argued that the marketplace of ideas is highly competitive and questioned whether the Fairness Doctrine is an appropriate remedy. Ultimately, skeptics who doubted the Fairness Doctrine prevailed. Even though then-FCC Chairman Mark Fowler encountered resistance in the committee hearing, his successor ultimately persuaded other members of the FCC to suspend most provisions of the Fairness Doctrine in August of 1987. The last vestiges of the Fairness Doctrine survived another thirteen years until they were repealed before the election of 2000 by a federal court order.

A Chilling Effect?

The Fairness Doctrine arose more than sixty years ago with the advent of radio and television. FCC authority rested on the idea that in exchange for being given monopolistic control of the airwaves, broadcasters were expected to fulfill certain public service duties. The two main obligations the Fairness Doctrine imposed on broadcasters were requirements to:

¹ U.S. Congress, Senate. 1987.

(1) devote a reasonable percentage of airtime to the discussion of public issues and (2) present contrasting views in the case of controversial issues of public importance.² The Fairness Doctrine has always been contentious, especially from the perspective of broadcasters who claim it violates their First Amendment rights,³ but a pair of favorable Supreme Court decisions upheld the requirements for stations to notify people whose honesty, character, and integrity had been attacked during the presentation of views on controversial issues of public importance and to offer them a reasonable opportunity to respond over the licensee's facilities.⁴

What the courts, congressional hearings, broadcasters, and scholars have not clarified is the extent to which the Fairness Doctrine affected media coverage. Some believe, as the broadcast industry claims, that the Fairness Doctrine had a "chilling effect."⁵ According to Doris Graber (2002), "...the fairness doctrine has impoverished public debate by suppressing controversy, because the media frequently shy away from programs dealing with controversial public issues to avoid demands to air opposing views in place of regular revenue-producing programs."⁶ One study of radio broadcasting presents some secondary evidence to support this contention.⁷ However, other scholars disagree. In a series of interviews with broadcast station personnel shortly after the suspension of the Doctrine, Patricia Aufderheide found only one person who could provide a single example of controversial programming they would have been unable or unwilling to do while the Fairness Doctrine was in effect.⁸ Another recent study relying upon interviews with broadcasters reaches the same conclusion that controversial programming has not increased.⁹

Although these studies reach different conclusions about the chilling effect, they all rely upon interviews with broadcasters rather than analyzing the broadcast coverage itself. This means that despite being one of the most important pieces of media regulation in our nation's history, we still do not know how the Fairness Doctrine influenced media coverage. Virtually no research has probed actual media coverage to determine whether the Fairness Doctrine had a chilling effect or any other effect.¹⁰ Fortunately, two features of the Fairness Doctrine improve our ability to discern its effects. First, the Court limited the Fairness Doctrine to television and radio only, not newspapers. The print media were exempt thanks to a case that struck down a Florida law requiring newspapers to allow political candidates a right of reply when attacked publicly.¹¹ The FCC's selective application of the Fairness Doctrine to broadcast media suggests that there should be discernable differences in the messages in each medium.

Such differences might not be easily recognized were it not for the second notable aspect of the Fairness Doctrine: its sudden demise. As previously mentioned, most provisions of the Fairness Doctrine were suspended in the late 1980s by Reagan appointees on the FCC. Specifically, in August of 1987 the FCC concluded that requirements for broadcasters to provide balanced coverage of controversial had deterred TV and radio stations from dealing with issues of public concern. Broadcasters claimed they had steered clear of controversial discussions and

² Middleton, Trager, and Chamberlin 2000.

³ McConnell 2000; Eggerton 2000.

⁴ *National Broadcasting Co. v. US* 1943; *Red Lion v. FCC* 1969.

⁵ Palatz 2000, 95-6.

⁶ Graber 2002, 64.

⁷ Hazlett and Sosa 1997.

⁸ Aufderheide 1990.

⁹ Craig and Smith 2001.

¹⁰ For a notable exception see Entman's (1989) analysis of issue duration for the 1975 and 1986 pre-Doctrine period.

¹¹ *Miami Herald Publishing Co. v. Tornillo* 1974.

provocative commentary because they were worried about possible disciplinary action. The FCC also noted that the proliferation of media outlets had made a legal mandate for diversity of viewpoints obsolete. Any effects the Fairness Doctrine had should be evident in the broadcast coverage after the 1987 FCC action.

