

# **Dynamics of power in the media policymaking process**

A critical evaluation of post-Leveson press regulation  
and the BBC Charter review

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**DECLARATION OF AUTHORSHIP**

I ...Tom Chivers.... hereby declare that this thesis and the work presented in it is entirely my own. Where I have consulted others, this is always clearly stated.

Signed: \_\_\_\_\_ Date: 5 November 2020 (revised 3 February 2021)

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## ABSTRACT

This thesis examines two crucial media policy decisions made during the 2010s: the 2012-13 reforms of press self-regulation after the Leveson Inquiry into phone hacking at *News of the World*; and the 2015-16 review of the BBC's Royal Charter and its licence fee funding. These changes in media law and regulation have had a major impact on the UK's press and broadcasting industries, but these debates also reveal entrenched inequalities of power that shape how media policy decisions are made. Media policymaking is often dominated by a narrow selection of elite interests, while media organisations themselves represent policy debates largely in terms of their own objectives. This poses a critical challenge to the democratic ideals that underpin essential political and media institutions, and calls into question whether our media systems are truly accountable to the public and reflective of their interests.

Based on interviews with 13 policy actors and analysis of over 270 policy documents, this research evaluates the dynamics of power in the post-Leveson and BBC Charter policy debates. Through examining the various decision-making practices, the political tactics actors use to influence these procedures, the ideological contests through which media policy is expressed, and the overlapping roles of media as reporters on and stakeholders in policy debate, this thesis details the specific forms of power at play in media policymaking. Combining analytical models of policymaking with sociological theories on power, this research also explores the role of *media power*, and argues that a 'media policy power cascade' is progressively shrinking the opportunities for non-elite groups to influence media policymaking.

Ultimately this research seeks to expose the routinised imbalances of power that characterised two seminal British media policy debates, and offers a critical perspective for challenging these trends towards more democratic and public goals.

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# 1. INTRODUCTION

Media policy and media policymaking processes rarely excite very much public or political attention. Interest in ‘the media’ generally focuses on what media outlets make and how audiences use them, rather than the structures and systems that organise how media operate. This is of course not surprising. The social and cultural influences of media—some of the largest and most prominent organisations in everyday life—extend far beyond the official boundaries of government or legislative authority. Obscure technical discussions on market regulations, production quotas and governance schemes seem not just plainly dry and dull, but far removed from more pressing concerns that occupy public debate. Yet in just the last year, major press and broadcasting institutions in the United Kingdom have been at the centre of dramatic moments of public conflict and private tension that underline the pivotal connection between media policies, democratic processes and power.

In March 2020, almost nine years after the phone hacking scandal at Rupert Murdoch’s *News of the World* newspaper, more intrigue erupted when a group of celebrities alleged in the High Court that journalists and editors at the *Daily Mirror* had also engaged in industrial-scale phone hacking during the early 2000s. Neither Mirror Group Newspapers nor Murdoch’s News UK have publicly accepted that any wrongdoing or illegality took place beyond *NOTW*, instead silencing the growing list of new hacking claims with exorbitant out-of-court settlements which are estimated to have cost both companies almost £500m to date. Notably, this growing evidence of corporate and journalistic malpractice at Britain’s biggest newspapers has not produced scathing condemnations from government ministers or calls for immediate reform. Instead the Conservative government has taken every step to appease the national newspaper industry, introducing lucrative tax breaks and even proposing statutory regulation for social media companies to buttress the declining print market. Publishers argue fiercely that the likes

of Facebook and Google should have a legal responsibility for the content that users post on their platforms, while insisting on their papers' freedom from political interference through law or regulation. Somewhat paradoxically, as print circulation and revenues continue to fall, the power of corporate newspaper interests to steer press policy is growing and their intimate relationships with political elites are flourishing. Perhaps the clearest sign of this is the revelation that within just 72 hours of winning the November 2019 general election, one of Boris Johnson's first engagements as Prime Minister was a private meeting with Rupert Murdoch.

Over this same period the government has orchestrated a concerted attack on the British Broadcasting Corporation that threatens to undermine the core pillars of public service broadcasting in the UK. Defunding the BBC of its £4bn public income has long been the prized goal of right-wing politicians and newspapers alike, who see the Corporation as a bloated left-liberal institution feathered by a regressive compulsory tax. Although this campaign is by no means new, the recent assault suggests that Britain's unique model of public broadcasting faces an existential crisis. A consultation into decriminalising licence fee evasion, ostensibly an effort to find a proportionate and fair enforcement regime, may pave the way for replacing the BBC's guaranteed income with voluntary subscription. Ahead of the review the Prime Minister publicly challenged whether the licence fee is justified "in an age when lots of media organisations have to compete".<sup>1</sup> Ironically, this desire for media markets free from the distortions of public intervention has been paired with brazen government interference in the BBC's independence. Conservative ministers have boycotted appearing on flagship news programmes in protest against the Corporation's supposed anti-Tory anti-Brexit bias. When the BBC suggested performances of 'Rule Britannia' may be cut from this year's Proms concert in response to the global Black Lives Matter movement, Conservative politicians and right-

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<sup>1</sup> *The Guardian*, 'Boris Johnson 'looking at' abolishing TV licence fee for BBC', 9 December 2019.

wing commentators revelled in righteous fury. “If the BBC wants to cancel our patriotism and our history,” one former Tory MEP tweeted, “I want to cancel my licence fee”. The appointment of ex-Goldman Sachs banker and Tory mega-donor Richard Sharp as BBC Chair—though not as extreme as the government’s first preferred candidate, arch-Thatcherite licence fee critic Charles Moore—has made clear the government’s intent to recast the Corporation in its own image. With a mid-term review in 2022 and Charter renewal on its centenary in 2027, many of the policymaking conventions that have governed the BBC’s uneasy relationship with state power are being openly challenged by a government that makes no secret of its antipathy to traditional ideals of public service broadcasting.

These lively debates on the UK press and the BBC coincide with a rapidly evolving media landscape beset by chronic challenges. Trust in institutions is at a nadir, with media organisations especially struggling to maintain public confidence. 60% of Britons say they hold little or no trust in media (the lowest rating in Europe), while trust in print and broadcast journalists in the UK has plummeted since the mid-2000s.<sup>2</sup> The rise of digital media outlets and online streaming services has shattered much of the commercial base of traditional media markets, with many companies going bust or being swept up by a new generation of multimedia conglomerates—Disney, Amazon, Comcast, 21<sup>st</sup> Century Fox—that control increasingly concentrated swathes of global media industries. Social media platforms like Facebook, YouTube and Twitter are plagued by concerns of fake news, targeted harassment and unethical algorithm design. The ‘new’ media that once promised revolutions in how audiences make and use content have been captured by the same power structures that typify ‘old’ media. The bizarre spectacle of Facebook founder Mark Zuckerberg shunning an international committee of lawmakers in 2018 epitomises the elite status of these decidedly modern moguls (Fenton,

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<sup>2</sup> European Broadcasting Union (2020); Jennings and Curtis (2020) for *YouGov*.



2011; Moran, 2018), and their apparent impunity from any attempts at regulation or public accountability.

With countries like the UK riddled with growing economic inequality, social division and rampant political extremism, such unpredictable epochal changes point to a compounding democratic deficit in the aims and outcomes of current media policy. “How all these developments unfold and how they will affect our societies,” Just and Puppis usefully point out, “will be determined largely by crucial policy decisions” (2018:328). Yet the ongoing conflicts facing the British press and the BBC signal a deeper crisis in how media policymaking is organised, and the routinised effects of media power on the debates and decisions that take place. Media policy is unique in that “mass media not only disseminate the decisions of policymakers, but are also active in shaping public policy” (Ali and Puppis, 2018:285). Recent events suggest that these two roles are more entangled than ever, and the ‘mediatization’ of political institutions (Garland et al., 2018) has seen policymakers’ conduct increasingly guided by the corporate demands and political influence of dominant media organisations.

## **RESEARCH OVERVIEW**

These structures are, however, not innate or inevitable. They are the combined effects of political institutions, the aims and practices of policy actors, ideological conflicts, historical precedent and the general distribution of political and economic power throughout society. In order to understand, predict and perhaps even intervene in the crises happening now, we need to look back and unpick the dynamics of power that have shaped previous decisions on media policy. This research presents case studies on two significant recent debates in British media policy: the 2012-13 reforms of press self-regulation following the phone hacking scandal, and the 2015-16 renewal of the BBC’s Royal Charter. These case studies are informed by the documentary record of legislative drafts, official reports, public statements and parliamentary

debates on these two policy questions, as well as original contributions from interviews with policy actors who were intimately involved in each policymaking process.

The following chapters are partly intended to offer a detailed retelling of these events: how press and broadcasting policy is made, the different mechanisms and practices of official decision-making, the debates, campaigns and conflicts that surround them, who is involved in these processes, and how the resulting policies have changed the state of British media. Yet this research is fundamentally concerned with *why* these debates produced their particular policy outcomes, and seeks to denaturalise the media policymaking process as a pivotal site where power is both exercised in political conflicts and (re)distributed through official decisions. These case studies thus utilise analytical models of policymaking from political science and sociological theories of power, combining these to understand the dynamics of power in policymaking beyond the local contexts of individual political acts. Together these ideas provide the conceptual architecture for unpicking the media policy debates yet to come, using these case studies as the stepping off point for critiquing new arrangements of law, regulation and power in British media policy.

Media policymaking is, at its core, a competition between various groups and organised interests in public life attempting to imprint their aims and values on the rules and systems that govern what media organisations can do. The ability of these groups to influence government decision-making is dependent on their own resources and activities, but is also constrained by the forces, structures and relationships in which these processes take place. Despite the presentation of policymaking as a highly ordered and rigid machine, actual policy decisions are often bound by unspoken codes, taken-for-granted behaviours, ideological biases and unpredictable human interactions.

Policymaking is also a distinctly *elite* activity which—while founded on the ultimate need for the consent of the public and their democratically elected officials—is conducted in private, exclusive settings by a vanishingly small minority of political, bureaucratic and corporate figures. Potential debates on the social and cultural impacts of media policy beyond market competition are shrouded in ambivalence and marginality. A second and far more pressing purpose of these case studies is thus to expose the often hidden forms of power that determine how different public and private actors can access, engage in and influence these elite processes of media policy decision-making. This is essential if we are to evaluate and critique media policies as major acts of state and legislative authority, purportedly made through open and balanced means, accountable to democratic institutions and with the interests of the public at their heart.

The debates on press regulation and the BBC Charter review are important objects of study for a number of reasons. Both policy processes speak to the unique historical development of the press and broadcasting in one of the world's oldest liberal democracies, and also illustrate the evolving patterns and tensions in how governments have made decisions on the central mass media in British society over the last century. Apart from common libel laws and monopolies regulation, the newspaper industry in the UK has been free from any external state or political controls on what it can publish or how it organises its commercial affairs since the abolition of the 'taxes on knowledge' in the mid-19<sup>th</sup> century (Conboy, 2004; Rooney, 2000). Royal Commissions in 1949, 1962 and 1977, along with the Calcutt Reviews in the early 1990s, targeted growing concerns about the ethical conduct of newspapers and further concentrations in press ownership, yet each of these interventions ended in anti-climax. Piecemeal recommendations for voluntary reform were openly ignored by the industry and buried by successive governments, who were unwilling to risk open warfare with the same newspapers they relied on for political support (Curran, 2000; O'Malley and Soley, 2000). The

2011 phone hacking scandal and the subsequent Leveson Inquiry marked a decisive break from this enduring ‘policy silence’ (Freedman, 2014:70-1), exposing the widespread institutional failures of the industry’s model of self-regulation as well as the insidious compact between political leaders and the national press that has moulded British political culture since the 1980s.

In contrast, the process of renewing the BBC’s Royal Charter has been a recurring event in British policymaking since its foundation as a public corporation in 1927. Negotiations between government and the BBC on the mission and constitution of the UK’s principal public broadcaster have developed an elite culture in their own right (Born, 2005; Mills, 2016; Smith, 2006), yet the various methods of BBC policymaking have changed as much as the media landscape it operates in. The austere managerial reviews of the 1920s and 1930s gave way to far more intractable conflicts over the balance between public service and market competition, and policy change from the 1950s to the 2000s was characterised by deregulation and the growing influence of commercial lobbyists (Elliot, 1981; Freedman, 1999; Holland et al., 2013; Leys, 2001; Milland, 2004; Wilson, 1961). Arguments stressing the impact of new media formats and international broadcasting goliaths have seen the BBC recast as a tool for enhancing media markets rather than a vehicle of national social benefit. Charter review has correspondingly been built on industry consultations and bargaining with commercial interests with only the barest performative gestures of public engagement. This model of broadcast policymaking is coupled with increasingly frequent political interference in the BBC’s affairs, with governments of all shades insinuating, pressuring and threatening draconian reforms when the Corporation has been felt to have unduly favoured one party or viewpoint over another. The Charter renewal debates in 2015-16 were in one sense the latest predictable moment of bureaucratic deliberation, but also acted as the once-per-decade arena for myriad overlapping political, economic, social and cultural battles focussed on the future of the BBC.

These distinct backstories highlight the often messy and sometimes contradictory practices that forged the media systems we have today. The two case study debates symbolise the latest chapters in a complex history of British media policymaking, and invite us to question how the dynamics of power that shape current debates are as much inherited from past political behaviours as they are specific manifestations of the here and now. Moreover the post-Leveson debates and the recent BBC Charter review took place at a time when the prevailing view—at least amongst many government officials, regulators, media executives and politicians—is that “such policy projects are steadily less necessary, legitimate and practicable than they used to be” (McQuail, 2000:22). Technological convergence has, the argument goes, exposed the traditional policy division between distinct media formats as simplistic and unsuited to a modern global media ecology. The abundance of media outlets, news sources and content providers has overtaken the need for prescriptive regulations or clumsy government controls, and providing for unrestricted consumer choice between competing commercial products is regarded as far more efficient and beneficial than imposing subjective cultural and social ideals (van Cuilenberg and McQuail, 2003:200; Hallin and Mancini, 2004:67). This paradigm is not a natural or objective approach to media policy but a thoroughly ideological reconceptualisation of the fundamental purposes and meanings of media. Its core rationale, played out through successive debates and decisions over the last 30 years, has restructured media systems in order to facilitate expanding commercial opportunities and capital accumulation for private media businesses (Abramson, 2001; Basu, 2018; Braman, 2004; Fenton et al., 2020; McChesney, 2003; Seymour-Ure; 1987).

Neo-liberal media policy is not only evident in the primary aims and ideals of recent debates, but also in the forms and processes of media policymaking. Authority for media policy decisions is increasingly detached from democratic institutions or public oversight, while light-touch regulations and industry stakeholder negotiations are the preferred tools of executive

action (Feintuck and Varney, 2006; Gibbons, 2015:22-9). “Media policy, in other words, is always trying to remove traces of itself—which is, of course, precisely what the state attempts to do under neoliberalism: to use its power to rub itself out, to make itself invisible” (Freedman, 2015:104). Yet despite the overt emphasis on market freedom and deregulation, neo-liberal policy actors are not averse to utilising the powers of the state to preserve politically valuable interests or guard against undesirable ‘externalities’ (Harvey, 2005).

The importance of ideology highlights a second justification for analysing the two case study debates: the overarching role of values and language in shaping the practices and products of media policymaking. Both the post-Leveson debates and BBC Charter review revolved around distinct visions of the purpose of press and broadcast media in modern British society. The phone hacking scandal brought historic liberal principles of press freedom into stark and tragic contrast with ideals of commercial journalism’s ethical responsibilities to the public, while decisions on the future of the BBC amplified rival interpretations of public service broadcasting as either a universal benefit to British culture and society or a bloated impediment on free and fair market competition.

How issues in public life are debated and acted on as matters of government policy stems from these vital contests of meaning-making, and media institutions clearly play a fundamental role in how such contests unfold. Newspapers, broadcasters and online media formats facilitate discussion and information exchange between policymakers, interest groups and the wider public. These media also pressure political actors to make or change decisions, public institutions and private organisations by exposing wrongdoing, highlighting failures or calling attention to rising demands for change in wider society. This ‘fourth estate’ ideal of media and journalism is not only the foundational model of representative democracies and political decision-making (Schudson, 2002; Spitzer, 1993), but is also one of the guiding normative objectives of much modern media policy. Content regulations, market controls and

structural interventions in media systems directly impact the ability of media institutions to scrutinise the powerful, provide a forum of social and cultural expression, and inform the public as active, rational participants in democratic processes. The power of the media to influence media policymaking (and indeed to influence many aspects of public life) is umbilically connected to the structures and effects of media policy itself.

Both of the case study policies examined in this research had these essential characteristics of media and its democratic function at their core. The British press is heralded (most often by itself) as a raucous and adversarial agent of holding the powerful to account, its commercial titles representing the country's diverse political constituencies in the public sphere by competing for readers in a vibrant 'marketplace of ideas'. The BBC embodies a distinct ethos of public service broadcasting that sets out to articulate a shared national identity and expand the cultural horizons of its audiences, responsible to the public as a whole through its universal funding and Charter. Yet such optimistic interpretations of media power as a wholly liberalising force neglect the realities of how these two media institutions actually function as conduits of democratic process and political influence. Access to professional press and broadcasting media production—and thus access to and influence in elite policymaking *through* media—is not guaranteed equally to all social and political groups, but is instead mired in existing unequal distributions of power and status in society. Government officials, corporate bosses and other established powerful actors have the resources and connections to sustain their interests through engaging with national newspapers and broadcasters, whereas non-elite groups and the general public are broadly alienated from directly influencing what media make. The kinds of voices that are heard in media coverage of policy debates, and how these groups, their aims and activities are reported (if at all), often reflects elite debates and inter-elite conflicts, leaving policymakers and the public with a narrow and unrepresentative view of the issues at stake (Davis, 2007; Schlosberg, 2013).

The most significant aspect of media power raised by the post-Leveson and BBC Charter debates is the unique influence media organisations have at their disposal as both mediators of *and active stakeholders in* media policymaking. The economic needs of commercial publishing and broadcasting companies may lead executives and editors to direct their coverage in support of policy decisions that sustain their market share, while the BBC (while bound by strict impartiality regulations) controls significant cultural and social influence it can similarly deploy in attempts at swaying government policy. Though such activity is natural of any organisation seeking to preserve its own interests, the case becomes murkier when considering how media outlets can distort coverage of a policy debate by drowning out or attacking interests or proposals that threaten their policy aims. Media actors are some of the most influential and well-connected political and social elites, and over the last few decades newspaper editors, commercial media lobbyists and media tycoons have insinuated themselves into unaccountable relationships with political and state officials. The BBC, with its legal duty to impartiality and balance, is no more immune to the political and cultural biases of its staff and management, nor from the pressure of softening its coverage of contentious issues in order to stave off damaging political and media criticism.

The close correspondence between the political aims of government policymakers and the private aims of media organisations stakes a serious challenge to democratic processes and public accountability. Given this high potential for conflicts of interest between how media organisations report policy processes and how their representatives engage in those processes, we need to consider whether certain patterns of private lobbying and policy engagement are reinforced and naturalised by how media coverage articulates the terms of debate. This raises the prospect of routinised media influence that pervades all aspects of political decision-making, such that the dynamics of power in media policymaking are massively tilted in favour of established media elites and their interests rather than the broader interests of the public.



It is, however, necessary to caution against dismissing all media policymaking as inescapably captured by elite corporate interests, or invariably leading to greater concentrations in market ownership, further relaxations of basic public protections and a persistent drag towards media systems valued exclusively by competition and private profit. One of the most intriguing elements of the post-Leveson and BBC Charter debates is that each was, in its own way, characterised by brief but intense moments of challenge and disruption to the prevailing orthodoxies of contemporary British press and broadcasting policymaking. The phone hacking scandal in 2011 sparked a ferocious public backlash that for a time shattered the historic hands-off approach to press regulation, with a small campaign of hacking victims and impromptu lobbyists securing unprecedented access to the most exclusive spaces and moments of elite decision-making. Public service-minded pressure groups and industry stakeholders similarly deterred the government from enacting its most extreme threats against the BBC, and the Corporation displayed a surprising resilience against the ideological attacks of its political opponents and the demands for reform from its commercial rivals. How these groups achieved their unexpected interventions in elite political processes—and how the potential moments for radical reform that peppered these two debates were ultimately doused—invites us to examine the campaign tactics, lobbying practices and wider forms of political mobilisation that different media policy actors employ, and the ways in which the influences of these activities are moulded by the structures and institutions of media policymaking. From this we can inquire on the balance between elite, non-elite and public influence on some of the most important issues facing modern democratic societies.

The apparent instabilities and contradictions within elite policymaking processes highlight these two case studies as rich demonstrations of the different forms of power that shape the vital relationship between politics and media. The post-Leveson and BBC Charter debates exemplify unresolved crises at the heart of British media: the entrenched corruption of

press regulation and unchallenged unethical reporting practices, enabled by a political establishment captured by and dependent on corporate press power, with disastrous consequences for public trust in journalism; and the gradual but severe erosion of public service broadcasting, incited by pervasive political interference in the BBC's independence along with the increasing influence of free market values and commercial interests on the normative aims of media regulation. Furthermore these recent policy debates offer the rare opportunity to examine how power operates at the precise intersection where media's communicative functions and the policies that govern them collide. From this we can advance an understanding of media power as neither a disinterested by-product of policy arrangements nor as a totalising constraint on all democratic activities, but as a complex and dynamic manifestation of unique corporate and political influence, the effects of which must be forensically picked apart if we are to properly comprehend the true extent of the disconnect between the public, the media and democratic processes.

## **RESEARCH QUESTIONS**

The central research question for this thesis may best be summarised as “what are the dynamics of power that shaped the post-Leveson and BBC Charter review policymaking process?” Rather than over-simplifying the many inter-related subjects and dilemmas raised by this one question, it is necessary to establish a more precise set of conceptual and critical focuses.

**(1) How did the organisation of the post-Leveson and BBC Charter policy processes affect the ability of interest groups to influence decision-making?**

The first of these concerns the policymaking process itself. Media policymaking does not occur accidentally but is purposefully organised by official decision-makers, and the tools and methods policymakers employ when formulating policy have a profound impact on how

different interest groups can engage in public policy deliberation. The two case study debates are unique for taking place across distinct combinations of legislation, parliamentary and government consultations, judicial inquiry and private negotiations. Both policies also centred on Royal Charters, an obscure legal instrument for creating public bodies by order of The Queen (on the advice of government ministers) rather than through statute in parliament. Further, these two debates emerged from markedly different political, historical and institutional contexts involving various technical precedents in policymaking. Whereas BBC Charter review in 2015-16 was a planned decision with established broadcast decision-making practices, the post-Leveson negotiations in 2012-13 were an unplanned and disorganised reaction to an explosive public scandal in an industry absent of political intervention. Analysing how these two processes were organised is valuable for identifying the common decision-making practices but, more importantly, they offer a means to critically evaluate liberal-rational norms and assess whether media policy formulation is genuinely open and balanced for all interest groups. These are essential characteristics of any democratic system, and can provide us with strong indications of where power is situated within the official and unofficial mechanisms of British media policymaking.