If the broadcasters and pro-deregulation members of the FCC are correct, then the post-Fairness Doctrine era should have more diverse coverage. Conversely, if the original logic which inspired the Fairness Doctrine is more accurate, then suspending it should adversely affect media coverage by making less diverse. By taking advantage of this natural or “quasi” experiment,¹² we can see the effects of the Fairness Doctrine by examining media coverage before and after the 1987 suspension. Even allowing for some differences in format and marketplace trends toward consolidation,¹³ we have a counterfactual on news content thanks to the print coverage during the era.

A key question is whether the amount of issue diversity or “controversy” changed due to the Doctrine. Naturally, controversy could mean many things and be measured in many different ways. The first phase of this study examines the overall distribution of issues covered before and after the 1987 repeal in print and on television. The extent of issue dispersion will be measured with an index of dispersion based on the “Gini coefficient,” which has been used by others to summarize income inequality.¹⁴ In the income context, the Gini coefficient varies from zero (if everyone in the population receives exactly equal incomes) and grows toward one when income is more concentrated, ultimately reaching one if a single person receives all the wealth. I will adapt this measure of dispersion to quantify media diversity by charting nightly network news stories that are publicly available in the Vanderbilt Television News Archives.¹⁵ To facilitate comparisons, similar dispersion measures will be constructed for the print media based upon a New York Times index data set in the Policy Agendas Project.¹⁶ The Vanderbilt archives start in August of 1968 and the New York Times index ends in 1994. Using these beginning and end points, my analysis of media diversity will run from the nineteen years prior to the 1987 suspension and for seven years afterward.

The second phase of the study analyzes coverage of controversial issues before and after the rule to assess particular changes in the print and television media.¹⁷ Three highly visible issues which were mentioned as examples of controversial topics during the 1980s FCC hearings on the Fairness Doctrine are abortion, gun control, and AIDS. They are all life-and-death issues but each has the potential to be deemed controversial in particular parts of the country which may cause stations to hesitate before airing such subjects. Aided by my research assistant, I will analyze the amount of time devoted to these subjects on television evening news before and after the Fairness Doctrine as listed in the abstracts of the Vanderbilt Television News Archives.¹⁸ Three dependent variables will be created, one for each major networks, to capture the number of seconds of coverage devoted to each topic with steps taken to account for the data structure (next page).

¹² Cook and Campbell 1979.

¹³ Bagdikian 2000.

¹⁴ Lambert 1993; Page and Simmons 2000.

¹⁵ <http://tvnews.vanderbilt.edu/index.html>.

¹⁶ <http://depts.washington.edu/ampol/nytcode.shtml>.

¹⁷ Comprehensive radio archives are not available during this period.

¹⁸ In addition to giving a short synopsis of each story, the archives also give the duration of each segment in seconds.

Each of these first two phases of the analysis – both the level of dispersion for all issues and the time-based measures of coverage for the three issues – will generate three dependent variables, one for each of the three main networks (ABC, NBC, and CBS). This means that all together there are a total of six dependent variables which are both longitudinal and interrelated. In situations with multiple dependent variables and unclear expectations about causality, a time series statistical technique known as vector autoregression can be used to analyze the data.¹⁹ These models help account for the fact that the error terms are not likely to be independent since coverage one day influences future coverage when stories are breaking and one network's exclusive coverage may influence the coverage of rival networks.²⁰

The Last Days of the Fairness Doctrine

The FCC suspended *most* of the Fairness Doctrine in 1987. The last remnants, concerning free reply time for opponents of political candidates endorsed by the stations (the “political editorial rule”) and for candidates and others whose integrity had been attacked (the “personal attack rule”), were formally removed on October 12, 2000 by a U.S. Court of Appeals which ordered the FCC to repeal the rest of the Fairness Doctrine immediately because of its alleged adverse effects.²¹ This decision came on the heels of a temporary suspension the FCC itself had imposed a week earlier to see in quasi-experimental fashion what would happen to campaign coverage with sixty days of no restrictions.

In theory, the same pre-post quasi-experimental design with a print media comparison group can be used to discover the effects of the suspension of these political editorial and personal attack rules. If the broadcasters are correct, then coverage of the campaign prior to the temporary suspension of the Fairness Doctrine on October 5, 2000 should be qualitatively different than coverage afterward. Even assuming broadcast stations wanted to await the outcome of the appeals court decision, then coverage after October 12th should be different after the abolition of the Fairness Doctrine. This last phase of the study will examine the diversity of candidate coverage and viewpoints represented in the media for political candidates before and after the October 2000 repeal of the candidate aspects of the Fairness Doctrine.