**(2) Which people, interests and political tactics had the greatest impact on press and broadcasting policy decisions?**

The second research question advances on this relationship between political interactions and power, and concerns how media policy actors use different political, economic and social resources in their attempts to persuade decision-makers. Contrasting perceptions of the importance of various moments of decision-making, as well as the actual patterns of access different groups have to the policy processes, may have a substantive effect on how policy actors choose to interact with media policymaking through public campaigning, policy research, media engagement and intimate lobbying. In addition, the actors, interests and

political tactics that policymakers are most responsive to may be strongly linked with their own impressions of what kinds of public or private contributions are more or less useful for informing their decision-making. Clearly some figures and groups possess professional expertise and political connections for gaining access to elite spaces and processes that are far beyond the reach of most other groups. The issue is whether specific methods of policy engagement are innately more influential than others, how widely these forms of influence are distributed across elite and non-elite policy groups, and what this reveals about the balance of power both within the local contexts of press and broadcasting policymaking and across the central institutions of British democracy.

**(3) What impact did competing values, language and narrative accounts of press and broadcasting policy have on the content and shape of media policy debate?**

Competing sets of beliefs and ideas about how and why media should be governed in particular ways are central to media policy debates. One way policy actors seek to influence decision-makers is by convincing them that their interpretations and ideals of media's roles are more effective or appealing for resolving policy problems. But these discourses also have a far more integral role in shaping the definitions and vocabulary that policymakers use to articulate and arrange their decision-making. Argument, rhetoric and normative principles of media policy establish the boundaries and scope of debate, and crucially legitimise or delegitimise what kinds of actors, interests and forms of political activity should be included in these processes. This third research question thus emphasises the effects of language and policy narratives on media policymaking, and seeks to reveal how ideological power is structured into political processes through these discursive phenomena. From this we can interrogate whether the normative definitions at the core of the post-Leveson and BBC Charter review processes represent a continuation of the contemporary neo-liberal mode of British media policymaking,

or if these two debates entailed new beliefs and principles that challenged or replaced dominant ideological practices.

**(4) What is the specific influence of media organisations on media policy decision-making?**

As considered above, media perform a number of vital and intersecting roles within the media policymaking process. As policy actors, media organisations represent their respective policy aims as one among many other interest groups engaged in executive decision-making processes. Media outlets also perform an essential communicative role by reporting on and facilitating public debate about media policy issues as a means of informing decision-makers and other policy actors. Yet media actors—editors, journalists, corporate executives and business owners—are also political and cultural elites with unique access to and connections in exclusive government and policy spaces. Each of these roles pertains to specific notions of power and influence within political processes, but taken together they invite us to question whether the fundamental democratic functions of media are distorted by the private and institutional interests of media organisations, and whether these organisations unduly influence media policymaking in their favour through the unique forms of power at their disposal. By looking at coverage of the post-Leveson and BBC Charter debates across different media formats and publications, at the conduct of individual media actors within the two decision-making processes, and at the extent to which non-media policy actors ‘use’ the media as part of their own political activity, this fourth research question aims to critically assess the specific power of media in policymaking and how this influence manifests.

**THESIS OUTLINE**

This thesis addresses these questions through a series of thematic discussions on the specific formations and dynamics of power in British press and broadcast policymaking.

Chapter 2 reviews the political science literature on the policymaking process, examining the different ideas on how interest groups are organised in society and how political processes incorporate competing actors into democratic decision-making. Beginning with normative pluralist notions of political competition and advancing to modern theories of ‘new institutionalism’ and discursive politics, this chapter provides a brief genealogy of some of the most prominent analytical models of policymaking and considers how they can be adapted to the study of press and broadcast policymaking.

Chapter 3 explores the various sociological perspectives on what ‘power’ is and the different theoretical definitions for how people influence the actions of others, both personally and through social and political institutions. This chapter critiques the division within the literature on power between ‘behavioural’ and ‘structural’ explanations, including ideas of ‘media power’ that correspond with these schools, and proposes a combined model of these accounts for analysing power in the media policymaking process.

Chapter 4 describes the specific methods used to sample and collect documentary evidence and interview data, and details the Critical Discourse Analysis methodology used to systematically evaluate the dynamics of power in the two case study debates. This chapter also explores underlying debates about the reliability and validity of the types of knowledge created through these research methods, and recounts some of the challenges involved in conducting research on elite political processes.

Chapters 5 and 6 present accounts of the core policy debates, official decision-making processes, evolving technical proposals and political conflicts of the post-Leveson and BBC Charter review case studies respectively. These chapters are partly intended as detailed histories of how the two policies were made, and loosely follow the ‘stages’ concept of policymaking as a cumulative translation of undefined problems into tangible matters of policy

decision (Easton, 1953; Hill and Varone, 2017; Hogwood and Gunn, 1984; Jenkins, 1978; Picard, 2020). However these chapters also attempt to denaturalise official decision-making mechanisms and, in addressing the substance of *Research Question (1)*, present a deeper argument about how the structures of media policymaking and its formative decisions are steeped in imbalances of power.

Chapters 7 and 8 analyse the various forms and mobilisations of influence at the heart of the post-Leveson and BBC Charter policy processes, and compares how these dynamics played out between the specific political, historical and institutional contexts of press and broadcasting policy.

Chapter 7 focuses on the issues of media policy language and narrative considered in *Research Question (3)*, and explores how the different political arguments, rhetorical devices and philosophies of media expressed by competing actors in the two debates shaped the content, structure and aims of official decision-making. This chapter also expands on the concerns raised in *Research Question (4)* relating to the pervasive role of mass media coverage in moulding how media policy debates are articulated.

Chapter 8 turns to the social relationships and political tactics that define how people interact with the policy process. The chapter first details how the organisation of ‘policy networks’ surrounding the two case study debates entrenched unique patterns of access and influence between different types of actors, groups and decision-making processes. Expanding on this and incorporating a broader discussion on matters raised by *Research Questions (2)* and *(4)*, this chapter then critically examines the power of specific forms of public campaigning, media engagement and private lobbying to influence media policymaking.

Chapter 9 concludes this thesis with discussions on the central dynamics of power revealed by the two case studies, and summarises key findings in relation to the thematic

focuses of each Research Question. This conclusion expands on the wider consequences of media power for democratic politics, and considers how the policy changes introduced by the post-Leveson and BBC Charter debates have shifted the balance of power both within the press and broadcasting industries and across media policymaking more broadly. Integrating the core analysis of this thesis into my own prospective ‘Media Policy Power Cascade’ model, these closing discussions consider how the shifting political precedents and evolving modes of decision-making established by these two case study debates have further entrenched concentrations of elite and corporate media influence at the heart of British media policymaking. As we move into a period of deep uncertainty for press and broadcasting media, not just in Britain but around the world, this model offers a means for critiquing the systemic dynamics of power in media policymaking, and for denaturalising these dynamics with an aim to seizing new opportunities for genuine public involvement (and possibly even radical intervention) in future policy debates.



## **2. REFLECTIONS ON THE POLICYMAKING PROCESS**

Studying the public policymaking process is an essential part of evaluating how modern democracies work. Policymaking is the primary means for governments, legislatures and other organs of representative democracy to exercise the political authority invested in them by the public, and to manage the rules and institutions that govern significant parts of public life. Through examining what kinds of decisions are made, how they are made, who is involved in making them and the changes in laws or regulations that these decisions produce, we can develop a deeper understanding of how a political system is organised and the balance of power within it. The premise of ‘good’ policy infers that change not only creates a better outcome than what stood before, but also that it results from a process in which all groups have equitable say in how the decision was reached. In this regard policymaking is a participatory process, in which competing groups mobilise their interests in the public sphere and elected officials are held accountable on the basis of how they respond to these expressions of popular will. Policymaker’s decisions do not favour a single-minded majority against a minority, but instead reflect an aggregate consensus of the collective public and private interests across society.

This normative model of the ‘political marketplace’ continues to underpin contemporary definitions of policymaking and its study. Yet such an ideal raises a number of issues about how this model can be applied to analysis of the realities of policymaking. Understanding how an ‘interest’ is defined involves considering whether such elementary political units are limited to just economic and demographic groupings or encompass a more nebulous range of associations, and if so how policymaking processes account for the varying public and private interests mobilised across society. This also calls to attention the distinction between equality of participation and equality of influence, and the extent to which official decision-making practices embody or recreate the wider political, social and economic

equalities in everyday life. These are not new or especially intractable questions, but they nonetheless form the basis of numerous scholastic attempts to scientifically model the policy process as a staple part of democratic organisation. These theories provide useful sets of methods and analytical frameworks, but they also entail particular arguments about the kinds of systems, dynamics and causal factors that can or cannot be identified as influential in political decision-making. These perspectives in turn make assertions about the nature of power in policymaking and the variables for evaluating its democratic credentials.

This chapter does not catalogue all debates, nor reconciles a meta-model of the policy process. It offers instead a discussion of some of the major shifts in contemporary policy theory, and explores the value of these developments for a study of the media policymaking process. Each compounding branch of theory reflects historical changes in how governments and polities have structured decision-making, yet these schools also emphasise advancing conceptualisations of how interest groups and other political actors influence the democratic process. Through their varying models of the political system, these accounts chart how policy change happens and the salient institutions and processes that shape it. This chapter also explores the differing definitions of the particular role of media institutions in the policy process, and how these strands of policy theory can be applied to the unique circumstances of the post-Leveson and BBC Charter review debates.

## **PLURALISM AND PRESSURE GROUPS**

As both an explanatory framework and the dominant normative description of decision-making in modern democracies, pluralist theory has a long genealogy of different schools and reappraisals. Yet these all share an interest in three major shifts in social and political systems from the beginning of the 20<sup>th</sup> century. First, mass industrialisation had brought about rapid changes in working and living that fractured the ‘common ground’ that defined traditional

social and economic interests. Second, the expansion of corporate entities that took charge of growing industrial and financial organisations altered the central relationships of production and consumption. Third, the state itself created vast empires of new programmes, agencies and departments to negotiate these evolving expressions of public and private life.

Early pluralists saw this modernisation as a positive contribution to individuals' ability to mobilise with others, to advance their collective interests, and to do so equally across as many interests as may bring personal advantage (Blokland, 2011:19). To accommodate this exploding constellation of 'pressure groups', the model in which elected decision-makers acted on behalf of the public was replaced by new systems of bargaining and consultation between political parties, government actors and the organised associations of public and private interests (Hill and Varone, 2017:26-6). In this view, the unelected state institutions that put policies into action were subordinated to elected leaders, and elected leaders were in turn subordinated to the public through their appeals to the numerous pressure groups representing the electorate.

Robert Dahl's 1961 work *Who Governs?* is the most renowned case study of pluralism in policymaking. Charting the social and political changes in New Haven, a rapidly growing Massachusetts city, since the late 18<sup>th</sup> century, Dahl noted how the assimilation of previously disparate ethnic groups into civic life had made it "increasingly difficult to build or hold followings by means of hallowed appeals to ethnic loyalties or effects on income" (Dahl, 2005:60). New electoral coalitions were required to reconnect decision-makers with developing urban needs that merged or moved beyond ethnic and socioeconomic issues. For Dahl, the new focus on collective group interests and the shared benefits of public policy brought to the fore the impact of "technicians, planners, professional administrators, and above all to professional politicians" (2005:62). Those figures most likely to succeed in public affairs were no longer the ethnic or economic elites at the heights of their respective constituencies,

but the ‘Social Notables’ who could manage these competing yet overlapping groups in their favour.

The central challenge facing Dahl and other pluralist theorists was to dispel claims (explored in the next section) that the new complex of policymaking institutions was still vulnerable to historic patterns of political inequality and domination by a few powerful groups. Dahl concedes that social and economic elites possess imposing resources, that many aspects of public life are framed in terms of their interests, and that the expansion of public policy into business and social organisation provides notables with a “strong and steady stimulus to participate in city decisions” (2005:76). However, Dahl also contends that these groups are small in number and “often in disagreement even on questions directly in their own interests” (2005:77). The regularity of this ‘inter-elite’ conflict hinders one group from dominating decision-making, and their patterns of influence remain tethered to the leadership structures and democratic processes that allot them their ‘notable’ status.

From this Dahl derives a central tenet of pluralist theory; the political resources needed to influence policymaking are not accumulated in tandem with other resources like wealth, social standing, property or higher education. Dahl does not suggest that inequalities in political resources don’t exist, but that they instead “tend to be *noncumulative*. The political system ... is one of *dispersed inequalities*” (2005:85, original emphasis). Although different groups possess different types and degree of resources depending on the specific social or economic interests they represent, their influence over decision-making is ultimately dependent on their command of public support. “Electoral competition,” as Blokland puts it, “provides politicians with a strong motivation to continually broaden their coalitions and expand their constituency” (2011:169).

Dahl doesn't dispute that a small number of privileged individuals hold a degree of direct influence over policymaking that few others enjoy. But the prospects for total elite control are, in his view, negated by the *indirect* influence that flows up from pressure groups' mobilisation of collective public wants (2005:101). This indirect influence is partly communicated through a 'political stratum' of campaigners, lobbyists, policy experts and technical professionals, who serve as a *medium of influence* between decision-makers and the wider assortment of interests in society. Leaders reach out to public at large through this sub-culture "to adapt their policies to what they think their constituents want" (Dahl, 2005:101).

Again it could be argued that such a system privileges those individuals whose policy goals appeal to leaders' preconceptions of what is in the public interest or, similarly, that only those with the political resources or nous can succeed in penetrating the 'political stratum'. Here Dahl returns to the cumulative strength of the collective, and emphasises the competition between those within the stratum to develop their own exclusive constituencies, arguing that "a political issue can hardly be said to exist unless and until it commands the attention of a significant segment of the political stratum" (2005:92). Public preferences emerge through competition between leaders which, far from causing a myopic or artificial representation of political issues, creates "alternative sources of information" (2005:165) that limit the possibility of a dominant elite class. Here Dahl offers an explicit recognition of the role of media in policymaking, though this is restricted to a functional layer for mediating interests between policymakers and citizens.

The mass media are a kind of filter for information and influence. Since few citizens ever have much immediate experience in politics, most of what they perceive about politics is filtered through the mass media. Those who want to influence the electorate must do so through the mass media. (Dahl, 2005:256)

Dahl acknowledges a tension in this relationship between policymakers, citizens and the media, as policymakers' perceptions of the influence of the media will dictate the extent to which they 'use' media to inform their decisions. However, newspapers (and Dahl was concerned solely with print media in local contexts) are treated much like mobilised interest groups more generally – one amongst many organised means for mediating sectional aims between the public and policymakers, and therefore not exercising any greater degree of influence.

In Dahl's account of the New Haven pluralist democracy, power over policymaking is not a process of covert manipulation, but a demonstrable exercise in which one leader builds support by presenting the means to manifest public interests through political action. But this one-dimensional view of power (to which I will return in the next chapter) ignored, as Dahl later considered, how "the citizen often does not understand how his 'interests' are involved" in the arcane and distant mechanisms of the policy process (in Blokland, 2011:272). Dahl's observation that elected leaders seek to build broad coalitions of support is therefore not sufficient to claim that the genuine interests of the public as a whole feature meaningfully in political decisions. Validating Dahl's normative assertions requires an analysis of the political and social contexts of policymaking, which looks beyond the fixed realm of a single city's urban planning policy.

Nonetheless, Dahl's assessment of New Haven maintains an important place in the development of policy theory. Quite apart from its optimistic appeals to civic participation and bottom-up democracy in the symbolic town hall meeting, Dahl's liberal-pluralist account emphasises that the analytical focus ought to remain on the observable interactions between interest groups and the official processes that mediate these interests. The group-to-policymaker dynamic that Dahl examined persists as an enduring characteristic of later pluralist theories, which celebrate the indirect strength of the public at large as the basis of influence in the policy process. Politicians and other policy officials frequently appeal to pluralist values

and ideals in their descriptions of the decision-making systems they manage, and media policy is hardly unique in celebrating consultation, openness and ‘listening to all sides’ as evidence that decisions reflect a fair balance of all interests. While it is unsurprising that political actors place great esteem in justifying the democratic credentials of their own activities, these sentiments are significant because they relate directly to the actual structures, functions and exercises of policy formation these executive actors put in place. As both a normative and an analytical model, pluralism’s value for studying the media policymaking process lies in examining whether and how these myriad political processes contribute, individually and jointly, to a genuinely democratic aggregate consensus of competing policy interests.

### **THE ELITIST CRITIQUES**

Dahl’s landmark 1961 study was partly a retort against earlier challenges to the behaviouralist, atomistic assumptions of positivist accounts of policymaking. Founding philosophies of liberal-pluralism, arising out of Enlightenment values of constitutional liberty and human dignity, saw decisions as innately democratic and rational because they resulted from the aggregate negotiated interests of “the common man” who “inherently was capable of good judgement” (Bachrach, 1969:27). However, critics noted a disconnect between these normative principles and modern developments that appeared to foster inegalitarian rather than democratic processes.

The fragmentation of individuals’ interests across a greater diversity of public and private associations had resulted in political and social identities becoming “less and less stable, coherent, concrete and self-evident” (Blokland, 2011:2). Charles Wright Mills further claimed that those who “have lost faith in prevailing loyalties” do not seek to re-engage with more immediate aspects of political life but instead “pay no attention to politics of any kind ... they are inactionary” (1970:30). The retreat from public life by substantial segments of society

provoked a serious contest to the model of the ‘political marketplace’, as absence from participation weakened the visible support for some groups’ respective interests while making others appear more popular and organised. Processes of ‘rationalisation’ were also causing political institutions and behaviours to become more calculated towards partial goals, while the tightening operations of governments and national economies imposed restrictive conditions on what types of decisions could be made and how. Bureaucracies and capitalist dicta “had become an iron cage in which humanity was, save for the possibility of a prophetic revival, imprisoned” (DiMaggio and Powell, 1991b:63). Rationalisation, in short, was predetermining the outcome of human activity. Individuals or interests that mobilised in ways contrary to these narrowing choices were ignored or excluded from democratic participation, and policies that competed with or challenged prevailing orthodoxies were also dismissed.

Whereas pluralist theory describes a system of dispersed inequalities and competition between pressure groups, a number of critiques from what might be termed the ‘elitist perspective’ argued instead that a small class of elite actors, rich in resources and influence, had entrenched control of political decision-making (Mills, 1970:32). Minority domination was inevitable where that minority worked on a single impulse against an individualised, undirected mass:

A hundred men acting uniformly in concert, with a common understanding, will triumph over a thousand men who are not in accord and can therefore be dealt with one by one.” (Bachrach, 1969:12)

Military, religious, bureaucratic, economic and aristocratic elites, without private burdens like poverty, social inequalities or unemployment, became best placed to dominate rationalised political spaces (Hill and Varone, 2017:37).

The elitist critiques produced two distinct models for how this domination unfolded in the day-to-day interactions of public and political organisation. The first, espoused most



notably by Italian theorists Mosca and Pareto at the turn of the 20<sup>th</sup> century, advocated rule by elites as superior to pluralist democracy. The stability and competence of any system of government depended on a unified, organised and resourceful elite class—guaranteed by their purer political nature to “safeguard and further the interests of the community” (Bachrach, 1969:2)—to defend it against the irrational and impulsive demands of the masses. The operative task of this elite was to insulate its control against demagogic and revolutionary dissent, through continuously adapting political institutions to capture changing social forces and maintain elite authority in the wider community.

Against this avowedly antidemocratic premise, the second account entails a concerted attempt to rescue pluralist ideals from those modern political developments that seemed to lead invariably to some form of elite domination. American political scientist Peter Bachrach argued that the ruling class was not a single, monolithic entity with unified interests but instead a competing set of “organized minorities, obeying diffuse and conflicting impulses” (1969:16). What had been previously envisaged as a noble but outnumbered elite class, acting in concert against a potentially destructive passive public, was reimagined to encompass competing sets of elites who defer to the masses to sustain their activities in government. Bachrach’s model of ‘democratic elitism’ stressed that public accountability persisted in systems of inter-elite competition, because interest groups mobilised throughout civil society prevented “any one elite group from overreaching its legitimate bounds” (1969:36). Yet Bachrach remained critical of the general patterns of elitist organisation in modern political systems, particularly because “each elite tends to dominate in its own sphere of activity and [encounters] little if any interference from other elites” (1969:37).

These elitist critiques may seem quaintly historical, representing efforts to understand the rise of populist or totalitarian movements and to reconcile their collapse with the burgeoning political conflicts of the second half of the 20<sup>th</sup> century. Yet these models are still

relevant today for their analysis of the formation of elite groups and how their interests are structured within the core institutions of policymaking. As more and more areas of public policy have been integrated with industrial and economic planning (and in particular with neo-liberal objectives of unregulated competition and profit maximisation), policymaking is increasingly organised as a technocratic domain for experts, regulators, technicians and industry panels. Media policy especially has seen legal powers and regulatory authority for media systems divided out to new quasi-state institutions and agencies, creating what Harvey has described as “government by executive order and by judicial decision rather than democratic and parliamentary decision-making” (2005:66). In analysing the post-Leveson and BBC Charter review debates, an elitist perspective remains useful for comparing the notionally pluralistic patterns of policymaking with the arrangements and activities of entrenched elite groups, and for unpicking how elite interests are rationalised as normative political attitudes. These critiques also prompt us to ask whether the competition between interest groups is merely subordinated to the actual centres of elite authority, or if civil society organisation can actually function as “a centre of opposition, if not an alternative” to elite domination (Harvey, 2005:78).

## **CORPORATISM AND THE ROLE OF THE STATE**

Early theories of political decision-making assigned only minor roles to the state and formal institutions of government in the dynamics of interest mediation and elite domination. Some pluralists asserted that the state was nothing more than another interest or association among many, albeit one in which all individuals are invested, and this membership “has no deeper or higher meaning than other memberships” (Blokland, 2011:26). Elitist critiques, on the other hand, conceived of the state as the means and ends for a dominant socio-economic group to manifest their control (Miliband, 1969; Mills, 1970), or as the driving force for institutionalising favoured economic and social practices (Weber, 1986). The expansion of the

state and its increasing role in public and private life brought a new focus on the diversity of state bodies, as well as the state's active role in organising and managing the policymaking process. A presupposition of state passivity or elite capture undermined the fundamental participatory ideals implicit to democratic and constitutional structures, and new models were needed to salvage the notion of the state as “the vehicle of the community and the public interest” (Blokland, 2011:27).

Re-evaluations of pluralist thought emphasised how executive bodies, legislatures, the judiciary, the civil service and their associated political classes all performed a vital function in bridging the plurality of social and political concerns in the public to the official structures of decision-making and government (Beer, 1965:71). ‘Corporatism’ represents one such model describing how the state, to facilitate the most effective and efficient policy outcomes, actively legitimises select interest groups and creates “an *institutional relationship* between the systems of authoritative decision-making and interest representation” (Schmitter, 1974:88, my emphasis). A number of post-War social democratic governments in Western Europe implemented forms of corporatism that enforced degrees of cooperation between trade unions, employer associations and other industrial or business groups as a means of controlling wages and interest rates (Hill and Varone, 2017:75-6). By co-opting major socio-economic producer groups into the official decision-making domain of the state, the locus of policymaking shifted from open conflict and bartering between competing interests (as under pluralism) to managed negotiation between non-competing groups who were granted “a deliberate representational monopoly within their respective systems in exchange for observing certain controls” on their political activities (Schmitter, 1974:93-4).

In this sense corporatism fused pluralism and democratic elitism. Interest representation in Schmitter's descriptions of corporatism is *functional* representation, constrained by the purposes a group can serve and “related to certain basic imperatives or needs of capitalism to

reproduce the conditions for its existence and continually accumulate further resources” (1974:107; see also Beer, 1965). However, as a result of this, both the corporatist model and the analysis it seeks to provide pay little attention to interest groups that do not exercise an economic or productive function. Whether a set of integrated groups actually represents a genuinely democratic range of interests in their respective sector depends on the existing balance of power in that sector and the ‘shape’ of corporatist relations the state creates for it (Rhodes, 2003:31). Political parties, campaign organisations and citizens’ associations are equal in pluralist models but, as with elitist accounts, groups that control the levers of national industries dominate the corporatist perspective of policymaking (Cawson in Rhodes, 2003:31).

Ironically, analyses of corporatism emerged just at the time when corporatist economic management was swept aside by the rise of monetarist and neo-liberal politics across Europe and the US (Grant, 2000:51-3; Humphreys, 1996:161-3). Yet corporatism is still useful for contemporary study of media policymaking, and not simply because it offers a means for unpicking how state institutions (as the principal instigators of the policy process) organise specific patterns of decision-making that reflect entrenched state objective. Aspects of corporatist organisation are evident in the management of the UK Arts Council (Upchurch, 2011), the ‘functional separation’ of broadband infrastructure from commercial internet service providers (Whalley and Curwen, 2017), and arguably even in the organisation and regulation of the BBC. As is explored later in this research, the complex arrangement of numerous facets of BBC policy decision-making—and the precarious constitutional relationship between the Corporation and the British state (Mills, 2016:213-4)—poses many challenges to the notion of Charter review as a public-driven and democratic process.

## **THE POLICY NETWORKS PARADIGM**

The economic trends that superseded social-democratic or corporatist patterns of policymaking were also accompanied by a fragmentation in the established processes of political representation. New realms of state activity have to negotiate with different kinds and degrees of cultural, social and political resources at play in modern democratic societies as well as financial and economic bases. Post-industrial societies now encompass a far more diverse range of conflicts than the dominant capital-versus-labour concerns of much of the 20<sup>th</sup> century. These new constellations of interest groups organise in various formal or informal associations, and mobilise their policy demands across numerous different relationships and interactions in both in civil society and official political institutions (Hill and Varone, 2017:77). Thus the challenge for more recent theories of policymaking is to identify how decision-making processes integrate the range and diversity of these complex and competing expressions of political will, while still producing policy outcomes that solve collective problems and represent an effective, participatory consensus.

Perhaps the most salient of such accounts can be described broadly as ‘network theory’. It takes as its premise that a variety of interests exists not just across various social and economic associations within the public at large, but also within and between organised interest groups such as political parties, businesses, non-profits and campaign bodies. The empirical turn in post-war policymaking, with a greater emphasis on information exchange and the blurring between public and private responsibility, has led many matters of policy to be sectorialised and departmentalised, creating relatively distinct policy ‘subsystems’ (Adam and Kriesi, 2008; Baumgartner et al., 2007; Rhodes, 2003; Sabatier and Weible, 2007). These subsystems act (whether naturally or by formal design) to contain deliberation and decision-making about a particular policy area, such as defence, education or health care, and enable “regular communication and frequent exchange of information [leading] to the establishment

of stable relationships between actors and to the coordination of their mutual interests” (Adam and Kriesi, 2008:129). This ‘network’ of interactions is argued to benefit both decision-makers and interest groups. Government officials can accumulate alternative arguments and evidence to negotiate a popular solution, while special interest groups can more easily identify and lobby ministers, specialists and other crucial decision-makers through standardised channels that form around a given policy area.

Some like Rhodes employ policy networks as a means for explaining “the oligopoly of the political marketplace” (2003:9), in which governments organise the vast array of policy interests into more stable structures of information exchange and decision-making between a selection of key actors. Similar to ideas of corporatism, this interpretation expresses a type of governance that limits participation to groups that fulfil specific roles and work together to represent the aggregate mutual interests of their broader constituencies. Rhodes even presents a continuum of different types of networks, each reflecting the extent of cohesion and cooperation (or disunity and competition) between groups within a network (2003:38-9). Other network theorists like Adam and Kriesi employ the concept as a broader framework for describing the “different possible patterns of interaction among public and private actors in policy-specific subsystems” (2008:130). This view characterises policy networks not only by formal government arrangement, but also by informal relationships and the reputations, roles and participation of multiple policy actors with both decision-makers and one another. The extent of conflict, bargaining or cooperation between groups can vary hugely from issue to issue, and the concentration or fragmentation of power throughout a policy network impacts greatly on the potential for and form of policy change (Adam and Kriesi, 2008:134-5).

This does not, however, mean that policy networks achieve the pluralist ideal of open access for all groups across the many various parts of a fragmented policymaking culture. Adam and Kriesi assert that policy-specific or domain-specific contexts determine “the shape

of policy networks” (2008:141) and these arrangements determine the strategies and types of interests that are most successful in influencing policymakers. Policy areas that have greater salience and visibility with the public result in a more crowded policy network, with numerous groups advocating a range of different interests and arguing over the potential resources up for grabs within that subsystem. Conversely the more peripheral an issue, “the greater capacity a network has to run its own affairs without politicization” (Adam and Kriesi, 2008:142) and the less capacity for insurgent groups or minority interests to penetrate the network and impact policy.

There are two aspects here on which a brief note might be made regarding the role of media within a network model of policymaking. The first concerns how media organisations are structured into policy networks and the impact they have on competing policy interests within a policy domain. If we take the image of a network as a number of nodes (actors, organisations, sites of decision-making and interest mediation etc.) joined in variously ordered and cohesive relationships, it is evident that ‘media’ in its many guises may be situated at several points on this conceptual web. Media organisations may themselves appear in policy networks as actors (somewhat inevitably in debates on media policy), seeking to advocate their economic or political interests to policymakers through engagement and cooperation with other networked groups. Yet as sources of information, media exercise an additional and overlapping role in providing links for *other* actors to influence networked policymaking. Policymakers use the media to publicise and justify their policy aims to the public, while interest groups use the media to amplify their core policy appeals or to circumvent prohibitive institutional barriers in the formal decision-making process (Grant, 1995:133-9).

The second aspect of media’s networked role concerns its contribution to the *discursive infrastructure* that orders groups and interests across a policy network. The salience afforded to a policy issue in media coverage affords status and influence to different types of actors.

Taking media policy and ideas of prominent or peripheral issues, subjects such as broadcast spectrum allocation, physical media infrastructure or regulatory quotas tend to attract more overtly technical (though certainly not unimportant) debates that news sources may not find relevant to publicise to their audiences. This ‘de-politicisation’ results in the organisation of smaller and more tightly regimented ‘policy communities’ (Marsh and Rhodes, 1992:251), with decisions resulting from exclusive bargaining between nuanced media interests and technical groups that share relatively common and coordinated aims. On the other hand the moral and social content of media texts or the cost and accessibility of media products (topics rarely left untouched by media coverage) attract a much larger and less cohesive set of public and private interests, resulting in a much more openly contested and politicised network structure.

### **RULES, BEHAVIOURS AND ‘NEW INSTITUTIONALISM’**

The shift from centralised control to multiple networked domains of policymaking is clearly not unique to media policy. The fracturing of direct state command over decision-making has driven ideas about modes of *governance*, in which “a variety of government agencies have chosen to share their authority for collective action with non-profit agencies and private firms in a network of mutual dependence” (Millward and Provan, 2000:360-1). Many theorists have debated whether this shift away from top-down decision-making is the ‘natural’ result of bureaucratic attempts to manage diverse policy sectors, or if it represents a conscious political effort to replace the role of the state in decision-making with mutually coordinating third-party (and particularly private sector) organisations (Fischer, 2003:24-5; Hill and Varone, 2017:20; Millward and Provan, 2000:362). The re-ordering of relationships entailed in systems of governance means that contestation and bargaining is regarded as *formally inter-organisational*, in a fashion that suits the theories of policy networks described above. Policymaking in the ‘age of governance’ is less a matter of the successful imposition of an



interest group's objectives on government decision-making, and more about the common rules and traditions that shape how decision-making actually happens.

Understanding the role of these organisational norms has encouraged post-positivist accounts of policymaking, which analyse how value-laden cultures and expected behaviours influence a policy subsystem and the actors within it. The network definition may describe the connections and relationships that constrain an interest group's activity within a subsystem, but it doesn't explain how particular patterns of group organisation actually create the substantive mechanisms and interactions that make up the policymaking process. 'New institutionalism', one of the more recently established branches of policy science, seeks to re-establish the role of social context and offers "a reaction against the behavioural revolution of recent debates" (DiMaggio and Powell, 1991a:2). Traditional approaches lack an appreciation of how social context—and not solely rational choice—determines preferred outcomes, and do not offer an explanation for why policy systems maintain equilibrium when "atomistic [theories] predicted unstable and paradoxical decisions" (DiMaggio and Powell, 1991a:5).

'New institutionalism' seeks to redefine institutional systems as *cognitive* structures where rules, routines and scripts of behaviour are formalised within a professional field, policy sector or societal group. Institutionalisation—the process by which "social processes, obligations, or actualities come to take on a rule-like status in social thought and action" (Meyer and Rowan, 1991:42)—may begin as a rationalising process for adopting a shared system of assumed optimisations to enhance bargaining and information exchange. Eventually, however, "a threshold is reached beyond which adoption provides legitimacy rather than improves performance" (DiMaggio and Powell, 1991b:65). Legitimacy, more so than popular support or negotiated consensus, becomes the currency with which groups establish influence and authority in the policymaking process.

Absent from some early accounts of new institutionalism is an explanation for how policy change can happen if policy networks are characterised by homogeneity and self-sustaining institutional behaviours. Baumgartner et al. (2007) propose that policy processes abide by stability and incrementalism, interrupted only by occasional large-scale departures from past policy caused by the rise and fall of issue salience within a subsystem. This ‘punctuated equilibrium’ hypothesis suggests that policy institutions remain stable while the behavioural norms of dominant actors are capable of mitigating or finessing emergent policy challenges. This stability is punctuated when the institutionally-limited behaviour of decision-makers prevents any adaptation to exogenous shocks in social, political or institutional circumstances. This results in policy failure, and new or minority actors become interested in the issue causing “previously dominant agencies and institutions ... to share power with groups or agencies that gain new legitimacy” (Baumgartner et al., 2007:159). Similar models propose that change results from a ‘feedback loop’ effect, where the cumulative shortcomings of previous policy decisions inevitably lead to a critical mass of issues that necessitate reform to adapt to new circumstances (Baumgartner et al., 2007; Streeck and Thelen, 2005). Meyer and Rowan explain the incremental form of policy change in new institutionalism by highlighting that “institutionalized organisations seek to minimize inspection and evaluation by both internal managers and external constituents” (1991:59), thereby reducing the potential for public or politically-motivated scrutiny that could force change in procedure – a pattern that could easily be applied to the foundations of both the phone hacking scandal and the BBC’s Charter review debates.

For all their differences in provenance, the various models of new institutionalism resemble accounts of democratic elitism; dominant groups maintain their controlling status through managed marginal shifts in the accepted behaviours and values that guide decision-making. Though written to offer explanatory frameworks for studying contemporary policy

processes—increasingly characterised by bureaucratic, technocratic and formally networked modes of decision-making—new institutionalism nonetheless espouses a normative conception of policy as an elite matter, led by elite actors and conducted through practices defined in elite terms. When significant exogenous changes impact on a policy system, the dominant figures are simply shuffled around in order to prevent a genuine re-evaluation of institutionalised norms. Despite colourful descriptions of how institutional patterns develop and of how change comes to occur within an established network of institutionalised organisations, institutional theorists appear reluctant to designate who, if anyone at all, has control over the institutionalisation of rules and behaviours in the first place.

### **POLICYMAKING AS ‘DISCURSIVE POLITICS’**

The accounts detailed in this chapter so far can be viewed as compound evolutions in an empirical conception of the policy process. But one significant development offered by new institutionalist perspectives is the notion that institutional cultures not only preclude particular political behaviours, but also exclude groups that advocate interests in opposition to the settled values and norms of a policy network. Compared to the positivist presumptions of network theory, this evolution is useful because it highlights the pervasive role of political ideas and ideology in justifying institutional policymaking practices and drawing the boundaries of debate.

This is a necessary distinction to avoid naturalising the terms and the symbolic terrain on which institutional battles take place, or to avoid treating an institutional perspective as justification for apolitical policy analysis. Frank Fischer, in this same vein, argues that a wholly empirical approach to policy analysis diminishes ideas and political values—arguably the fundamental components of policy decisions—to little more than impassive properties or resources to be bartered. Fischer contends that “ideas and discourses can have a force of their

own independently of particular actors” (2003:vii), and this forms the basis for a theory of ‘discursive politics’.

Policymaking is a constant discursive struggle over the definitions of problems, the boundaries of categories used to describe them, the criteria for their classification and assessment, and the meanings and ideals that guide particular actions. (2003:60)

For Fischer, policy issues should not be treated as natural phenomena to be itemised by objective observation or dealt with through scientific methods. They arise from the interactions between the competing discourses circulating in society and the political, social and cultural developments in everyday life. Policy processes are “infused with sticky problems of politics and social values” that cannot be easily reduced by positivist assessment, and it is the struggle to “create and control systems of shared social meanings” that determines how policy processes play out (Fischer, 2003:11-13).

Fischer is especially critical of models of policy analysis which elevate the rational choice of decision-makers—guided by information exchange and occupational ‘expertise’—as the principal locus of policymaking. Positivist policymaking models are themselves infused with the dominant contemporary narratives of ‘evidence-based’ policymaking, in which supposedly noisy and messy public contributions to policy formation are subordinated to the clear and crisp solutions provided by impartial technical assessments. Fischer argues that this narrative “largely serves as an ideology that masks elite political and bureaucratic interests” by reconstituting policy as an apolitical, empirical practice, reducing the potential for politically-motivated elected representatives (and thus, the wider public) to influence policymaking processes (2003:14).

A discourse perspective sees the policy process as “literally ‘constructed’ through the language(s) in which it is described” (Fischer, 2003:43). For Fischer, policy issues are “interpretively fitted” into discursive accounts that attract attention or support for the issue and

its resolution (2003:58). Media organisations—and their role in constructing, legitimising and circulating ideas and values of social or political life—are clearly central within discursive policymaking, where interpretation and expression are paramount. Similar to new institutionalism, discursive politics suggests that policy actors are mobilised into political action by the language and social meanings that they share with others, which in turn create common objectives to implement through policy. Competition between groups in the policy process is conducted not just through the bartering of interests, but also through deploying competing narrative accounts which give meaning to these interests and define them in ways that appeal to the political and bureaucratic needs of policymakers.

The measures of authority and legitimacy that define different policy actors' place and influence in a policy debate are reproduced by these same discursive contests. Decision-makers and other ruling or elite policy groups (not least elite media) are closely involved in advancing the “particular conceptions of reality” that justify and cement their position in policy processes and “cover up contradictions and paradoxes” (2003:86) in those contexts. Fisher's theory on policy change is similar, in this respect, to the accounts offered by the ‘new institutionalist’ models described above. Change arises from the failure of dominant ‘discourse coalitions’ to maintain “successful discursive reproduction” against opposing or insurgent narratives (Fischer, 2003:108). Furthermore, analysis of ‘winners’ and ‘losers’ in the policy process is, in discourse theory, not concerned merely with an actuarial summary of whose policy objectives were or were not implemented by legislation or government action. For Fischer, “the conventional or accepted stories that dominate a policy controversy” are a greater indicator of success, as these stories will define the cognitive and linguistic frames that shape how changes in law or regulation are made (2003:173).

From this Fischer encourages analysis of policy process ‘metanarratives’, which seek to explain the interaction between competing discourses by their differences and similarities.

By identifying “the existence of other narratives related to the issue ... that do not conform to or run counter to the controversy’s dominant policy narratives” (Fischer, 2003:173), one may be able to better account for the different roles and tactics that opposing policy actors assume and how they engage, successfully or not, in the policy process. These activities should not be seen as impotent or recalcitrant as network theorists like Grant (1995) suggest. ‘Outsider’ behaviour is instead recognised as the result of contrasting narrative and cognitive frames between ‘insiders’ and ‘outsiders’, and can be just as powerful as the dominant formal policy practices or even (crucially) represent a fundamental challenge to otherwise normative policy values. The analytical role of the ‘metanarrative’ is thus to thread the wider interplay of narratives into a full account of policy as a product of competition between discourses in society.

## **POLICYMAKING AND POWER**

The theories explored in this chapter do not by any measure present a comprehensive account of all aspects or ideas of policymaking, but they do each offer unique analytical perspectives which, taken together, offer a rich multi-faceted approach for studying the many complex processes and interactions that comprise the media policymaking process. These theories also share the recognition that analysis of policymaking as a social phenomenon is “essentially the study of the exercise of power in the making of policy” (Hill and Varone, 2017:24). Though the attention paid to power varies across theories of policymaking (itself indicative of their contrasting epistemologies), study of the policy process is grounded in a focus on how individuals or groups can “exercise causal powers that produce specific effects in the world” (Scott, 2001:1). There are equally various theories of how power exists in social relations, how it is created, held and accrued, and more fundamentally what ‘power’ is. Policymaking as explored in this chapter is conceived as both a site in which power relations are made manifest and as a mechanism for creating, reinforcing or challenging the conditions

of power constituted by policy actions. Exploring the principal theories of power that describe these relations and conditions is therefore vital in accentuating the wider social implications of public policy and how it is made.

### 3. CONCEPTUALISING POWER

Much commentary on politics, policy and social affairs is peppered with instinctive references to power—power *over* someone or power *to do* something; *gaining* or *losing* power; being *more* or *less powerful* than others; *having* power, *exercising* it, *wielding* it and so on—without any discernible thread linking these colloquial distinctions. In the policymaking context, trying to isolate a single all-encompassing definition for how policy actors influence decision-making reveals just how loose a concept power really is. An extensive sociological tradition of theorising power offers numerous explanations for how power functions in social relations, and how these dynamics enable or prohibit particular courses of action. Unfortunately, few of the salient accounts agree on the fundamental nature of power, and fewer still share a classification or taxonomy for describing and delineating power’s different ‘forms’. As critiques of, responses to, or advances on one another, prominent strands of theory do however share a common interest in illuminating, as sociologist John Scott has put it, how power enables actors “to affect the conduct of other participants in social relations that connect them together” (2001:1).

This chapter does not try to create bridges between opposing accounts where none exist, but instead highlights the analytical similarities and crucial differences between some of the most influential sociological works on power. These theories are divided into two predominant views, which Scott also refers to as the two ‘streams’ through which power functions; a ‘mainstream’ that treats power as a *behavioural* force, and a ‘second stream’ that sees power as a *structural* force (2001). Hindess has similarly conceptualised the myriad debates on power as occurring in two distinct camps, one concerning “the simple capacity to act” (1996:2) and a second wherein power operates through “the consent of those over whom it is exercised” (1996:11).



Rather than treat such streams as alternative or even opposing theoretical foundations, this chapter presents an integrated framework that sees the various conceptions of both behavioural and structural forms of power as distinct, compounding, interacting and mutually dependent forces. This perspective is arguably essential for analysing the dynamics of power in the policymaking process, for which employing only a single or unitary view of power would elide or oversimplify the numerous overlapping social, political and cultural factors at play. As such this chapter begins with an overview of the two ‘streams’ of power and their particular manifestations, together with a prospective model for how these forms may be understood as collective parts in a more holistic evaluation of power. Following this the chapter explores some of the defining literature on power.

In addition to drawing out the significant evolutions in thought and exploring how they may be applied to a study of the policymaking process, this chapter also links these theories to different ideas of *media power* as a distinct phenomenon. Media actors, media institutions and media processes, in many guises and roles both in and around decision-making, are clearly closely involved in and integral parts of political and social interactions. ‘The power of the media’—as an economic, political and symbolic site of social interaction—is therefore not only analogous to more general sociological definitions of power, but intimately tied up with the other essential forces and forms of power that shape people’s daily lives. Just as the study of policymaking processes is a study of power, a study of media policymaking is fundamentally concerned with how competing actors and groups (including media institutions themselves) influence the decisions that structure and distribute media power in democratic society. Finding ways to identify and measure this influence, and thus to uncover the core dynamics that define the media policymaking process, is this chapter’s primary goal.

## **STREAMS, CANALS AND FLOWS: A COMBINED MODEL OF ‘DOMINATION’**

Mainstream research, according to Scott, defines power as ‘coercive influence’ or one actor influencing the behaviour of another by means of “punitive or remunerative sanctions that ... work directly on the interests of the subaltern” (Scott, 2001:13). The distribution of mainstream power is linked closely to the distribution of material and political resources, as it is these resources that are used to deploy such sanctions. A mainstream analysis of decision-making depends on the assumption of actors’ informed calculation of the options available to them and their rational responses to others’ actions.

Second stream research, by contrast, identifies power as ‘persuasive influence’ that “operates through the offering and acceptance of reasons for acting in one way or another” (Scott, 2001:13). This power is not exercised directly but is formed in the shared meanings that structure a society and the organisations within it. Persuasive influence is consequently “the collective property of whole systems of cooperating actors” (Scott, 2001:9), enabling that system to normalise preferred courses of action or endow specific actors with the authority to act on behalf of the whole. Second stream theories analyse the flow of power in these systems by identifying the values that legitimise these shared symbols and commitments, and studying how such values are structured into patterns of social activity.

The distinction between mainstream and second stream demonstrates the need to view power from conflicting perspectives and recognise that power can be exercised in multiple forms simultaneously. To enable this, Scott further divides the two streams into four elementary forms of power—force, manipulation, signification and legitimation—which, when actualised, are “structured into the stable and enduring social relations that make up large-scale social structures” (Scott, 2001:16). Together these produce what Scott terms *domination*, the basis

for organised leadership in mass societies by means of structuring of elementary forms of power into enduring or “canalised” patterns of action (Scott, 2001:16).