Importantly, conducting the study in this particular time period has added advantages. The first advantage is that radio transcripts are available on Lexis-Nexis which means we have an additional comparison group. Predictions for the effects of the political editorial and personal attack rules on radio coverage should be similar to those for television, and again both should differ from the Fairness Doctrine-exempted print media. The second advantage is that a comprehensive academic public opinion survey, the National Election Study, was in the field for their pre-election survey from September 5th until election day. If the Fairness Doctrine was truly as effective in restricting debate as industry critics contend, then media coverage should influence the opinions of NES respondents after October 12, 2000. This last step attempts to link the Fairness Doctrine to changes in public opinion.

¹⁹ Greene 2000; Johnston and DiNardo 1997.

²⁰ Depending upon the precise nature of the data, the distribution underlying the model might also be different. If issues are highly controversial, then networks might not mention them to avoid having to air a counterpoint, which means less dispersion than expected. On the other hand, if controversial issues are mentioned, then stations should air companion stories to comply with the Fairness Doctrine. This suggests the potential for over-dispersion. Negative beta distribution models can account for such under- and over-dispersion.

²¹ Labaton 2000.

Implications

Free speech advocates like Oliver Wendall Holmes and John Stuart Mill often stress the importance of diversity. They favor vigorous competition between opposing viewpoints in the proverbial marketplace of ideas where, ideally, the truth will prevail.²² For many years, our federal government tried to promote diversity through the Fairness Doctrine. But, as the nation changed, so did support for media regulations. After attacking it in the courts and through the FCC for more than thirty years, opponents of the Fairness Doctrine won a major victory in 1987 and completed their quest for its repeal in the fall of 2000. Yet, for all the controversy surrounding it, we still know very little about how the Fairness Doctrine influenced media coverage and more importantly, citizens themselves. Fortunately, the manner in which Fairness Doctrine was implemented and then revoked lends itself to empirical scrutiny.

My interest in the Fairness Doctrine stems from my concern for deliberation and how the quality of the information environment affects citizens. Years ago scholars demonstrated the unstable, unconstrained, and unknowledgeable state of public opinion.²³ Many theorists claim that deliberation can remedy these problems,²⁴ but most deliberation in a modern democratic society takes place in the mass media.²⁵ If the media deliberate for citizens, then we need to learn as much as possible about what influences media deliberation and how it affects citizens. We already understand quite a bit more about media effects than ever before. After a period of finding no discernable effects, we now can see that the media have powerful agenda setting capabilities, telling us “not what to think, but what to think about.”²⁶ More recent empirical investigations have shown the media actually shape political attitudes,²⁷ with strong effects for experts and commentary on network television news.²⁸ The question is whether the repeal of the Fairness Doctrine makes news more or less diverse, thus setting up the potential for one-sided streams of political messages (less diversity) if Fairness Doctrine proponents are right or increasing the variance of ideas and debate (more diversity) if the Doctrine’s critics are correct.²⁹

While the Fairness Doctrine is gone, the underlying importance of media diversity remains and contemporary critics of the American media continue to advocate similar governmental restrictions.³⁰ Moreover, while few realized it at the time, the fate of future media content regulations hinged on the outcome of the 2000 presidential election. Stephen Labaton, a New York Times reporter, noted that for years Republicans argued that the Fairness Doctrine should be abandoned, while Democrats supported it. In fact, the Democrats went so far as to include a plank in their platform during the 2000 presidential race calling for the reinstatement of the Fairness Doctrine.³¹ While the Bush Administration seems unlikely to reinstitute the Fairness Doctrine given its ideological stance, candidates vying for the presidency in 2004 may call for its revival. Hopefully this research will enhance the policy debate through evidence of whether media content mandates promote diversity in the mediated marketplace of ideas.

²² Holmes 1919; Mill 1947.

²³ Converse 1964; Delli Carpini and Keeter 1996; Bartels 1996.

²⁴ Fishkin 1991; 1997; Elster 1998; Dryzek 2000.

²⁵ Page 1996.

²⁶ Klapper 1960; McCombs and Shaw 1972; Iyengar and Kinder 1987.

²⁷ Bartels 1993; Zaller 1992; 1996; Mondak 1995; Dalton, Beck, and Huckfeldt 1998.

²⁸ Page and Shapiro 1992, 343.

²⁹ Zaller 1992.

³⁰ Bennett 2000.

³¹ Labaton 2000.

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