Many theories of power that fit within these categories dispute the relevance or validity of the opposite ‘stream’, and the sorts of power relations they describe often suggest an intractable division between empirical observation and structuralist explanation. What is unique about Scott’s framework of domination, however, is it proposes that

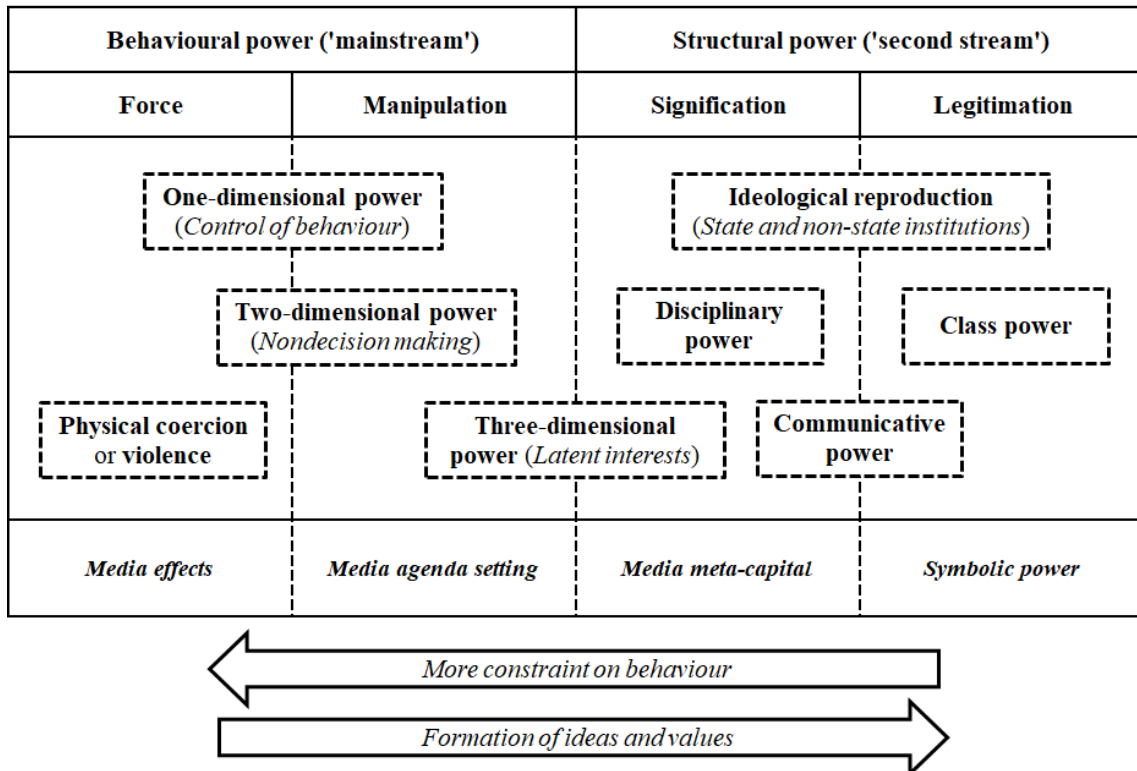
the power relations of any actual society are organised through its institutional structures into *a variety of concrete combinations of power* that combine these types in complex ways. (2001:23-4)

From this we can envisage a tandem role played by both behavioural and structural influence in creating lasting systems of domination in society. Neither stream operates in isolation from the other, and the predominance of one form of power over others is only indicative of the specific combination operating in those social conditions. This recognition is especially pertinent to the study of policymaking, where formal political processes, informal public deliberations, institutional practices and cultural discourses all produce a number of power dynamics that change between sector, topic, time and place. Scott’s two-stream framework and the composite concept of ‘domination’ allow for a much broader evaluation and interpretation of power in policy processes, without either committing to the universalist assumptions of single models of power or glossing over the rich complexity inherent to the role of power in policymaking.

With this in mind, Figure 1 offers an illustrative model of how the different conceptions of power presented in this chapter might fit within a combined account of domination. The position and proximity of these theories in the figure is not just a reflection of the epistemological similarities or divisions across the literature on power. This framework also infers lateral relationships between these ideas of power, and contends that mainstream and

second stream power should be understood as both dependent on and contributing to the effects of one another. Types of behavioural influence that compel someone to change their actions or limit their decisions rely on political, legal or cultural systems that give meaning and legitimacy to these attempts at coercion, but at the same time this exercise of behavioural power reproduces and reinforces its structural foundations.

**Figure 1. A combined model of domination**



This same relationship can also be applied to distinct expressions of media power, which are arranged in Figure 1 to correspond with the elementary form of power they most closely resemble. Media texts and discourses can affect behaviour through encouraging or discouraging a course of action, but this persuasive influence is ultimately contingent on a deeper structural frame that establishes media and its productive institutions as essential mechanisms of political communication and social interaction. The particular effects of different forms of social, political and media power are all vital to the debates and interactions that constitute the policymaking process, constraining actors' decisions and forming the ideas and values that drive policy change. Before analysing the specific patterns of domination that

defined the post-Leveson and BBC Charter debates, this chapter unpicks some of the definitive mainstream and second stream theories of power, examines their arguments and methodologies, and interrogates the fundamental dynamics that influence how people engage in political and democratic processes.

## **BEHAVIOURAL POWER: DOMINATION THROUGH CONSTRAINT**

To take a rudimentary stepping-off point, Bertrand Russell defined power as “the production of intended effects” (2004:23), the ability of one actor to influence another through inducement of reward and punishment. Power of this sort is quantifiable; someone who is more successful at influencing than another can be said to be more powerful than them. Consequently, one can take Russell’s suggestion that a person who *regularly* produces their intended effects not only possesses the means to continue that relationship but is also inclined to do so. C.W. Mills’ own idea of a ‘power elite’ (explored in the previous chapter) rests much of its analytical weight on identifying these recurring means of influencing others. Mills was primarily concerned with the centralisation of power in political and economic institutions, and how this had alienated the American public from involvement in essential democratic processes (1970:31). Expanding on Russell, power in this sense is not the mere exercise of constraint but the possession of material or social resources to maintain that constraint indefinitely and against opposition. For Mills the American power elite had not “emerged as the realization of a plot” (1970:34). Rather, the centralisation of legislative and administrative control had created this elite whose power “exceeds that of any small group of men in history [and created] a new kind of social structure, which embodies elements and tendencies of all modern society” (1970:41).

Both Russell’s and Mills’ concepts of power identify the control of resources as a necessary (though not the only) means of exercising domination by constraint. This in turn provides a straightforward empirical method for locating powerful actors in social relations by

their wealth, their rank in political or social institutions, or other advantageous characteristics. Max Weber termed this “domination by virtue of a constellation of interests,” in which influence is

derived exclusively from the possession of goods or marketable skills guaranteed in some way and acting upon the conduct of those dominated, who remain, however, formally free and *motivated simply by the pursuit of their own interests*. (1986:30, my emphasis)

That latter clause reflects a pertinent dividing line within mainstream accounts of power concerning the nature of actors’ interests. Whereas Russell’s and Mills’ descriptions of behavioural power involve the domination by principals over seemingly passive or impotent subalterns, Weber brings attention to the role of a subaltern’s own interests in shaping power relations. The tension between actors’ rival interests and the competing goals they seek invariably lead to situations where individuals “pursue their own interests at the expense of those of others” (Scott, 2001:7). They achieve this not through violence or subjugation (i.e. Scott’s elementary concept of ‘force’), but by strategically changing “the bases on which a subaltern calculates among action alternatives” (Scott, 2001:14) in order that they act in a way that benefits the interests of the coercer (i.e. Scott’s notion of ‘manipulation’).

### Control of behaviour

Keeping in mind the study of public policymaking, domination by constraint occurs not only through one actor manipulating another but also through the wider restrictions on legal, political, economic or social action that public policies are intended to enforce. This is a crucial distinction when analysing the flows of power in democratic institutions, and even more so when studying decision-making in policy processes. In both cases, the intention of the principal actor is to affect the behaviour of others so that this change acts back upon them as a benefit which “offers itself to the dominator as the product of his will” (Simmel, 1950:181).

Pluralists like Dahl sought to clarify what they saw as sloppy, inconsistent descriptions of ‘power’ by those such as C.W. Mills, and in a 1957 essay *The Concept of Power* (building on his 1961 observations in New Haven) he sought to cement a scientific model to measure power by empirical means. Dahl’s conceptual starting point is that

A has power over B to the extent that he can get B to do something that B would not otherwise do. (1957:202-3)

Dahl’s concern with actions that someone *would not otherwise do* highlights his epistemological grounding in the rational actions and reactions of individuals. This concise definition of power is the central contention: B, as a rational actor, would have proceeded to act in pursuit of their interests—and against the interests of A—were it not for A’s intervention, which succeeds in getting B to act in a way that is advantageous to A. Dahl argues in both *The Concept of Power* and *Who Governs?* that there cannot be a power relation without an *overt conflict* between A’s and B’s interests (1957:205, 2005:189).

Dahl provides a means for quantifying an individual actor’s power (A’s ability to get B to act in a particular way) in terms of *probability*. A’s specific power is the probability that B acts in a way intended by A as a result of A’s action.<sup>3</sup> Adding in the necessity for an overt conflict of interests, this probability of success by A is compared to the likelihood that B would have performed the same action without A’s intervention. If “A unfailingly gets B to do something B would never do otherwise”, then A has total *positive* power over B, but only in regards to B performing the intended action and the particular means of power that A uses to achieve this (Dahl, 1957:205). Embedded in this calculation is the significance of A’s *intent*: A making B do *x* against their will and A deterring B from doing a different action *y* are merely

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<sup>3</sup> Dahl offers the tellingly concise formula  $P_I = (a, x | A, w)$ , where  $P_I$  is the likelihood that one actor,  $A$ , doing a particular action,  $w$ , causes another actor  $a$  to do  $x$  (1957:204).

semantic differences unless one assigns “a positive or negative *direction* to the responses of the respondent” (Dahl, 1957:105).

Dahl’s claims to empirical rigour fall short in this aspect. The subjective interpretations of a principal’s intent, and the direction of their attempts at power over a subaltern, do not yield easily to scientific analysis of this sort when one recognises that Dahl’s A-over-B relationship rarely occurs in a political vacuum. One principal may not be the only actor attempting to influence a particular subject (or multiple subjects) and may themselves be the subject of a separate but determinative power relationship. One cannot expect to assess the magnitude of numerous, intersecting influences that constrain someone’s behaviour without first assessing each interaction independently of the observable results of this many-to-one power relationship.

Such controlled environments are not readily available to the study of power in the messy field of policy processes. The uniqueness of every exercise of power makes it effectively impossible and indeed analytically undesirable to conceive that, for example, if  $A_1$  and  $A_2$  can each make B twice as likely to do  $x$  (to borrow Dahl’s algebraic explanations), then they would together make B four times as likely to do the same  $x$ , or  $x$  *again*, or another action  $y$ , and so on. Power, as Dahl himself concedes (2005:227-8), is non-cumulative, yet his method for comparing power relations relies on subjective assumptions, made by the observer, of the relative equivalence of the relationships between different actors.

Though *The Concept of Power* includes a detailed example of ranking the influence of individual Congressional actors over separate policy fields, Dahl’s 1986 essay *Power as the Control of Behaviour* expanded on his analysis of power relationships in decision-making processes. Recognising that political power and authority are often invested in specific actors



and institutions with defined roles in policymaking, Dahl considers how one actor can affect the behaviour of another without the former intentionally acting on the latter:

[A] might be said to *have* power when, though he does not manifest an intention, [B] *imputes* an intention to him and shapes his behaviour to meet the imputed intention. (1986:52)

B anticipates A's reaction because of A's behaviour, such that A leads to or causes B's response without necessarily willing it. Though this leans close to the dispositional character of power that typifies second stream theories, Dahl nonetheless insists on a positivist, behavioural conceptualisation of these anticipated reactions. In one sense this makes 'control of behaviour' a valuable standard foundation for analysing power in single instances, but Dahl's pluralist model does not lend itself to an historical or systemic analysis of power distributed across society.

Many early models of media's behavioural effects share Dahl's 'one-dimensional' view of power (Lukes, 2005), holding that media can influence the behaviour of audiences through control over the creation and content of media texts. This 'hypodermic needle' or 'magic bullet' theory of media effects—in which the information and ideas that audiences consume through media texts have a direct causal impact on their actions (DeFleur and Ball-Rokeach, 1989; Lasswell, 1927)—has been displaced by far more nuanced explanations. Active audience or reception theories<sup>4</sup> share with broader pluralist theories an insistence that “the autonomous power to make sense of society in diverse ways [is] widely diffused in society. There are no dominant discourses, merely a semiotic democracy of pluralist voices” (Curran, 2002:120).

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<sup>4</sup> These terms are used here only as shorthand for a deep tradition in media sociology (see Curran, 2002:115-6 and Williams, 2003:190-203) of foregrounding the ability of media audiences to approach and interpret texts independent of a producer's intended message.

Such accounts do not, however, discount media as inert or impartial arenas. Schudson, writing specifically about the enabling civic role of news media, argues that “the job of the press is to help produce a more informed electorate” (2002:204). Freedman categorises these pluralist ideals as a ‘consensus’ paradigm, a normative view of media power predicated on a fundamental expectation of media freedom which “requires adequate competition between ... different outlets and thus the free interchange of all players in an open market” (2014:18). This paradigm underlies many optimistic accounts of media history and the influence of print and broadcast media in the democratisation of modern societies (Curran, 2002:32), and is useful as a perspective on the role and power of the media in the policymaking process. The ideal policy function of media outlets is to facilitate debate, deliberation and argument between competing policy actors, informing their rational evaluation of decisions and ultimately serving as the arterial democratic link between the public and elected policymakers. The power of media in this sense is in constructing the pluralist foundations on which positivist behavioural forms of power depend, enabling groups to realise their interests through interaction with and representation in media.

#### *Nondecisions and media agenda-setting*

However, assumptions of the rational and inevitable emergence of important policy issues (and the media’s impartial role in reflecting public salience) overlook how conflicts of interest are actually defined. In their 1962 work *The Two Faces of Power*, Bachrach and Baratz challenged Dahl’s sole attention to “key as opposed to routine political decisions”, describing it as an insufficient means for analysing power because of a second ‘face’ of power that determines which issues are (and crucially are not) decided upon.

Of course power is exercised when A participates in the making of decisions that affect B. But power is also exercised when A devotes his energies to creating or reinforcing social and political values and institutional practices that limit the scope of the political process to public consideration of only those issues which are comparatively innocuous to A. (Bachrach and Baratz, 1962:948)

They argue that using overt conflict as the basis for identifying power relations, as Dahl does, ignores the extent to which conflict can be made *covert* through the manipulation of political and social processes. Power of this sort is not control of behaviour but the ‘mobilisation of bias’ (Schattschneider, 1960), whereby powerful actors ensure unfavourable decisions are kept out of public consideration and remain dormant as ‘nondecisions’ (Bachrach and Baratz, 1962; 1963).

For Bachrach and Baratz, the topics or conflicts on which policy decisions are made do not arise freely from public consensus, nor are they discovered by political leaders as objective concerns to barter and fight over for electoral support. A distinction between key and routine decisions cannot be made solely on the magnitude of contestation between parties over those decisions, as to do this is to “accept as issues what are reputed to be issues” and take for granted a community’s values and practices in determining the emergence of conflict (1962:949). This recognition also calls attention to the influence of actors who are not official decision-makers but “may have been directly instrumental in preventing potentially dangerous issues from being raised” (1962:952). Bachrach and Baratz instead propose evaluating power in decision-making by first assessing the dominant political practices, cultural values and institutional norms that surround and shape these processes. Following Schattschneider’s assertion that “all forms of political organization have a bias in favour of some kinds of conflict and the suppression of others” (1960:71), an analysis of nondecision-making then involves examining how “status quo oriented persons and groups” manipulate the dominant community values to reveal those

processes that “tend to limit the scope of actual decision-making to ‘safe’ issues” (Bachrach and Baratz, 1962:952).

In both overt decision-making processes and nondecision-making, a principal’s assumed character or prestige, or even the set of taken-for-granted community values, can “effectively prevent grievances from developing into full-fledged issues which call for decisions” (Bachrach and Baratz, 1963:641). This provides a crucial consideration of discursive and social context in the formation of power relations (which is the central focus of many second stream theories), but Bachrach and Baratz stop short of conceding that the discursive function of ideas can be as influential as the observable exercise of behavioural power by actors in actual decision-making processes. Studying the second ‘face’ of power improves on Dahl’s method by offering a means to identify the contextual dynamics of nondecision-making, but is nonetheless more akin to an analytical extension of his first ‘face’ of power than a complete critique of its behaviouralist foundation.

In defining different forms of media power, nondecision-making not only offers a distinct theoretical model but is also poses a lively and serious challenge to normative democratic descriptions of media’s political functions. Whereas pluralist accounts see media as merely one set of actors among many (Blockland, 2011:171) or as a neutral site for deliberation (Hallin and Mancini, 2004:22), theories of media control adopt a greater critical perspective on media’s role in shaping public policy debates. Freedman contrasts the consensus paradigm, and its emphasis on audiences as the foundation of media power, with a ‘control’ paradigm that centres the power of media to “confine public discussion to a narrow and artificially maintained consensus” (Freedman, 2014:22). Far from being open sites for building public consensus, media are seen as instruments of social and economic domination by powerful groups. This influence is exercised principally through the processes of ‘agenda-setting’, by which certain issues gain or lose attention and importance in public and political

debate. Hill argues that agenda-setting “is in many respects an ideological process, translating an issue into a policy proposal” (1997:115), and as McChesney notes media institutions are “in an ideal position to control the public perception, or lack thereof, of any possible debate regarding the control and structure of the media” (2008:350).

Media agenda-setting moves the analytical spotlight away from texts or audiences and towards a study of the political economy of the media and the structural components that govern how media operate (Freedman, 2014:24): the organisation of labour and capital that influence how (and what sorts of) media texts are produced (Couldry, 2000; Hesmondhalgh, 2006:224); the personal and professional proximity of media, state and corporate actors (Davis, 2002 and 2003; Herman and Chomsky, 1988); and the fundamental commercial and corporate nature of media businesses which mobilise cultural capital to the pursuit of economic capital (McChesney, 2000). Policymakers and interest groups alike recognise media as pivotal because media outlets act as “the funnel regulating the flow of communications” (Spitzer, 1993:9) between these groups and the wider public. Attempts to ‘use’ media to publicise a group’s aims and goals are fundamentally contingent on finite and unequal degrees of ‘access’ to media production (Davis, 2007b:55), but crucially media organisations themselves “have their own economic and ideological interests” that they may seek to promote through their ownership and control of media outlets (Freedman, 2008:87).

The ability of policy actors to engage with media and successfully influence its reporting is closely linked with media’s role as ‘gatekeepers’ and arbiters of what is or is not perceived as an important or salient issue. Material, political and social inequalities mean that access to media is readily available to elite groups like government insiders, corporate leaders and prominent cultural figures but typically out of reach of the general public. Contests over media access are not open as pluralists would argue but are instead centred around inter-elite conflict. As Davis posits, “elites are simultaneously the main sources, main targets and some

of the most influenced recipients of news” (2007b:60). The reliance of elites on media for influencing public opinion (Davis, 2007b:55), combined with the coterminous reliance of media on elites as sources of information, has resulted in “a form of corporate-inspired ‘dominant ideology’ exported through the media to the mass of consumer citizens” (Davis, 2002:178).

Freedman notes that the increasing concentration of media ownership into fewer and fewer corporate organisations grants these businesses a unique status as both economic and cultural elites, with power over immense financial and symbolic capital (2008:106). This position causes the broader power elite to direct its attentions and appeals for favour at powerful media groups who, in turn, expect advantageous business deals or a favourable change in government policy (Freedman, 2014:49-50). The media power of agenda-setting is thus the clearest demonstration of nondecision-making, and it entails severe implications for the balance and accountability of notionally democratic media policymaking processes. The question is whether media institutions facilitate a genuine public discussion of the widest range of media policy issues and concerns, or whether media actors limit the scope of their reporting and discussion to only those comparatively innocuous issues that culminate in political decisions which benefit the partial private aims of elite media groups.

#### *Overt, covert or latent conflict?*

Nondecision-making (and the equivalent media power of agenda-setting) fit into Scott’s model of domination as a form of constraint that affects the ability of subalterns to actualise their grievances in overt political struggle. Yet despite this crucial addition to the behavioural notions of power, Bachrach and Baratz ultimately retreat to a method that “in the manner of the pluralists [analyses] participation in decision-making in concrete issues” that arise from subjective conflict (1962:952). Steven Lukes is particularly critical of this aspect of the second

‘face’ of power and offers in his seminal 1972 work *Power: A Radical View*<sup>5</sup> a third face which proposes that power operates not only in the manipulation of overt and covert conflicts of interest but crucially in preventing “conflict from arising in the first place” (2005:27).

Before exploring Lukes’ contribution to theories on power, it is worth briefly detailing the epistemological turn fundamental to his critique of one- and two-dimensional power. Dahl’s method rests on an overt conflict of interests between A and B and Bachrach and Baratz—despite recognition that conflict can be kept from actualising in decisions—similarly claim that “if there is no conflict, overt or covert, the presumption must be that there is consensus on the prevailing allocation of values” (1970:6). Lukes challenges this positivist insistence that conflict can only be said to occur between conscious preferences, and argues instead that “people might actually be mistaken about, or unaware of, their own interests” (2005:190).

This concern with how individuals come to form or acquire their values and beliefs is a central epistemological aspect of ‘second stream’ theories of power. The methodological tension, then, is between observing a subaltern’s subjective interests (those that are declared or can be inferred from B’s behaviour) and identifying their ‘real’ interests. As we will come to see in the following section, Marxist theories on hegemony and the Foucauldian account of ‘regimes of truth’ fiercely contend that most actors are unaware of what is really of benefit to them, and are subject to (in the former) or constituted by (according to the latter) structures that normalise objectively harmful or limiting interests. Lukes does not lay claim to a “privileged access to truths presumed unavailable to others”, but nonetheless rejects the positivist insistence on tangible moments of decision-making as the only locus of power (2005:145). His conception of power, operating in ways that produce *latent* conflict, posits “a contradiction

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<sup>5</sup> Cited here from the 2005 second edition.

between the interests of those exercising power and the *real* interests of those they exclude” (2005:28).

## **STRUCTURAL POWER: DOMINATION THROUGH DISCURSIVE FORMATION**

A common contention of second stream theories is that behavioural power is subordinate to or subsumed by types of structural power. Proponents of the second stream do not view constraint on behaviour as power *per se*, but as a different aspect of broader political relations (Habermas, 1977:76) or more critically as a form of reductive violence arising from a failure of consensual power structures (Arendt, 1970). Scott thus proposes that what links the epistemological tendencies of second stream theories is their characterisation of power as “diffused throughout a society”, rather than as a capacity confined to individuals and organisations which they exercise or hold over others (2001:9). Power in this sense is facilitative and productive, as it creates enduring social structures that determine how people relate to and interact with one another. This description of power as social production stands in stark contrast to the negative exercise of power inferred from Russell’s “production of intended effects” (2004:23). Whereas first stream accounts see power as a means to an end, a second stream view of power raises the “communal mechanisms that result from the cultural, ideological, or discursive formations *through which consensus is constituted*” (Scott, 2001:9, my emphasis).

In Scott’s description of domination these take two forms; signification and legitimation. The former relates to a commitment to or normalising of cognitive symbols—“ideas and representations that lead people to define situations in certain ways”—while the latter indicates power that comes about through groups ascribing “a normative character to the views of their principals” (Scott, 2001:15). Though these forms do not appear so explicitly in the wider theoretical tradition of structural power, they nonetheless provide useful labels for



comparing the conceptualisations posited in various second stream accounts. The locus of power here is not individual behaviour or the use of resources to constrain others' actions, but the ordering of social, cultural and political values into systems that accord individuals and ideas with their subject-positions in relation to one another. Rather than severing an analysis of the constraint of behavioural power from the power of discourses and ideas, Scott argues that forms of structural power "justify and mask the realities of coercion and inducement" (2001:21). Presented below is a selection of various theories of structural power. These are not intended to present a total account of all structuralist philosophies or to suggest one is analytically superior to others. As will be argued, these models offer further justification for connecting mainstream and second stream power while also illustrating the epistemological breadth across theories of the power of discourse.

### *The third face of power*

Lukes' critique of the two faces of behavioural power concerns how dominant ideas and values shape decision-making. Whereas the preceding approaches posit that power is only exercised in a conflict of interests, Lukes challenges the rationalist basis on which these circumstances are determined. Conflicts and grievances, he argues, are the conscious result of individuals comparing their subjective interests with the political knowledge available to them, to create "an undirected complaint arising out of everyday experience" (2005:28). Expanding Bachrach and Baratz's 'mobilisation of bias' beyond its limited conceptual boundaries, Lukes asks

Is it not the supreme and most insidious exercise of power to prevent people, to whatever degree, from having grievances in such a way that they accept their role in the existing order of things, either because they can see or imagine no alternative to it, or because they see it as natural or unchangeable, or because they value it as divinely ordained and beneficial? (2005:28)

In this 'three-dimensional' view of power, potential issues are not only kept out of decision-making processes but are also prevented from being recognised as realistic conflicts in the first place. "Through the operation of social forces and institutional practices," conflict is averted such that those who stand to gain from its recognition remain unaware of this potential while those who stand to lose continue to benefit from the existing state of affairs (2005:28). Scott helpfully summarises Lukes' addition to the debate on individuals' interests: "if they are unaware of their real interests, it is not even necessary for a principal to exclude them from decision-making" (2001:60).

Lukes' radical view of power is an eloquent description of the influence of discursive formation on social interactions, as well as a valuable justification for linking together behavioural and structural concepts of power. It accepts the basic premise that the common core of all power is "A in some way affects B" (Lukes, 2005:30), but challenges the analytical focus of 'mainstream' accounts on interests as objective empirical criteria. People's expressed preferences may be a product of social arrangements that subdue their real interests, such that a positivist assessment of these preferences "inevitably takes over the bias of the political system under observation" (Lukes, 2005:58). Lukes concedes there are several difficulties in identifying power of this sort, the most pressing being the challenge that if causal values and ideas are embodied in social institutions then "how and where is the line to be drawn between structural determination ... and an exercise of power?" (Lukes, 2005:52-54). Without acknowledging the dialectic relationship between structure and agency (as in Figure 1.) we are left with a sterile concept of behavioural power that takes no account of social context, or reduce an explanation of decision-making to only totalising structural powers that marginalise and diminish the role of the individual.

Lukes is insistent on combating critics' accusations that his third face of power describes a condescending "conception of the social subject as an ideological dupe" (Hay

quoted in Lukes, 2005:149). In a passage that would not go amiss as a retort to the pessimism of C.W. Mills' introduction in *The Sociological Imagination* (2000:3-5), Lukes asserts that

Our own power will in part depend on harnessing and evading or diminishing the powers of others. We carry around in our heads maps of such agents' power—of their dispositional abilities to affect our interests—usually as tactic knowledge, which allows us some measure of prediction and control. (2005:65)

Here then is a conceptualisation of power that is both constraining and structuring while still allowing for the freedom and reason of the individual. Individuals may of course “accept their role in the existing order of things” (Lukes, 2005:28) but do not do so without any personal introspection or unqualified compliance. Recognising that the paths to success in these ‘maps’ are normalised and highly ordered, while at the same time being opposed and resisted by individuals who are bound by the same rules, is vital for analysis of decision-making processes.

#### *Class power and media contradiction*

In all forms of organisation, certain powers of command are “attached to particular social positions” and buttressed by the corresponding legal devices or state apparatuses that produce that organisation (Scott, 2001:31). How these positional powers take shape and structure social relationships is an important consideration of policy analysis. Policies are shaped and implemented by legislative and government actors, who derive their authority from legitimised sovereign bodies—in particular parliaments, ministries and courts—and these actors are in turn the targets of appeals for bargaining by others wishing to influence policymaking processes. The extent to which these state actors can and actually do integrate this bargaining in exercising their specific legal or political authority is therefore a significant factor in what the policy decisions they make. It is not a radical claim to suggest that the rights of authority accorded to these actors by formal state and democratic structures are in essence legitimised by social and cultural norms. Elite figures are not integrated and recruited into the

senior legislative, judicial or executive roles of modern states through natural or unconscious processes. Rather, the authority of elite decision-makers is considered legitimate “because it is accepted as being right, correct, justified or valid in some way” by the public at large (Scott, 2001:20).

With this constructivist notion of ‘authority’ in mind, Marxist theories in the mid-to-late 20<sup>th</sup> century sought to explain how capitalist states, seemingly unthreatened by class antagonism or world-historical revolutions, nonetheless commanded power over masses who “[consented] to forms of leadership that may work against their interests” (Scott, 2001:90). Borrowing from Gramsci’s concept of class hegemony, Nicos Poulantzas defined power as “the capacity of a social class to realise specific objective interests” (1973:106). In this view, power is a structural phenomenon that takes shape through the organisation of classes. The interests of a class are defined in opposition to the interests of others, and “the degree of effective power of a class depends directly on the degree of power of the other classes” (1973:108). For Poulantzas this power could only be realised through the state, which he conceived as the central arena of class struggle. The state, far from being the singular force of power, is itself subject to the control exerted on it by the dominant class and thus benefits the interests of that class through its economic, legal and political functions. Poulantzas’s approach is an exclusively structural one, in which “one need not refer to the motivations of [actors]’ conduct, but only to their place in production and their relation to the ownership of the means of production” (1969:72).

Ralph Miliband disputed this conception of classes as objective structures and of elite actors as “the merest functionaries and executants of policies imposed upon them by ‘the system’” (1970:57). In *The State In Capitalist Society*, Miliband argued that the state was only one of many distinct sites of class conflict in capitalist society, and that there is also a political system made up of many institutions—the church, businesses, the mass media—“which vitally

affect the operation of the state system” (1969:54). Contrary to Poulantzas’ claims, Miliband saw the individuals who lead these institutions as wielding “considerable power and influence, which must be integrated in the analysis of political power” (1969:54). The relationship between the state and these institutions was the necessary focus for Marxist critique of advanced capitalism, as it demonstrated how the state legitimised the authority of powerful institutions in the political system and while also relying on them for the “political socialisation” of ruling ideas (1969:241).

As a methodological perspective, the concept of class power encourages analysing the motivations of actors’ decisions and actions with reference to their place in the broader distribution of socioeconomic power and status that shapes contemporary capitalist societies. Furthermore it offers a means for explaining policy actors’ interactions with state institutions as fundamentally determined by embedded ideological norms which restrict the types of political or economic interests that may be expressed. Theories of class power thus see state and non-state institutions as facilitating the formal authority of specific exercises of power “through structures of legitimacy and the value commitments that underpin them” (Scott, 2001:30).

The general political assessment of power in the Marxist critique is in many ways overly reductive. It suggests that the numerous complex interactions that comprise a policy process are all ultimately predetermined by class dynamics, which remain unaffected by (and are of course responsible for) the unique social and political circumstances that produce that debate. Yet an assessment of institutions as major sites of ideological reproduction also provides an important observation about media power, one which draws out the ambiguities in how media—as means of cultural production—shape and circulate the discourses that underpin structural power. Marx’s notion of ‘false consciousness’, applied to the productive capacity of mass media, implies that the formative power of agenda-setting is exercised exclusively in

service of the ruling ideology. Freedman is unsatisfied with the implication of media power as merely a function of other dominant economic or social groups (2014:25). He instead highlights how capitalist modes of organisation create uncertainties and inconsistencies in the production of hegemonic discourses. There are

multiple contradictions within the commercial media; a simultaneous desire for a narrow consensus and yet a structural imperative for difference; a situation in which audiences are treated as commodities but in which they do not always play this role; a tendency for those who work within the media not to rock the boat (for self-protection and advancement), but, in exceptional periods, to do precisely this. (Freedman, 2014:28)

This analysis is an essential antidote to assumptions of media's totalising or untrammelled influence over public and political debate. It accepts the vast inequalities and monopolies inherent to modern commercial mass media but rejects that they are "forever frozen" into elite systems of domination (Freedman, 2014:29). For analysis of the policy process, awareness of the contradictions of media power can emphasise both the instability of media institutions—and how this is often the source of policy failure—and the agency of media actors, whether they are journalists, editors, executives or corporate lobbyists, to pursue their particular interests and policy objectives in dynamic (though nonetheless discursively structured) ways.

#### *Disciplinary power and media meta-capital*

Whereas Marxist theory asserts that power is a property of a person's economic and social relationship to the means of production, other theorists have attempted to explain structural power as a social function not tied exclusively to state or political institutions. Talcott Parsons argued that power is innate to *all forms* of organisation, which create "certain categories of commitments and obligations, ascriptive or voluntarily assumed [that] are treated as binding" (1963:237). Power here is ingrained in a collective acceptance that obligations are shared amongst an organised group and enforceable through negative sanctions. Behavioural

accounts observe constraint in the singular, where sanctions are treated as unique responses to opposition in a specific decision-making process. Parsons, on the other hand, presents a view of constraint where the threat or use of sanctions is “generalized” to secure the pursuit of collective goals (1963:250). Here again is a valuable justification for linking ideas of behavioural power with those of structural power, in that the authority afforded to formal sanctions against non-compliance is “essentially the institutional code within which the use of power as a medium is organized and legitimized” (Parsons, 1963:243).

Michel Foucault was similarly concerned with the disciplining effects of power, but unlike Parsons did not view it as the ‘property’ of a sovereign organisation to be justly exercised in pursuit of its goals. Focussing instead on the processes and discourses that produce this discipline in subjects, he argued for the need to “cut off the king’s head” in discussions on power and to abandon what he saw as obsessions with sovereignty and legitimacy (1980:121). For Foucault, it is the “accumulation, circulation and functioning of a discourse” that operates to produce the ‘regimes of truth’ by which individuals are constituted in their relation to others and institutions:

We are judged, condemned, classified, determined in our undertakings, destined to a certain mode of living or dying, as a function of the true discourses which are the bearers of the specific effects of power. (1980:93-4)

In his writings on medicine, sexuality, prisons and madness, Foucault explored the reproduction of legitimate rights and legal obligations which disguise the dominating totality of normalising and rationalising discourses. Though the locus of power is still between subjects and institutions, he posited a much more dynamic relationship than earlier structuralist accounts. Subjects, in their conduct as subjects, are as much involved in the reproduction of discourses as they are constituted by the institutional patterns such discourses produce: “they

are not only its inert or consenting target ... they are always also the elements of its articulation” (Foucault, 1980:96).

Though Foucault’s theories present discursive power as an inescapable force that creates all social relations and traps us into recreate them, it nonetheless has a methodological use for the study of policymaking. Analysis of power should not focus on the central locations or institutions and their general mechanisms but should instead, Foucault proposed, study “power at its extremities ... with those points where it becomes capillary ... in its more regional and local forms and institutions” (1980:96). As with other second stream theories, the Foucauldian approach presents a means of understanding one actor’s relation to others by reference to particular discourses or disciplines, which constitute participants as actor or acted-upon in both specific and general social relationships.

More importantly Foucault’s notion of disciplinary power mirrors Fischer’s (2003) argument that discourses have power in their own right, independent from how individuals or institutions actively mobilise ideas and values within their own activities. One pertinent example of this, particularly for the study of power in the media policymaking process, is the idea of ‘media meta-capital’. In *On Television and Journalism* (1998), Pierre Bourdieu argued that the difference in patterns of cultural production between various areas of social life creates specific ‘fields’ of discursive power. Looking at the central media forms in mass society—television, radio and the press—Bourdieu posited that “the journalistic field, itself dominated by market pressures, more or less profoundly modifies power relationships within other fields” (1998:68). The cultural capital accrued by journalists and media organisations imbues these actors with a monopoly over media’s particular discursive influence (Bourdieu, 1998:77), but this control also re-shapes the patterns of discursive production in other cultural fields. Couldry refers to this as media meta-capital, a form of structural power specific to media organisations



which has “influence over the terms on which people can acquire symbolic capital in a range of other fields” (2003:12).

From academia to art and from cookery to sport, both Couldry and Bourdieu argue that the meta-capital of the media field—itsself contingent on economic capital—“tends to reinforce the ‘commercial’ elements at the core of all fields to the detriment of the ‘pure’” (Bourdieu, 1998:70). Couldry takes the primacy of the media field one step further, arguing that media’s position “as the frame through which private worlds face the social” has established a structural distinction between a ‘media world’ and an ‘ordinary world’ (2000:14-15). This distinction

cuts across and reshapes social reality, reifying the vast sector of social life outside media production as a so-called 'ordinary' domain. It also masks the complexities of media production processes themselves. And above all, it disguises (and therefore helps naturalise) the inequality of symbolic power which media institutions represent. (2000:16)

In this view, the growth of mass media has altered social and cultural organisation in other non-media fields of professional cultural production and across society as a whole, and refocused these fields in a way that priorities and privileges the ‘media world’.

The media/ordinary distinction causes policy actors to “take it for granted that the media have the power to ‘speak for us all’”, to direct their attention to what media are saying about political and social issues, and to try and influence the agenda through their own engagement with media (Couldry, 2001:157). This allows media to “sustain their status as the legitimate controller of access to public existence” (Couldry, 2003:12). Media meta-capital, and “the extent to which social relations have been increasingly ‘mediatized’” (Freedman, 2014:6), is thus a crucial analytical device for understanding how different policy actors’ status, authority and influence are signified through the ‘media field’. From this we can challenge the notion that political inequalities in decision-making processes are the natural result of open pluralist

bargaining and competition, and instead examine how power relations in media policymaking are partly the products of dominant political and journalistic narratives circulated by the media itself.

### Communicative power and the network society

The second stream theories discussed above all conceive of power as primarily a negative or repressive capacity to reduce the options to act or think in pursuit of someone's 'real' interests. Neither the critiques of class power nor the models of disciplinary power regard power on balance as a positive or enabling phenomenon, and their analogous forms of media power similarly envisage the influence of media influence as primarily restrictive. Hannah Arendt proposed an alternative conception of power to coincide with the political and theoretical values of democratic systems, and rejected those theories which defined power only as repressive or negative. In Arendt's view

it is the people's support that lends power to the institutions of a country, and this support is but the continuation of the consent that brought the laws into existence to begin with. (1970:41)

Within this is the proposition that constraint and the 'organisation of violence' are not forms of power at all. For Arendt, the imposition of one actor's will over another (through physical or social sanctions) is indicative of a *failure of power*, and of the collapse of the common convictions "to which the citizenry had given their consent" (1970:40-1).

Power, as Arendt describes it, is the characteristic of a group of people and is brought into existence by their coming together in agreement and consent towards a set of goals, attitudes and beliefs. As with the other second stream theories, power in this sense is not a utility or a means to an end but "is actually the very condition enabling a group of people to think and act in terms of the means-ends category" (Arendt, 1970:51). It is clear to see the

democratic ideals that Arendt sought to bring to debates on power. Marxist accounts presented power as a top-down effect of inter-class conflict, and Foucault asserted that individuals and institutions alike were all captured within self-sustaining systems of dominance. Arendt, in contrast, offers a collective and communicative model of power that “springs up whenever people get together and act in concert” (1970:52).

Jürgen Habermas expanded on many of Arendt’s assertions on the nature of power, rejecting the notion of “purposive-rational” systems of power.

The communicatively produced power of common convictions originates in the fact that those involved are oriented to reaching agreement and not primarily to their respective individual successes. (1977:5-6)

Arendt’s communicative concept of power is, Habermas argues, correct in highlighting the “intersubjectivity generated in the praxis of speech as the basic feature of cultural life” (1970:7-8). In his view, communication is the locus of all social relations and subsequently the locus of power. The multitude of perspectives and experiences that are brought together in social interaction are not eliminated or consolidated, but agreements and common goals are found and further emboldened through their communication. Adapting these core assertions to an assessment of communicative power in political mobilisation, Habermas argues that communicative power is the ‘driving force’ behind the specific power of institutions, where the democratic consensus mobilised through communication imbues institutions and social groupings with a normative purpose (1996:150). The struggle between political groups over which set of discourses should become this governing norm is, for Habermas, the central site of conflict over structural power. Those actors that other accounts treat as sovereign or authoritative actors “have to *borrow their power* from the producers of power” (1977:87, my emphasis), and their legitimate right to exercise this power lasts only as long as such consent is given by its subjects.

The optimistic and progressive conceptualisation of ‘communicative power’ is a necessary reminder of the democratic and emancipatory objectives that any study of power and the political process ought to have at its core. These same concerns are central to analysis of media’s role in society, and debates on media power are in essence questions about whether media actors, institutions and processes foster or endanger democratic political and social action.

Such questions are as much matters of technology and individual media use as they are matters of politics and economics, and as such Manuel Castells posits that in a modern ‘network society’—driven by the development of ICTs and forms of ‘new’ media—centralised (mass) media power is disaggregated and challenged by mass self-communication (2007:248). In clear opposition to earlier notions of mass society, Castells asserts that the “from one to many” method of mass communication has been replaced by a social structure characterised by a “global web of horizontal communication networks that include the multimodal exchange of interactive messages from many to many” (2007:246). Widely available and inexpensive (compared to the entry costs of mass media) forms of electronic media have shifted the production, dissemination and circulation of information away from centralised media organisations and towards individual personal ownership. This has, Castells continues, enabled “social movements and rebellious individuals to build their autonomy and confront the institutions of society in their own terms”, thus shattering the institutional monopoly of mass media and creating means for media *counter*-power (2007:249).

The recent theorisation of fluid, networked media stems from a view that “traditional mechanisms for ensuring compliance have broken down under the impact both of communicative abundance as well as an increasing unwillingness to ‘toe the line’” (Freedman, 2014:21). Both Freedman and Castells note that traditional mass media organisations have been forced to react to the disaggregation of media power generated by new media, with many such

institutions making widespread changes in their commercial organisation and patterns of production. Yet where Castells claims that the merging of old and new has led to equal “coexistence and interconnection of mainstream media [and] autonomous Internet sites” (2007:253), Freedman is far less optimistic. He argues instead that corporate media organisations are colonising ‘new’ media much in the same way as they monopolised mass media, and that the “desire to control it is increasingly evident” in continuing patterns of concentration, consolidation, commercialisation and neo-liberal regulatory practices (2014:22; see also Curran et al., 2016 and Fenton, 2006).

### *The symbolic power of media*

This chapter has thus far considered different forms of media power as reinterpretations of or extensions on established theories of behavioural or structural power. Given that this research is interested in media policymaking as a unique domain for studying dynamics of power, it is worth briefly exploring a specific type of power exclusive to media. This concept not only forms the crucial epistemological basis for the preceding ‘forms’ of media power, but also emphasises the importance of media policy as the means for organising and distributing “a new collective media influence that expresses the salience of information, symbols and knowledge in the contemporary world” (Freedman, 2014:5). The theoretical foundations of the ‘symbolic power’ of media stem from structuralist conceptions of language as a system of socially-constructed meanings (Culler, 1972:21). Bourdieu defines symbolic power as the “power of constructing reality” (1992:164), the driving force behind the processes of socialisation that produce the social subject. It is, he posits,

a power of constituting the given through utterances, of making people see and believe, of confirming or transforming the vision of the world and, thereby, action on the world and thus the world itself, an almost magical power which *enables one to obtain the equivalent of what is obtained through force* (whether physical or economic), by virtue of the specific effect of mobilization. (1992:170, my emphasis)

This comparison with the power of constraint is a useful one, as it highlights Bourdieu's focus on the arbitrary nature of symbolic power. Much as Parsons argued that powers of constraint are legitimised by shared obligations which justify and normalise their exercise, Bourdieu too posits that "symbolic power is that invisible power which can be exercised only with the complicity of those who do not want to know that they are subject to it" (1992:164). Couldry highlights how media power stems from this taken-for-granted prevalence of mass media, saying of television that "the paradoxical relationships between its familiarity (its inescapable ordinariness) and its pervasive cultural and social significance ... makes the latter's effects so difficult to analyse" (2000:12).

Symbolic power is thus an ideological function, as it enables the establishing and reproduction of a dominant culture through the determination of social meaning and the structuring of social priorities. Central to this struggle is the process by which dominant discourses are not only created but circulated, challenged and reinforced. Habermas' much celebrated and widely adopted concept of the 'public sphere' as the "foundation of common will" is useful in this aspect (2006:81). In this the roles of media and its constituent institutions are indispensable, as they form the central sites for these discursive processes of contestation and normalisation in modern societies:

The institutional core of the public sphere comprises communicative networks amplified by a cultural complex, a press and, later, mass media; they make it possible for a public of art-enjoying private persons to participate in the reproduction of culture, and for a public of citizens of the state to participate in the social integration mediated by public opinion. (Habermas, 2006:319)

## **THE STRUGGLE TO DOMINATE**

Though the theories discussed here place varying emphases on the extent, locus and impact of power, they all allude to a general and systemic influence of ‘the media’ that is

irreducible to any single place or person or text and that is instead organized more like a force field – the meeting point of individuals and institutions in defined contexts struggling to dominate creative and symbolic production. (Freedman, 2014:146)

It is this ‘struggle to dominate’ that I wish to investigate more closely by relating the public policies and regulations that govern this production, and the processes through which these policies are formed, to media’s multifaceted role as reporters, mediators, interest groups, corporate enterprises and ‘constructors of social reality’ (Couldry, 2000:4). Media’s presence around formal policymaking processes, and policymakers’ and stakeholders’ ‘use’ of media for their engagement with policy, is not under contention. What requires greater inspection, however, is how the relationships of power between policymaking and media change when policies that specifically regulate media are under consideration. The various forms of power that underlie each of the cultural, political and economic roles of media conflate as media organisations, both stakeholders in and reporters of these policy debates, direct their substantial monopolies over symbolic power towards these debates.

This specific media power collides with the behavioural and structural forms of power that surround and constitute the formal and informal processes of policymaking. The interplay of media power and the more fundamental forms of behavioural and structural power in media policymaking result in changes to media policy, which in turn lead to changes in the

distribution and productive capacity of media power. Media organisations are therefore simultaneously activists and mediators, subjects and objects of policy debates that can drastically restructure their own symbolic, political and economic capital. The foundational issues of theorising power with which I began this chapter—of understanding what power is, whether it is exercised or a structural force, if it can be measured and if some forms of power are ‘more powerful’ than others—become all the more pertinent in light of this tension between media’s idealised role in democratic societies and their active involvement in media policymaking.



## 4. METHODOLOGY

Uncovering the dynamics of power in media policymaking requires a set of practical methods that render these theories of policymaking and power to systematic analysis of the real life policy processes. Policy change involves a sprawling collection of actors across government, political parties, media industries, regulators, civil society groups and other public or private organisations, all trying to influence formal decision-making procedures and public debate through legislative drafts, position papers, parliamentary functions, meetings between policymakers and stakeholders, media reports, campaign activities and technical research. There is thus a wealth of data and sources for piecing together key events and decisions of the policy process, yet these artefacts on their own tell us little about the underlying political structures or power dynamics that actually influenced policy change. These factors are clearly far less amenable to empirical observation or objective assessment, and make it necessary to deploy a range of methods to identify and discuss the different dimensions of power in policymaking (Karpinnen and Moe, 2019:252; Puppis and Van den Bulck, 2019a:31).

This chapter details the methodological approach taken in this research to construct an account of the media policymaking process and analyse the different dynamics of power that operate within it. The first section describes the rationale of the case study approach and why I chose the post-Leveson and BBC Charter debates as the research subjects. After this I outline the ‘Critical Discourse Analysis’ (CDA) framework that informed my analysis of these case studies (Ali, 2019; Fairclough, 1989; van Dijk, 1993), exploring why CDA is particularly suited to studying power in policymaking, and discussing some of the issues relating to the types of knowledge and explanations created in a CDA methodology. Finally this chapter describes how the research data for this research—policy documents and interviews with policy actors—were

collected, selected and sampled, and details how this data was processed through a CDA approach to generate findings on the dynamics of power in the two case study policy processes.

## **THE CASE STUDY APPROACH**

The core methodology of this research is formed of two case studies of recent media policymaking processes in the United Kingdom: the 2012-13 debates on press regulation following the Leveson Inquiry into the *News of the World* phone hacking scandal, and the 2015-16 review of the BBC's Royal Charter and renegotiation of its public licence fee funding. Feagin defines a case study as “an in-depth, multifaceted investigation, using qualitative research methods, of a single social phenomenon” (1991:2), and Broughton Micova argues that utilising a case study approach offers the analytical flexibility and depth particularly useful for dealing with “the kind of complexity that media and communications policy inherently involves” (Broughton Micova, 2019:72).

Choosing which policy debates to research naturally involves personal selection and exclusion, and any one debate cannot wholly represent British media policymaking as a wider field of study. These two policies are, however, significant for a number of reasons that are by no means limited to just their recency. The post-Leveson and BBC Charter cases stand out as rare moments of direct intervention in how the UK press and broadcasting industries are organised and governed, and also symbolise the culmination of long-term changes that have brought the foundations of ‘traditional’ or ‘legacy’ mass media under intense challenge. As generational moments of media policymaking that have determined the future development of the UK's seminal political and social institutions, these debates also provided official public deliberative spaces for interrogating “more abstract paradigmatic views on the relationship between the state, society and media” (Puppis and Van den Bulck, 2019b:5).

The differences between the two case studies also make them interesting subjects for comparative research. Each debate dealt exclusively with distinct forms of mass media, allowing for assessment of policymaking between media systems and organisations. As established in the introductory chapter, the two processes have unique political and ideological histories, making their concurrence all the more pertinent for understanding the specific dynamics of power between different policymaking settings. These contrasting foundations raise the question of how media policymaking changes depending on whether a policy issue is known and prepared in advance (like the BBC Charter review), or whether it emerges suddenly from unpredictable circumstances (as was the case with the post-Leveson debates). The respective ordinariness and exceptionality of these events also affords opportunities for assessing the *openness* of media policymaking, and how the political prominence, public salience and official organisation of a policy debate impacts on the ability of competing groups to engage with and influence the policy process.

## **RESEARCHING MEDIA POLICYMAKING THROUGH CRITICAL DISCOURSE ANALYSIS**

These case studies are not intended to simply reconstruct the two policy processes by tracing the ‘natural’ sequence of debates and decisions from start to end. Fischer argues that such an insistence on rationally-guided, technocratic decision-making neglects the impact of ideas and discourses on the political formation of public policy, thereby serving “an ideology that masks elite political and bureaucratic interests” (2003:14, see also Fischer, 2007). Understanding these subtler, structural power dynamics of media policymaking thus requires a more thorough approach which conceives of policy processes and decisions as built through language and meaning, and recognises that these discourses both produce and are produced by the distribution of power across political and social systems. It is for this reason that this research adopts Critical Discourse Analysis as the core empirical framework for examining the

media policymaking process and critiquing its functions as a pivotal site of political, social, cultural and democratic activity.

The CDA methodology is closely associated with the work of scholars such as Fairclough (1989) and van Dijk (1993), who have developed it as an approach for focussing on “the role of language, language use, discourse or communicative events in the (re)production of dominance and inequality” (van Dijk, 1993:279). CDA draws extensively on sociolinguistics and structuralist accounts that explore the relationship between language and social context:

Linguistic phenomena are social in the sense that whenever people speak or listen or write or read, they do so in ways which are determined socially and have social effects ... The language activity which goes on in social contexts (as all language activity does) is not merely a reflection or expression of social processes and practices, it is *a part* of those processes and practices. (Fairclough, 1989:23)

This emphasis on discourse as productive social practice is crucial to a study of media policymaking, not least because so much of the ‘formal’ policy process manifests in distinct texts like parliamentary speeches, legal documents and evidence submissions. CDA research as a means of ‘interpretivist’ policy analysis (see *inter alia* Ali, 2019; Fischer, 2003 and 2007; Wagenaar, 2007; Yanow, 2000) incorporates an awareness of “the ways in which people’s interests are discursively constructed [and of] how they come to hold specific interests” (Fischer, 2003:15), and situates a study of power

on the meanings of policy, on the values, feelings, or beliefs they express, and on the *processes by which those meanings are communicated* to and ‘read’ by various audiences. (Yanow, 2000:14, my emphasis)

As argued in the previous two chapters, the dynamics of power in policymaking are structured across a range of behavioural and structural forms that interact to produce broader systems of

domination across specific political and institutional contexts. Evaluating how these systems take shape in media policymaking is not solely a matter of observing specific policy decisions, examining actors' roles in formal deliberative processes, and inferring power from an evaluation of the 'winners' and 'losers'. CDA allows for unveiling these processes, relationships and practices as products of taken-for-granted mores, institutional cultures, historical precedents and political biases, all of which are produced and reproduced through language.

This research uses two types of policy 'text' from the case study debates to inform its CDA model: documentary evidence and original interviews with policy actors. As discussed below, these text entail numerous formats and offer a varied range of discourses and experiential accounts of the policymaking process. For the purposes of this CDA methodology, however, these texts were all analysed through the same general approach adopted from existing CDA studies. Fairclough arranges this as a three-stage process; "description of text, interpretation of the relationship between text and interaction, and explanation of the relationship between interaction and social context" (1989:109). Description involves identifying essential contextual information about the text—source, date, topic, format, relation to other texts etc.—and cataloguing its linguistic and discursive features. This description is designed to draw out the salient discourse cues, such as its "features of vocabulary, grammar, punctuation, turn-taking, types of speech act and the directness or indirectness of their expression, and features to do with the overall structure of interactions" (Fairclough, 1989:109).

Interpretation involves highlighting the relationships between these features of discourse and language particular to the social context of the text. Given the focus here on policymaking and the dynamics that shape actors' political interactions with the policy process,

this research used a discourse coding framework that enabled correlating the arguments and meanings identified in texts to a set of discursive topics and themes:

1. *Process discourses* – how the text articulates specific proposals or evidence for policy change, and what these accounts suggest about the source group’s normative notions regarding contributing to and influencing official decisions (Milosavljević and Poler, 2019).
2. *Values discourses* – how the text expresses a group’s values, interests and principles of press and broadcast media, and the narrative interactions between the document and the underlying ideological contests through which policy issues are defined (Löblich, 2019).
3. *Relational discourses* – descriptions of different policy actors and organisations, their qualities and relationships with others, and what these perceptions of ‘place’ reveal about the different political and institutional arrangements for interacting with the policy process (Kenis and Schneider, 2019; Van den Bulck, 2019).
4. *Campaigning discourses* – accounts of specific lobbying and engagement activity, how policy actors organised their attempts to influence policymakers or other groups and what the descriptions of these various campaigning strategies reveal about different groups’ involvement in or knowledge of the decision-making process.

After description and interpretation of each text, the final stage of analysis involved explaining what the particular discursive claims and experiential accounts articulated in the text demonstrate about patterns and distributions of power within the policymaking process. This explanation is partly about situating a text within the broader power relations inherent to the social context of policymaking, how choices of language reflect a speaker’s subject-position,

and what rhetoric and vernacular reveal about normative behaviours and codes of a setting. The essential goal of this critical discourse analysis, however, was to ‘denaturalise’ the two policy processes, to trace the dwindling use of certain terms or discursive patterns, and to identify the emergence or repetition of specific phrases, idioms and precise wording of proposals across policy documents (Fischer, 2003:109). Through this the research attempts to deconstruct the “typically unspoken, commonplace assumptions” built into the formal mechanisms of media policymaking (Yanow, 2007:413), expose the vulnerability and flexibility of ‘dominant’ or elite discourses, and more critically unpick the dynamics of power that both shape and are shaped by policy discourses.

It is not just about what is said, but who said it, where it was said, how it was said, and the social, political, historical and economic contexts that went into shaping what was said ... It is also about the negation: what is not being said, who is not speaking and who sets the rules of discourse. (Ali, 2019:407)

A fundamental consideration for CDA research of media policymaking is ensuring that any interpretation and explanation is consistent while at the same time not being constrained and drawn into the very same operations of discursive power under analysis. van Dijk is emphatic that critical discourse analysis “is not—and cannot be—'neutral'. Indeed, the point of critical discourse analysis is to take a position” (1993:270). The point here is not to entrench oneself in a dogmatic mind-set, but to clearly establish the terms and objectives that inform the researcher’s own critical approach. The two case study debates are fundamentally manifestations of arguments about the functioning of media in modern society, involving issues of democracy and civic participation, freedom of expression, cultural production, public and private ownership, dissemination of news and information, and the formation of social identities. Evaluation and interpretation of these subjects is not only a central part of argumentation within the media policymaking process, but is also a necessary facet of critical media research which cannot (and should not) be reduced solely to objective measurement.

“Media policy research,” as Puppis and Van den Bulck have usefully argued, “should aim to combine understanding with a critical stance and to let normative, theoretical conceptualization of media policy ‘communicate’ productively with empirical evidence” (2019b:13).

In this instance these conceptualisations relate directly to core questions about causality and demonstrating links between concepts, ideas, meanings on the one hand and meaningful social and political action on the other. Demonstrating relationships between actors’ behaviour and the influence of different types of power in policymaking is both an epistemological concern (Seale, 2012:534) and the central evaluative purpose of critical media policy research. ‘Traditional’ descriptions of internal validity share with positivist accounts of power the same empirical requirements for proving that “one thing (A) has caused another (B)” (Seale, 2012:530). However, as the previously discussed ‘second stream’ theories of power argue, influence cannot always be evidenced by instances of *A* causing *B*’s behaviour. Although the ontological definition of a policy necessitates study “carried out by examining actual decisions in relation to particular issues” (Scott, 2001:61), this research does not stop at these conceptual borders. Through synthesising analysis of actual decisions with interpretation of the discourses and meanings that produced them, this methodology aims to expand case-specific policy analysis beyond “value-neutral positivist methods” (Fischer, 2003:36) without abandoning an interest in the agency of social actors.

Through combining critical discourse analysis approaches to both policy documents and interviews with key policy actors, this method attempts to comprehensively catalogue the core dynamics of the two case study debates through



identifying stakeholders with a vested interest in the outcome of a particular policy, analyzing various views and positions on the policy topic and how they relate to wider paradigmatic beliefs, mapping relevant fora where key discussions are being held and understanding the formal and informal steps in negotiations toward a policy decision. (Puppis and Van den Bulck, 2019b:10)

Hajer, in a similar study of environmental politics and ecological policymaking, provides a lively description for this sort of mixed-methods policy research:

Open the black boxes and get dirty fingers in the stacks of governmental archives, at the disorganized shelves of Friends of the Earth, in the reconstructive expert-interviews in which the point is to follow the problem definitions of the interviewee and precisely avoid that he or she starts to answer according to the pre-conceived categories that we have in mind. (1995:5)

The triangulation of these methods, as Seale describes, enables the researcher to seek out “instances of a phenomena in several different settings, at different points in time or space” (2012:535), and Bryman similarly advocates method ‘complementarity’ as a means for “convergence, corroboration [or] correspondence” (2006:105). The methods of data collection detailed below were thus not only employed to amass empirical evidence of the ‘who, what and when’ of each policy debate but more importantly to ascertain the patterns of ‘how’ and ‘why’ behind these pivotal moments in contemporary British media policymaking.

## **METHOD I: POLICY DOCUMENTS AND MEDIA COVERAGE AS TEXT DATA**

Although the meaning of ‘document’ as a data source can span an enormous range of textual, verbal and graphical artefacts, this research takes a fairly contained definition of policy documents as items of written text or speech created to influence or contribute to the policymaking process. Legislation, regulatory criteria, parliamentary Bills along with official proposals or drafts offer primary evidence of policy change, as they are the formal expressions of what changes have been made and how these changes operate. But these official texts are

themselves the products of extensive bartering, revision and redefinition of a policy issue that occurs across government reviews, public consultations, research reports, parliamentary debates, memoranda, speeches, hearings, public events, media broadcasts, news reports and campaign publications. All of these texts serve as both *sources* and *objects of study* detailing the public deliberation, discursive argument and technical formulation of policy:

In the first case, documents are understood as factual or contextual sources (akin to historical research) that can reveal the interests and intentions of their authors or in other ways uncover facts about the policy process. In the second case, documents are treated as meaningful social products or cultural artifacts that have independent consequences and are worth analyzing in themselves. (Karpinen and Moe, 2019:251)

The particular formats, audiences, messages and perspectives of these texts thus offer essential clues about the different ways that policy actors attempt to influence the decision-making process and whether they succeed in doing so.

Identifying and finding many of the core pieces of documentary evidence for the two case studies was relatively straightforward, particularly because of the increasing digitalisation of government business and parliamentary records, as well as the growth in company and campaign websites and online media formats. These ‘headline’ documents in turn opened a warren of links and references to further documents. Finding the interim drafts, unfinished proposals and later-abandoned initiatives was given particular attention in order to build the clearest picture of the iterative (and often disorderly) processes of debate and policy formulation that preceded the final points of official decision.

As these pieces were put together, broken hypertext links, defunct organisations and the (irritatingly regular) vanishing of specific texts from any public repository created blank spots and dead ends in the search. Cached webpages, searchable archives and fortuitous fiddling with URLs aided in filling some of these gaps, while interviewees, contacts and

academic colleagues kindly provided rare printed items or offered directions to documents that were otherwise unavailable or unknown. Following a summary reading to establish the content, context and position in the respective debate's timeline, each document was categorised by its source and format in preparation for close reading and analysis (see below). A number of texts (both potentially seminal and seemingly superfluous) remain unfound and those that were collected do not by any means account for every elusive ministerial memo, lobbyist briefing or minute technical revision. However, the sample gathered tries to reflect the widest range of pertinent documents from the most representative set of government, political, media and campaign actors involved in post-Leveson press regulation or the BBC Charter review.

This search produced a total of 276 policy documents. Table 1 details the volume collected for each case study debate and how these were distributed across different textual formats. Table 2 likewise tallies these sets by the types of policymaking bodies, stakeholder groups or other media policy actors that created them. These distributions are in themselves notable for what they reveal about the broader political and institutional dynamics of the two debates. A substantial proportion of the post-Leveson debates' documentary record consisted of letters and statements between government, newspaper publishers and campaign groups, with these latter two groups accounting for almost all of the non-government or party political texts. BBC Charter review, by contrast, was dominated by public consultations, research reports and evidence hearings at parliamentary committees, with the majority of these being produced by government departments and the BBC itself.

**Table 1. Documentary evidence by format**

Case study	Post-Leveson		BBC Charter review		Total	
	<i>N</i>	%	<i>N</i>	%	<i>N</i>	%
Bills, drafts, legislation	14	10.5	9	6.3	23	8.3
Reports and reviews	53	39.8	48	33.6	101	36.6
Submissions to consultations	3	2.3	31	21.7	34	12.3
Letters, minutes and statements	45	33.8	14	9.8	59	21.4
Speeches and events	4	3.0	11	7.7	15	5.4
Parliamentary debates	10	7.5	8	5.6	18	6.5
Evidence hearings	4	3.0	22	15.4	26	9.4
<b>Total</b>	<b>133</b>	<b>100</b>	<b>143</b>	<b>100</b>	<b>276</b>	<b>100</b>

Every one of these texts was processed through a close reading and analysis using the coding framework described above, recording key findings about the use of particular discursive patterns and linguistic trends that demonstrate the intent, values and meanings of the speaker. The immediate productive use of these samples was enabling the historical reconstruction of each policy process, threading the texts as numerous intersecting and simultaneous sequences of public debate, political conflict and official procedures which ultimately converged in decisive moments of media policy change (Pickard, 2019b). They offer “*a sense of the times*—of how people responded at that time to particular events or ideas” (Yanow, 2007:411, my emphasis). As explored below in relation to the policy actor interviews, many of these texts also provided substantive accounts of the text products of formal legislative and elite institutional actors of British policymaking system (Rhodes, 2003; Russell and Gover, 2017) who I was unable to interview. Whereas the interviews predominantly recount the

**Table 2. Documentary evidence by source**

Case study	Post-Leveson		BBC Charter review		Total	
	<i>N</i>	%	<i>N</i>	%	<i>N</i>	%
Government incl. ministries	29	21.8	24	16.8	53	19.2
Parliament and political parties	30	22.6	37	25.9	67	24.3
Regulators and 'ancillary' bodies	4	3.0	5	3.5	9	3.3
Broadcast media groups	-	-	13	9.1	13	4.7
(BBC)	-	-	42	29.4	42	15.2
Press and publishing groups	11	8.3	4	2.8	15	5.4
Campaign and civil society bodies	40	30.1	5	3.5	45	16.3
Independent and other*	19	14.3	13	9.1	32	11.6
<b>Total</b>	<b>133</b>	<b>100</b>	<b>143</b>	<b>100</b>	<b>276</b>	<b>100</b>

\*Incl. private research agencies and polling companies commissioned by others

arguments and experiences of campaigns and media industry figures, this documentary evidence has ensured that the voices and discursive influence of the ‘core’ policymaking elite has not been neglected.

Given the significant role of press and broadcasting organisations in the post-Leveson and BBC debates, it was pertinent to complement an analysis of media group’s policy documents with an assessment of news media coverage published by many of these same corporations. Two separate searches of British national newspaper coverage were conducted through the news archive service ProQuest, in order to source a sample of articles by UK daily and Sunday newspapers<sup>6</sup> in which the post-Leveson debates<sup>7</sup> or BBC Charter review<sup>8</sup> featured as the central topic or were mentioned to a meaningful degree. These searches produced a useful timeline of the volume and frequency of press coverage on these two debates, from which smaller, targeted searches were conducted to perform a direct CDA of media texts at these moments of heightened activity. Additional targeted searches of newspaper coverage— together with select examples of broadcast news coverage and current affairs programmes from TV and radio outlets—were conducted for salient periods of debate or conflict identified in analysis of other policy documents (even if these moments featured less prominent samples of news coverage), to evaluate the broader development of news coverage of these policy debates and their cumulative construction outside the central sequences of formal decision.

A quantitative study of press and broadcast news coverage of media policy—involving coded measures of the tone, framing and expressed values in coverage—would no doubt be an invaluable resource for evidencing and detailing the *scale* of policy narratives at specific stages

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<sup>6</sup> Selected outlets comprised the nine leading national newspapers (The Times, The Sun, Daily Mail, The Telegraph, Guardian, The Independent, Daily Express, The Financial Times and the Daily Mirror), the eight Sunday editions and their online equivalents.

<sup>7</sup> 2,181 results, search criteria: [Leveson AND ((press regulation) OR (Royal Charter))], 29 November 2012 to 30 October 2013.

<sup>8</sup> 1,167 results, search criteria: [BBC AND ((Charter Review) OR (Charter renewal) OR (Royal Charter))], 16 July 2015 to 31 December 2016.

in the policy process. However, for the purposes of this research, such a quantitative study would not easily illuminate the *development* of those narratives over the course of the policy process, nor resolve what Davis has described as “the problem of establishing the line of causality from news media stimuli to political response” within studies of media agenda-setting (2007a:182). As such the news media texts referenced in subsequent chapters were selected on the basis of their correspondence with significant moments of political decision, their demonstration of noteworthy discursive patterns, or their correspondence with discursive developments apparent in the main documentary record. These texts were analysed with the same topics detailed above, albeit with the recognition that they were produced by unique political and cultural institutions imbued with an innate capacity for establishing, reproducing or opposing policy narratives in the public sphere (Schweizer, 2019:274).

## **METHOD II: INTERVIEWS WITH POLICY ELITES AND EXPERTS**

The purpose of conducting interviews with key policy actors was to acquire first-hand accounts from people directly involved in the variety of public and private debates and decision-making functions in the two media policy processes. In this sense the actors interviewed were primarily experts and elites, as the figures intimately involved in policymaking typically occupy powerful positions in political, media and public institutions or have significant technical expertise in that policy area. Such interviews are highly valuable for research of media policymaking, as these figures can provide exclusive, original knowledge of their interests, opinions, experiences and perceptions from the heart of the decision-making process. Different interviewees offer a range of perspectives from different political moments or discursive arenas, complementing and expanding upon (or reflexively reassessing) data created from other types of research data. Van Audenhove and Donders note that

elite interviews and expert interviews have a lot in common, yet, they take a slightly different perspective. In elite interviews ‘power’, ‘status’ and ‘position’ are central. In expert interviews, ‘knowledge’ and ‘position’ are central. (2019:181)

Legislators, media lobbyists, campaigners and other policy professionals clearly perform different official and unofficial roles within the policy process, and the various ways they interact with the decision-making process present direct means for identifying different dimensions of influence and power.

Identifying potential participants followed mostly from the documentary evidence detailed above, which provided ample record of the individuals and organisations involved in the two case study debates. Ministers and other decision-makers with political or legal authority, along with party spokespeople, engaged backbenchers and committee members, are documented throughout the official parliamentary record. Named lobbyists and other executive policy staff from media organisations, trade bodies, regulators and pressure groups were discovered by their public ‘footprints’ in myriad reports, statements and speeches. Additional informants were also identified from their recurring appearances in news articles or media broadcasts, evidence hearings or public events on the topic, or from being mentioned as useful sources by other interviewees (a process Davis describes as "snowballing", 2007a:185). This aided in widening the search net beyond the alluring “big shots” (Van Audenhove and Donders, 2019:189) to include the likes of special advisors, researchers and civil servants – the kinds of ‘behind the scenes’ figures that play pivotal roles in the more minute, informal and rarely-publicised processes of policy formulation.

This identified a total of 44 elite and expert actors with extensive involvement in, knowledge of or perspectives on significant periods or aspects of the two debates (see Appendix 1 and Appendix 2). Regrettably and to this researcher’s eternal chagrin, only 20 responded to invitations to participate and of these just 13 people were formally interviewed.

**Table 3. List of interviewees**

Interview no.	Case study	Interviewee role	Date conducted
1	Post-Leveson	Former editor & journalist	28 September 2018
2	Post-Leveson	Researcher, Media Standards Trust	24 November 2017
3	Post-Leveson	Director, Hacked Off	30 November 2017
4	Post-Leveson	Director, Hacked Off	8 December 2017
5	Post-Leveson	Director, Media Standards Trust	11 December 2017
6	Post-Leveson	Chair, PCC & Conservative peer	6 June 2018
7	Post-Leveson	Director, Hacked Off	2 August 2018
8	Post-Leveson	CEO, IMPRESS	7 August 2018
9	BBC Charter review	Academic & parliamentary advisor	7 December 2018
10	BBC Charter review	CEO, Pact	10 April 2019
11	BBC Charter review	Policy advisor, VLV	1 May 2019
12	BBC Charter review	Chair, Save Our BBC campaign	16 May 2019
13	BBC Charter review	Policy director, ITV	17 July 2019

While this obviously represents a major shortcoming in the empirical scope of this project, there is a grain of reassurance in considering what this implies about policy actor interviews as a research technique. Elite or expert policy actors, particularly those with senior political or professional roles, are occupied with ‘proper’ things to do and may not wish to replace one duty (attending parliamentary debates, managing a media outlet, conducting corporate affairs etc.) with an academic exercise. Given the explicitly public-facing roles of some of these figures, many had staff or automated systems for screening non-essential requests. In several cases, it was impossible to find any publicly available contact information for a specific politician or media executive (many of whom have resigned or retired from public life since the two debates). Some actors still work in media policy (or even in the same posts they held as part of the post-Leveson and BBC Charter debates) and may have been anxious to prejudice their involvement in future policymaking processes by speaking openly about their past activities (Mikecz, 2012:482). Overall these impediments highlight the general inaccessibility of elite political and corporate life, and provide a pertinent allegory for critiquing the supposed openness of public policymaking when these processes are so often led by secluded actors.



Table 3 lists the individuals interviewed for each case study alongside a generalised summary of their position and organisation. Interviews with figures from the post-Leveson debates took place between November 2017 and October 2018, while BBC Charter review actors were interviewed from December 2018 to July 2019. Most meetings lasted between one and two hours, and were conducted in places typifying common media policymaking settings: the literally gilded halls of the Palace of Westminster, executive conference suites of media companies and the ultra-modern headquarters of legal firms, as well as the less extravagant offices of campaign groups, regulators, industry trade associations and university professors.<sup>9</sup> Some interviewees had to deal with other policy duties during our conversations, sprinting to parliamentary voting lobbies or taking phone calls from staff. These brief interruptions, in addition to offering a moment to digest answers and review next questions, gave an invaluable sense of different actors' daily activities and helped in providing physical presence to the heated arguments and tense negotiations recorded in the documentary accounts of the two debates.

The topic guide for interviews used the same sets of questions and subjects for every interviewee, though each was tailored to reflect the person's position and interests in media policymaking (Van Audenhove and Donders, 2019:183). The sequencing of questions was designed to lead through the chronological order of the policy process, getting interviewees to clarify and detail their involvement in specific events, debates and decisions. The emphasis of questions was, however, always phrased to try and draw out their own story, experiences and recollections rather than simply supplement the 'official' timeline. These semi-structured topics and open-ended questions created a far more flexible conversational tone and crucially

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<sup>9</sup> All interviews except two were—perhaps predictably, though no less damningly for the centralisation of British media policymaking practices—held in central London.

left the interviewee to explain and argue their answers without excessive interrogation (Van Audenhove and Donders, 2019:188).

After introductions and a brief reminder of the research aims, the opening questions set to establish the participant's policy and professional background, the generalities of their working day and their personal or organisational motivations for engaging with the post-Leveson or BBC debates. Modelled on similar research of elite actors by Herbst (1998) and Davis (2007a; 2009), these questions sought to aid in settling the participant into the interview, mitigate "the status imbalance between researched and researcher" (Mikecz, 2012:483), and provide "clues as to the approaches and goals of informants" within the policy process (Herbst, 1998:191).

Core questions inquired about the informant's direct experience of the policy process: the interests, goals and proposals they advocated; the types of documents, research and other materials they submitted to official processes, and how these were prepared; the decision-makers and stakeholders they engaged with, and how they acted in these encounters; and their interactions with media organisations to publicise and support their advocacy. Yanow argues that the use of documentary evidence in interviews

may corroborate observational and interview data—or they may refute them, in which case the researcher is "armed" with evidence that can be used to clarify or, perhaps, to challenge what he is being told. (2007:411)

As well as helping to triangulate existing information and evidence about the two a policy debates, these topics allowed the interviewee to provide their own exclusive accounts of how the media policymaking process works on a vital, human level.

For the central issue of this research, their answers also contributed a wealth of knowledge about the dynamics, structures and mechanisms of power that underpin the media

policymaking process. At certain stages during the interview informants were asked directly whether they felt their actions or arguments had a tangible influence on decision-makers or specific changes in policy. Many even provided unprompted discussions and explanations of their presumed role in official revisions or shifts in the tone of debate. Yet just as important as these explicit expressions of influence were the tacit hints or unspoken matters in these subjective reconstructions of the policymaking process (Van Audenhove and Donders, 2019:183). These created essential accounts of interviewee's perceptions of the interpersonal, political and institutional structures of media policymaking and their status, position and power within them. This was also inquired through questions about informant's opinions on the political and social issues of media policy that created these debates, how they defined and articulated their arguments, values and ideas about these issues, and what role these competing narratives or rhetorical trends played in their own engagement strategies. Herbst argues that questions of this sort are vital for assessing perceptions of how public and political opinion is formed during a policy process, and for exploring how individual actors' behaviour and actions were affected by policy discourses circulating in official documents, political debate or media coverage (1998:192).

A final set of questions asked interviewee about the results of each policy process and its implications for wider issues of media, policymaking and power: whether they felt the process was open, accessible and fair; if they believed certain actors or groups had too much or too little influence on debate; whether they would, in hindsight, have engaged with decision-makers or other stakeholders differently or acted in other ways; and what effect they think the new policies implemented by the post-Leveson process or BBC Charter review have had on how media organisations (newspapers, the BBC or the media ecology as a whole) operate in the UK. As well as concluding the interview and allowing interviewees to comment more

generally on the two case study debates, these questions produced unexpected moments of introspection, lament and even boastfulness which further enlightened their personal accounts.

There are several pertinent methodological considerations when interviewing elite and expert actors. The clearest danger is that informants will lie about their involvement, misremember facts or details, or simply be unable to recall what they were doing or how they were thinking about the policy debates at the time. Where the purpose of the interview is to understand how informants “make sense of their lived experiences” (Yanow, 2007:410), the nature of informants reflecting on the past detaches data from the reality of the past event. Herbst argues that researchers need to be sensitive to how policy actors “might be construing their past behavior and opinions in order to appear more cynical, more naive, more democratic, or less democratic than they actually are” (1998:193). Herbst also points out that researchers may sacrifice critical distance in exchange for ingratiating themselves with their elusive contacts:

Informants are highly trained and have fascinating insights for the researcher. Informants can also be quite persuasive, drawing the researcher into their conceptual frameworks and distracting the interviewer from the task at hand. (1998:193)

This issue of a researcher’s positionality is especially pertinent when inquiring about policy narratives, which are produced intentionally to be persuasive, argumentative, value-laden and emotive (Herbst, 1998:193). The possibility of this detachment, however, does not pose a significant threat when considered alongside the other forms of evidence that will be collected. Although an interviewee may embellish or underplay their role, these claims can be examined, queried or challenged with reference to documents, media coverage or other interviewee’s accounts both during the interview and in subsequent cross-analysis (Yanow, 2007:411). Furthermore, this detachment will still represent actors’ own voiced interpretations of the interplays of power in media policymaking. Whether they actually reflect the reality of events

or not, these accounts nonetheless aid in highlighting various normative views of political participation, democratic processes, media policy and power, and how these norms structure actors' behaviour and ideas.

## 5. PRESS REGULATION AFTER THE LEVESON INQUIRY

British press regulation throughout the 1900s was characterised by a cycle of cosmetic reform and political timidity (Curran, 2000:44; O'Malley, 1997:144). Self-regulation (managed and monitored exclusively by newspaper publishers) was endorsed time and again by successive Royal Commissions or other public inquiries, with empty threats that *next time* policymakers would have no choice but to introduce unprecedented statutory controls (O'Malley and Soley, 2000). The 2011-12 Leveson Inquiry and its subsequent policy debates appeared to mark an explosive break from this pattern of 'non-policy'. The *Guardian's* July 2011 exposé of industrial-scale phone hacking at the *News of the World* newspaper (NOTW) produced an intense public backlash against the tabloid paper, and focussed political attention on much more than technical issues of regulation. The phone hacking scandal revealed a deeper crisis at the heart of Britain's media and political culture, in which politicians of all persuasions since the 1980s sought to appease powerful media editors and moguls, especially Rupert Murdoch and his executives at NOTW's parent company News International. Government policies had accelerated deregulation and concentration in the UK's media markets, with pivotal legislative and regulatory decisions often made in direct favour of Murdoch's commercial interests. This democratic deficit was epitomised by governments, parliament and the police consistently overlooking the failures of the newspaper industry's self-regulator, the Press Complaints Commission (PCC), to properly investigate unethical and illegal activity at the companies that controlled it.

The Leveson Inquiry into the Culture, Practices and Ethics of the Press was an investigation not just into phone hacking but into the entire political economy of Britain's newspaper industry. Along with probing the widespread "failure to act on previous warnings about media misconduct", Lord Justice Sir Brian Leveson was tasked with recommending

a new more effective policy and regulatory regime which supports the integrity and freedom of the press, the plurality of the media, and its independence, including from Government, while encouraging the highest ethical and professional standards. (2012b:3-5)

In a radical break from the past the Leveson Report recommended that government establish *in law* a new ‘recognition body’, which would officially verify that any new self-regulatory body set up by the press had powers to effectively regulate its members and was properly independent of both the industry and politicians.

With the political and media establishments reeling from the phone hacking scandal, and with high-profile victims of press abuse publicly demanding real change, the question was locked on how, not whether, self-regulation should be reformed. Yet Leveson’s proposals directly challenged the entrenched historical principle that any political or state involvement in press regulation endangered free speech, and tested the legitimate boundaries between democratic institutions and the media that hold them to account. The post-Leveson policy process, made up of a fractious private negotiations between politicians, newspaper publishers and press abuse campaigners, thus served as the crucible for fundamental issues of press regulation, elite policymaking and corporate media power.

This chapter traces the progress of these debates and analyses how the Leveson recommendations were interpreted, bartered and implemented through draft proposals, political manoeuvres and backroom lobbying. The public and private skirmishes between ‘pro-’ and ‘anti-Leveson’ groups were not just fights for control and organisation of press regulation, but also represented the fundamental clash over the responsibilities and freedoms of the press in the modern age. Furthermore this account seeks to unravel how a concerted public demand for reform, spurred by deeply emotive and explosive abuses of power, was ultimately doused

by the same corporate media influence over democratic processes that had fostered the phone hacking scandal.

## **A RISING TIDE FOR REFORM – 1993 TO 2012**

The Leveson Report, published 29 November 2012, opened by attributing the Inquiry's formation to the "public revulsion about a single action—the hacking of the mobile phone of a murdered teenager" (2012a:3) by reporters at the *News of the World*. The Inquiry was "the seventh time in less than 70 years" that a government had formally investigated concerns about the press (Leveson, 2012a:3), but there had been a growing dissatisfaction with press conduct throughout the 2000s and early 2010s. Successive parliamentary reports on press malpractice were attacked by the accused papers and buried by senior politicians anxious to maintain favourable relationships with media groups, particularly the powerful Murdoch press.

From 2006 News International dismissed reports of phone hacking at *NOTW*, carried out by its royal correspondent Clive Goodman and private detective Glenn Mulcaire, as the aberrant acts of 'one rogue reporter'. Reviews by the PCC parroted the company's defence and exonerated senior staff from having knowledge of or responsibility for Goodman's actions. Questions of press regulation remained a political taboo until July 2011, when the *Guardian's* Milly Dowler reports thrust phone hacking into the centre of public attention. Amidst the exploding scandal the Prime Minister, himself under sustained scrutiny for his connections with News International executives, announced a judge-led public inquiry into illegal activities by the paper. Both the circumstances of the Leveson Inquiry's formation and its comprehensive investigations had a pivotal impact on the subsequent debates on press regulation, and exemplify the chaotic mix of public pressure, political panic and pressure group lobbying that would go on to define the post-Leveson policymaking process.



'One rogue reporter'

Many of the policy dilemmas at the heart of the Leveson Inquiry had already been investigated by Parliament's Culture, Media and Sport (CMS) Select Committee. Reports by the Committee in 2003, 2007 and 2010 chart a diminishing political confidence in the PCC and, like the Leveson Report, each of these claimed unique pressing circumstances: a changing balance between individual privacy and public interest reporting following the 1998 Human Rights and Data Protection Acts (CMS, 2003); the "persistent harassment" of the future Duchess of Cambridge and initial revelations of phone hacking at *NOTW* (CMS, 2007:4); and the "libelling by the UK press of the McCann family and others", along with the *Guardian's* 2009 exposé contradicting the earlier 'one rogue reporter' claims by News International executives in 2007 (CMS, 2010:5, see also Davies, 2014:70-4).

Notably, neither the Labour nor Coalition governments saw these reports as sufficient justification for intervening in policy that had remained largely unchanged since the second Calcutt Report's scathing criticisms of the PCC in 1993 (Bingham, 2007; O'Malley, 1997:155; McNair, 1994:150-9) . As Nick Davies, the *Guardian* reporter who uncovered much of the illegal activity at *NOTW*, recounts:

There was no sudden roar of indignation from MPs or from the government, not even a hint of irritation that this powerful corporation could commit crime and rely on authorities to fail to do anything about it. (2014:203)

The tepid reaction to the CMS Committee's proposals (see CMS, 2003:9-11; 2007:27; 2010:130) reflected an immovable belief in the PCC—owned and operated by the newspaper industry—as the only workable or even desirable self-regulatory model. As the Leveson Inquiry laid bare, this inaction was symptomatic of an underlying culture in which senior politicians courted editors and media proprietors for favourable coverage and political support, and in turn eschewed any contentious policy issues that might jeopardise this fragile

relationship (Leveson, 2012b:1438-41). The true scale of phone hacking was also kept veiled through a series of out-of-court settlements by News International, buying the silence of high-profile phone hacking claimants by offering extremely generous cash sums on the condition of strict legal confidentiality.

In this period before the Leveson Inquiry, the disproportionate power of media organisations to keep questions of press policy off the public agenda was on full display (Bachrach and Baratz, 1962:948). Leveson himself noted with concern how the intimate relationships between politicians and press

impacted on the willingness or ability of politicians to decide matters of public policy about the media, and specifically of policy about press standards, fairly and impartially in the public interest. (2012a:25)

Prior to the *Guardian*'s explosive July 2011 exposé, News International resoundingly rejected the CMS Committee's claim that it was "inconceivable that no-one else at the News of the World ... was aware" of phone hacking (2010:7). The company issued a furious statement stating "the Select Committee system has been damaged and materially diminished by this inquiry ... certain members of this CMS Committee have repeatedly violated the public trust".<sup>10</sup>

Articles in News International papers pressed further this campaign of delegitimisation and self-preservation. A 2010 *NOTW* piece claimed the CMS Committee's proposed reforms would muzzle the paper and that MPs' deliberations had descended "into bias, spite and bile".<sup>11</sup> *The Sun* attacked the "Labour-dominated" panel for having "abandoned fairness and independence in pursuit of cheap political advantage".<sup>12</sup> The reactions to the report also

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<sup>10</sup> News International press release, 24 February 2010.

<sup>11</sup> *News of the World*, 'Your right to know is mired in MPs' bias', 28 February 2010.

<sup>12</sup> *The Sun*, 'No honour', 24 February 2010.

demonstrated the convenient political alliance between News International and some Conservative MPs, who rubbished the 2010 report and sought to play down the allegations against the company. One Conservative Committee member, Philip Davies, attempted to remove the most damning paragraphs from the report, particularly those condemning a culture of staff bullying at *NOTW* and the paper's "wholly unpersuasive" public interest defence for some of its most lurid stories (2010:23, 156). Davies later provided a damaging quote for *The Sun*'s coverage, claiming the report had been "abused for narrow petty party political advantage. The main purpose was to defend freedom of speech".<sup>13</sup> This alliance continued throughout the subsequent phone hacking scandal. Labour MP Chris Bryant alleged some Committee members were "bending over backwards" to defend News International after a 2011 hearing in which executives were questioned over misleading the Committee in their previous evidence.<sup>14</sup>

Russell and Gover emphasise the political authority of parliamentary Select Committees, particularly their ability to "'spotlight issues' and draw them to government and wider public attention" (Russell and Gover, 2017:229). However, this period also demonstrates how Committee members' political manoeuvres and the policy goals of newspapers themselves can drastically influence press coverage of a Select Committee's work – a crucial component in this work having clout beyond insular parliamentary processes. News International titles consistently sought to discredit the CMS Committee's investigations into the company, rebut its accusations as inauthentic or politically motivated, and generally keep questions of reforming press regulation out of wider public debate. This campaign to silence criticism also extended to campaign and civil society groups. In 2009 the Media Standards Trust published a forensic review of the PCC's performance, which was dismissed by the then-PCC chair as

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<sup>13</sup> *The Sun*, 'Report hijack, 25 February 2010.

<sup>14</sup> *The Huffington Post*, 'Phone hacking shows how MPs Committees need real teeth', 11 September 2011.

“statistics of the madhouse” and ridiculed by other leading press industry figures. The report’s author recalled how this concentrated rubbishing of their criticisms prevented the group from effectively raising the PCC’s failings with policymakers:

It was kind of like the third rail of British politics, you couldn’t really talk about press regulation without getting burned. We proved the rule, we got burned. There was a very aggressive reaction and as a consequence perhaps those people who might have stood up, might have supported our critique and might have supported change didn't because it was too politically costly. (Interview 5)

### *The Milly Dowler moment*

On 4 July 2011 the *Guardian* reported that the *News of the World* had hacked the voicemail messages of the murdered schoolgirl Milly Dowler.<sup>15</sup> There was an immediate eruption of public outrage at the senseless exploitation of a desperate family, a feeling exacerbated with additional reports of hacking, blagging and further unethical practices targeting victims of terror attacks and relatives of British soldiers killed on duty.<sup>16</sup> Within days News International announced the closure of *NOTW* and the publisher’s parent company, News Corporation, also withdrew its controversial takeover bid for satellite broadcasting company BSkyB. Just as personal stories epitomised the emotionally-charged nature of phone hacking, public figures implicated in the unfolding scandal also shaped its emergence as a *political* crisis. Prime Minister David Cameron described the Milly Dowler allegation as “a truly dreadful act and a truly dreadful situation” but many questioned his willingness to act, particularly given his personal connections with senior News International executives, particularly Rebekah Brooks who, with Cameron, formed part of the elite ‘Chipping Norton set’ of media and political socialisers.

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<sup>15</sup> *The Guardian*, ‘Missing Milly Dowler’s voicemail was hacked by News of the World’, 4 July 2011.

<sup>16</sup> *Daily Telegraph*, ‘News of the World: bereaved relatives of 7/7 victims ‘had phones hacked’’, 5 July 2011; *Daily Telegraph*, ‘Phone hacking: families of war dead ‘targeted’ by News of the World’, 7 July 2011.

More politicians from all parties called for a public inquiry into phone hacking, but the government resisted on the basis that this would interfere with police investigations. Yet on 8 July 2011 the Prime Minister announced the formation of two inquiries: one to be conducted after legal action “to get to the bottom of the specific revelations and allegations we have seen” surrounding *NOTW* and the failed 2006 police investigation of the Goodman-Mulcaire hacks; and a second, to begin straightaway, to “look at the culture, the practices and the ethics of the British press.”<sup>17</sup>

The decision to split the inquiry into two distinct subject areas may be seen as simply the Prime Minister’s “initial instinct to avoid or deflect blame” (Hanretty, 2013:9), especially considering the mounting political pressure surrounding the BSkyB bid (Davies, 2014:348-9). However, the Hacked Off campaign group also had a significant influence on the inquiry’s official remit. Having attracted decisive public support from the Dowler family and other prominent hacking victims, Hacked Off figures secured a pivotal private meeting with the Prime Minister during which they pressured for broadening any inquiry to look beyond hacking at *NOTW* and consider the culture of the press industry as a whole. Highlighting the Leveson Inquiry’s formal terms of reference announced by the Prime Minister on 13 July,<sup>18</sup> one interviewee from the group pointed to “sixteen phrases which were inserted by Hacked Off, and frankly they are the most important phrases.” (Interview 4). In particular, the Inquiry was instructed to recommend a new system of press regulation, and advise on “how future concerns about press behaviour, media policy, regulation and cross-media ownership should be dealt with by all the relevant authorities” (Leveson, 2012b:5).

This extraordinary instance of raw, face-to-face lobbying, particularly by a nascent and relatively unconnected campaign, would have been unthinkable without the ‘Milly Dowler

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<sup>17</sup> Downing Street speech, 8 July 2011.

<sup>18</sup> HC Deb 13 July 2011, v. 531 c. 312.

moment' having made it politically untenable for policymakers to maintain a hands-off approach. The *Guardian's* reports in July 2011 inspired and enabled more political action in ten days than hundreds of cases of phone hacking—unveiling admittedly less heart-rending but no less illegal or unethical activity—and multiple parliamentary inquiries had achieved in eight years. The two decades-long silence in press policymaking was shattered, but only as a result of a “mixture of empirical information and emotive appeals” that shifted the boundaries of acceptable policy debate (Baumgartner et al., 2007:161-2). Indeed the Leveson Inquiry's formation cannot be solely interpreted as a triumph of investigative reporting, public pressure and nuanced campaigning. The response to phone hacking at *NOTW* demonstrates how idealised pluralist methods for identifying policy ‘problems’ had been completely precluded in the years leading to the phone hacking scandal, precisely because of the pervasive influence of the Murdoch press over British political institutions.

*‘Who guards the Guardian’s guardians?’*

The first part of the Leveson Inquiry ran from November 2011 to November 2012 and held formal evidence sessions for eight months, taking testimony from 337 witnesses and submissions from over 300 more. Leveson's court hearings were a media spectacle, broadcast live around the world and with every item of evidence published online almost immediately. Hollywood celebrities and ‘ordinary’ victims described their experiences of harassment, defamation and abuse by the press; newspaper editors and executives were questioned about their knowledge of illegal and unethical practices in Britain's newspaper industry; and Prime Ministers, party leaders and government officials from the last 30 years of British politics desperately defended or denied their intimate relationships with the media. The Inquiry also held a number of seminars and roundtables with industry experts, lawyers, regulators and academics, designed to explore and evaluate the failures of the PCC and discuss potential approaches for a new model of press self-regulation.

It is impractical here to explore every moment of drama or thread of intrigue exposed during Leveson's marathon examinations, though it is worth briefly highlighting the role of the newspaper industry itself in the Inquiry process and its impact on the subsequent press regulation debates. This can be grouped into three settings: the industry's insipient proposals for regulatory reform; official testimony from leading industry figures; and coverage of the Inquiry process by national papers. The industry's formal contributions to Leveson's work on press regulation helped to set the shape and scope of potential policy changes. In March 2012 the PCC confirmed it would disband, but the organisation continued during this 'transition' period to offer its proposals for reform alongside its industry funding body the Press Board of Finance ('PressBoF').

Star industry witnesses at the Inquiry, particularly Rupert Murdoch and Rebekah Brooks, expressed apparently limitless regret for the industrial scale of unethical and illegal practices at their papers. There was, however, a strong current of resentment and collective bitterness towards the Inquiry from many editors and journalists. Some challenged the empowering of a senior judge to conduct an inquisition of journalists, and the dangerous precedent it would set for press freedom and its relationship with the judicial system. Many saw the objectives and motivations of the Leveson Inquiry as little more than the product of leftie luvvies, vindictive politicians and embarrassed celebrities seeking to exploit the exposure of already illegal activities and mount an assault on Britain's popular newspapers. In between brandishing his favourite front page scoops, declaring "privacy is for paedos" and reminiscing on his most effective reporting tricks, former *NOTW* journalist Paul McMullan argued "you don't need to regulate the press. The press will eat itself."<sup>19</sup> *Daily Mail* editor Paul Dacre claimed "the way that the Inquiry has been conducted" meant "the British public are receiving a very bleak view of the press". Dacre went on to attack Britain's "liberal class" whose "hatred

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<sup>19</sup> Testimony to the Leveson Inquiry, 29 November 2011.

of mass selling papers has transmogrified into a hatred of self-regulation itself.”<sup>20</sup> “Any parliamentary involvement” in press regulation, he later remarked, “would be the thin edge of the wedge for statutory control of the press.”<sup>21</sup>

Press coverage of the Leveson Inquiry amplified many of these same criticisms. Britain’s national newspapers published over 2,000 reports about the Inquiry between its formation and the Report’s publication. Of those articles which expressed an evaluative viewpoint, 76 per cent contained only a negative assessment of the Inquiry and its work (Ramsay, 2013). Similar analysis by Thomas and Finneman categorised editorials by Britain’s main daily and Sunday newspapers into four distinct trends of coverage on the Leveson Inquiry: catastrophization of its likely outcomes, self-affirmation of the democratic role of newspapers, minimisation of the significance of phone hacking, and localization of the scandal as concerning an already illegal act. “This was largely a shrill, hostile discourse that mythologized the press’ role in society yet attacked accountability as the first step on the road to Soviet-era press controls” (Thomas and Finneman, 2014:183).

As a unique intervention in the affairs of the British newspaper industry, the Leveson Inquiry represented a major shift in political attitudes not only to questions of press policy but also to how these questions should be tackled. Whereas the three Royal Commissions on the Press entailed a non-binding approach for “making the press a subject of public, official scrutiny” (O’Malley and Soley, 2000:178), Leveson’s ‘judicialisation’ of the realm of press policy (Hanretty, 2013) shows the significance that government policymakers (and particularly the Prime Minister) politicians attached to demonstrating their commitment to resolving the major crises raised by the phone hacking scandal. That the Leveson Inquiry and its 2012 Report assumed such central authority in the nascent policymaking process is a reflection of the

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<sup>20</sup> Speech to Leveson Inquiry seminar on ‘Supporting a free press and high standards’, 12 October 2011.

<sup>21</sup> Submission to Leveson Inquiry, ‘Proposals for regulation of the press’, 15 June 2012.



reconceptualisation (if only temporarily) of press regulation as not merely an issue to be sporadically reviewed, but a matter of serious public concern and ideological tension for which the usual methods of political decision were not appropriate. As Hanretty has written on the political meaning of Leveson's being a *judge-led* inquiry,

It is difficult to imagine anyone other than a judge having the level of trust necessary to resolve competing normative claims without giving the appearance of doing anything other than finding a sensible solution to a technical problem. (2013:10)

In respect of *Research Question (4)* and the particular power of media in media policymaking, the furious campaign by some newspapers to belittle and delegitimise the Inquiry, its proponents and its insipient reform agenda goes some way to highlighting news media's central role in framing how policy debates are defined and formalised. Furthermore it shows that such agenda-setting is not an uncontested process, and in the case of the Leveson Inquiry involved a fundamental division between one faction calling for radical reform and another wishing to close off the subject altogether.

## **CROSSING THE RUBICON – DECEMBER 2012**

After the Leveson Report's publication on 29 November, deliberation between policymakers and stakeholder groups centred on Leveson's model for a new regime of press self-regulation. The core of these recommendations consisted of 38 criteria that any future regulator established by the press should meet in order to demonstrate its effectiveness and independence (and nine additional proposals to reinforce these criteria in the wider political and regulatory environments).<sup>22</sup> Most MPs and government policymakers reacted positively to the Leveson Report. In his parliamentary response the Prime Minister specified some of the headline recommendations for regulation that Leveson had proposed and declared:

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<sup>22</sup> See Leveson (2012b:1803-09).

These are the *Leveson principles*. They are the central recommendations of the report. If they can be put in place, we truly will have a regulatory system that delivers public confidence, justice for victims, and a step change in the way the press is regulated in our country. *I accept these principles, and I hope that the whole House will come in behind them.*<sup>23</sup>

However, the Prime Minister actively rejected the substantive and symbolic core of Leveson's radical departure from past self-regulation policy: that "the law must identify those legitimate requirements and provide a mechanism to recognise and certify that a new body meets them" (Leveson, 2012b:1807).

The question of whether legislation by parliament was an appropriate or necessary means of reforming press regulation became the fundamental dividing line between competing policy actors. The Prime Minister expressed clear opposition to statute:

I think it would be a dereliction of our duty in the House of Commons, which has stood up for freedom and a free press, year after year, century after century, to cross the Rubicon by legislating on the press without thinking about it carefully first.<sup>24</sup>

In contrast, the Labour leader Ed Miliband stated:

We endorse the proposal that the criteria any new regulatory body must meet should be set out in statute. Without that, there cannot be the change we need.<sup>25</sup>

This statutory dilemma was not just a difference in preference between pro- and anti-Leveson players in these debates. The Prime Minister's rejection of Leveson's legislative proposals was also the most significant decision for structuring how the government conducted its negotiations, and thus drastically constrained the political settings and mechanisms of decision-making. Throughout December and into the first few weeks of 2013, the political process of

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<sup>23</sup> HC Deb 29 November 2012, v. 554 c. 448. My emphasis.

<sup>24</sup> HC Deb 29 November 2012, v. 554 c. 456.

<sup>25</sup> Ibid. c. 451.

translating Leveson's proposals into a workable (but crucially non-statutory) framework took place in two distinct spaces: the cross-party talks between Conservative ministers and their opposite figures in the Labour and Liberal Democrat parties; and private meetings of the Conservative party leadership with senior industry representatives.

Immediately the official response to Leveson's recommendations had been taken out of public deliberation and confined to private discussions between the most powerful figures in Britain's political and media establishments. In the absence of any formalised methods of press policymaking, this elite bargaining invariably mirrored the same old practices of national newspaper executives influencing decision-making at the top table. However, as we will come to see, the loosely structured and ad hoc nature of these private deliberations also exposed them to intervention and disruption from other actors and forces in the wider political arena.

### *Cross-party talks*

In his response to the Report, the Prime Minister also suggested "there may be alternative options for ... ensuring that the Leveson principles of regulation are put in place" without legislation.<sup>26</sup> The Labour and Liberal Democrat leaders accepted his invitation to cross-party negotiations, with the first session taking place immediately after his statement in the Commons. Despite the unique format of these talks, many key features of the 'traditional' Westminster legislative process were still evident. Opposition parties played a persistent role in scrutinising the government's policy approach and focussing attention on awkward issues for the government (Russell and Gover, 2017:89), not least because the Liberal Democrats stood against their Coalition government partners to advocate in favour of Leveson's reforms. At this first session the government proposed to draft a 'Leveson Bill', demonstrating the unsuitability of legislation as the Prime Minister had first suggested:

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<sup>26</sup> Ibid. c. 449.

No matter how simple the intention of the new law, the legislation required to underpin the regulatory body would be more complicated.<sup>27</sup>

Our concern is that we simply don't need to have that legislation to achieve the end objectives. And in drafting out this piece of legislation, *what we are going to be demonstrating is that it wouldn't be a simple two-clause bill.*<sup>28</sup>

In a parliamentary debate on 3 December Harriet Harman, Labour's shadow Culture Secretary, announced that Labour would be preparing a separate draft Bill to show that legislation "can be done in a tightly defined and forensic way, as envisaged by Leveson".<sup>29</sup> Labour's 'Press Freedom and Trust Bill' matched most of Leveson's requirements for the core structure and powers of a new regulator, and also included a clause requiring political officials to "uphold the freedom of the media and its independence from the executive" (Labour, 2012:1). Leveson had recommended this as a necessary foundation of a new culture of independent press self-regulation (2012b:1780), and its inclusion in Labour's draft shows the party's initial commitment to the letter of Leveson's model in its negotiations with government..

Harman presented the Bill as "an offer to MPs on all sides of the House who want to implement Leveson's proposals", and the Liberal Democrats welcomed the draft as "an important contribution to the cross-party talks".<sup>30</sup> However the Bill proposed that the High Court act as the 'recognition body', rather than Ofcom as Leveson had preferred (2012b:1774-5). Conservative figures seized on this, saying that Labour "have gone from accepting the report in full to rejecting one of the major recommendations. ... Not only have they u-turned, even they admit that their proposals are quite top line and don't address the details."<sup>31</sup>

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<sup>27</sup> HC Deb 29 November 2012, v. 554 c. 449.

<sup>28</sup> Maria Miller quoted in BBC News, 'Press 'need to act' after Leveson', 30 November 2012. My emphasis.

<sup>29</sup> HC Deb 3 December 2012, v. 554 c. 606.

<sup>30</sup> *The Independent*, 'Tories dismiss Labour plans for Leveson law', 10 December 2012.

<sup>31</sup> *Ibid.*

What is notable in these opening political salvos is the varying degrees of importance the competing parties gave to different aspects of Leveson’s official recommendations. All three parties for a time recognised the Leveson Report as a *symbolically* binding model for reform, but emphasised certain details of its proposals while underplaying or omitting others. Leveson’s suggestion that Ofcom serve as the ‘recognition body’, for example, was instantly dismissed and never considered again in negotiations: many MPs questioned giving “a Government-appointed body, the chairman of which is appointed by a Secretary of State, a role in the regulation of the press”.<sup>32</sup> These varying canonisations of the Leveson recommendations, and the role of political ‘red lines’ in shaping policy-making, are examined further in Chapter 7. Yet this dynamic is worthy of a brief discussion for its relation to the substance of *Research Question (1)* and the influence of official policymaking structures on how policy actors engage in decision-making. The immediate shutting-out of specific technical proposals shows how quickly the authority of the Inquiry’s recommendations—which party leaders had pledged themselves to—was moulded to match policymakers’ political aims. The cross-party talks accelerated the rationalisation of the post-Leveson decision-making process, as rival policymakers’ focus on specific methods of implementation narrowed the scope of potential solutions to only those that were amiable to either the political parties or the newspaper industry. Substantive reform of press regulation, via a recognition body empowered in law, was fast falling out of the political frame, while the design of any new regulatory model became increasingly defined by politicised reinterpretations of the Leveson Report.

### Industry negotiations

In his response to the Report the Prime Minister also stated that he favoured “giving the press a limited period of time” to establish a Leveson-compliant regulator,<sup>33</sup> thus granting

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<sup>32</sup> HC Deb 3 December 2012, v. 554 c. 609.

<sup>33</sup> HC Deb 29 November 2012, v. 554 c. 449.

industry executives and lobbyists a unique and exclusive role in reimagining Leveson's recommendations and pressuring the government's contributions to the cross-party talks. During the Leveson Inquiry two Conservative peers, Lord Hunt of Wirral and Lord Black of Brentwood (respective chairs of the PCC and its industry funding body PressBoF), submitted a new regulatory framework to replace the mothballed PCC. They described their plans as "independently led self-regulation" based on legally-binding contracts with publishers. Leveson rejected the colloquially named 'Hunt-Black plan' as insufficiently independent from the industry and lacking adequate powers (2012b:1650), but the two Conservative peers continued to insinuate their proposals throughout the post-Leveson negotiations.

As party leaders argued over how to build a new regulatory system that would attract support from the industry and victims of press abuse alike, Hunt and Black pushed ahead with creating their contract model in concert with publishers:

We'd decided to try and persuade the government that the cross-party negotiations were unnecessary because people were going to sign up to the contract model. Most of the representatives of the press met at Number 10 and we all agreed to seek to find some way of implementing it. (Interview 6)

On 5 December, the day after this Downing Street meeting with the Prime Minister and Secretary of State, "around 20 newspaper editors" convened at the Delaunay restaurant in central London to discuss the proposals set out in the Leveson Report.<sup>34</sup> Minutes from the private meeting recorded by Peter Wright of *Daily Mail* publishers Associated Newspapers indicate that those present supported the majority of the Leveson criteria. Closer analysis reveals more dissent than implied.<sup>35</sup> One example of this is the editors' response to the process of appointments to the regulatory board: Wright's minutes claim those present accepted that an

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<sup>34</sup> Rusbridger in *The Guardian*, 'We need reform and a free press. This will require both time and openness', 24 March 2013.

<sup>35</sup> Of the 40 discussion points noted in Wright's minutes, 31 were recorded as "acceptable", 5 considered with caveats and four branded "unacceptable".

appointments board could be made up substantially of independent members, but caveated this with a desire that “decisions [should] be unanimous”. If implemented industry representatives (or any other constituency) would have been able to veto appointments, which Leveson claimed would undermine the necessary independence of the appointments process (2012b:1650). This argument over the industry’s involvement in appointments to the regulator was, as is detailed below, a recurring sticking point throughout the subsequent stages of deliberation.

Despite several such deviations between Wright’s minutes and the official Leveson criteria, the editors’ Delaunay meeting was seen by some press figures as a moment of unexpected cooperation:

We're all used to the sort of annual fisticuffs at press awards and shouting matches [but] the editors of the national papers sat in a room at the Delaunay restaurant, went through point by point Lord Justice Leveson's recommendations for how a self-regulatory model worked and pretty much agreed to them all.<sup>36</sup>

*Guardian* editor Alan Rusbridger, speaking at a CMS Committee hearing the next week, gave his interpretation of the Delaunay meeting:

One of the reasons we wanted to meet as a group of editors, without Lord Hunt and without Black, last week was to try to set for them, if you like, their terms of reference so that Lord Hunt clearly understands when he is setting up his appointments board that *it should be Leveson-compliant rather than industry-compliant* or Hunt/Black-compliant.<sup>37</sup>

Yet in a sudden exercise of corporate authority, industry executives publicly dismissed the editors’ Delaunay terms and seized exclusive control of negotiations. In a letter to the Culture Secretary the five trade bodies for the UK publishing industry asserted that “publishers—rather than editors—are responsible for funding the regulator”, and that the PCC Chair Lord Hunt

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<sup>36</sup> Chris Blackhurst (editor, *The Independent*) on The Media Show, BBC Radio 4, 5 December 2012.

<sup>37</sup> CMS Select Committee oral evidence, 11 December 2012. HC 819-i Q102, my emphasis.

would act as the industry’s “point of contact” with policymakers.<sup>38</sup> Lord Hunt, together with Lord Black, Peter Wright and Trinity Mirror’s legal director Paul Vickers, formed the Industry Implementation Group (IIG) to lead the industry’s talks with government. After the “historic moment” of Delaunay had been overturned, “two Conservative peers were charged with representing the industry [and] a long period of private negotiations began.”<sup>39</sup> This raises an important distinction, in relation to *Research Question (4)*, between the collective influence of media institutions over policymaking and the often complex hierarchies of corporate and political power within media organisations. By monopolising a role as the industry’s legitimate representatives, the formation of the IIG substantially reduced the number and range of newspaper industry actors directly involved in the post-Leveson negotiations. It also concentrated this involvement in the hands of publishers and executives, with their coup over editors handing this small group of delegated executives what one Hacked Off figure described as “a second bite of the cherry [to] lobby Ministers with arguments that failed in front of a public inquiry.”<sup>40</sup>

### *The (absent) role of parliament*

As these parallel threads of private elite negotiation continued through the opening weeks of 2013, the defining political foundation for the cross-party negotiations—the Prime Minister’s rejection of legislation—still determined how policy solutions were deliberated and the actors who could influence this. The insistence by government policymakers that they, together with the industry, could reach a non-legislative solution deprived MPs and peers of any formal decision-making function. Parliamentary debates during December contain countless examples of the arguments for and against implementing Leveson by statute, but

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<sup>38</sup> *The Guardian*, ‘Publishers remind minister that they, not editors, will do Leveson deal’, 14 December 2012.

<sup>39</sup> Alan Rusbridger (editor, *The Guardian*), ‘Who should guard the Guardian?’ for Free Speech Debate (online), 2 April 2013.

<sup>40</sup> CMS Select Committee oral evidence, 19 March 2013. HC 819-iii Q256.



these are far more notable for demonstrating the relative impotence of the two legislative chambers in the shadow of extra-parliamentary meetings. Cross-party negotiators viewed the exclusion of parliament from voting on negotiations as not only necessary but politically right.

In a Commons debate on 3 December the Culture Secretary stated:

I hope that there will be no votes on the issue, because *what we need is consensus*. We need to move forward with *something that we can all agree on*.<sup>41</sup>

The government's insistence on a non-legislative approach drastically constrained the types of actors who were considered 'insiders' (Grant, 1995), even to the extent of redefining the traditional role of parliamentarians as the ultimate decision-makers on government policy. Control of and authority over negotiations remained with Conservative ministers and their opposites in the Labour and Liberal parties, who were themselves closely bound within the elite political rituals of high office and subject to intense pressure from the press industry. In the later stages of policy formation this redefinition also affected the range of strategies available for influencing these debates. In creating a deliberative space outside of the official parliamentary process, the government transferred political control over this pressing matter of public policy away from the 'standard' functions of parliamentary plurality and instead conferred exclusive authority to the party leaderships and appointed industry representatives.

### **THEIR CHARTER, OUR CHARTER, WHOSE CHARTER? – JANUARY TO MARCH 2013**

On 31 December 2012 the government shared with these 'core' negotiators a prospective model for implementing Leveson's recommendations, comprising a draft framework for a Royal Charter and a five-page draft Bill. The 13-page draft Charter (*Charter #1*) would establish a 'Recognition Panel' for assessing and approving the applications of new

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<sup>41</sup> HC Deb 3 December 2012, v. 554 c. 598. My emphasis.

press self-regulatory bodies, and detailed ‘carrot and stick’ provisions for incentivising industry membership to the new system. Employing a Royal Charter—quasi-legislation issued by the monarch on advice from the Privy Council—had been hinted earlier in various newspaper reports as a legislative work-around proposed by the government’s Minister for Policy, Oliver Letwin. Interviewees from both sides of the negotiations claimed that the Prime Minister brought in his Cabinet fixer because he doubted that Culture Secretary Maria Miller was capable of negotiating a workable settlement between the opposing Labour, Liberal and industry figures. As explored further in Chapter 8, the loose structure of the post-Leveson negotiations exacerbated the tensions between the ‘real’ authority of Cabinet ministers and the political power of party leaders, in this case resulting in the Prime Minister’s office usurping a Secretary of State’s policy portfolio to ensure press regulation remained firmly in his control.

The idea of using a Royal Charter was first suggested to Conservative ministers by the Treasury Solicitor Paul Jenkins, the head of the government’s legal service.<sup>42</sup> Letwin and Jenkins floated the Charter framework to lawyers and representatives for both pro- and anti-Leveson groups in the negotiations, with much of these early intricate legal discussions struck between obscure constitutional dilemmas the more pressing concern of the Privy Council’s independence from government.

We had a jolly argument about how this body was going to have money. You can’t raise money through the royal prerogative, that was what the Civil War was about! He [Jenkins] later rang me and said the Secretary of State had some fund that she could give to this chartered body. We didn’t think it was a great idea because the Royal Charter sounds sort of not right, obscure, vaguely improper. But we had no objection to it in principle. (Interview 7)

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<sup>42</sup> See Baksi (2017) and *The Times* obituary, 23 March 2018.

Oliver Letwin kept appearing in our meetings and came up with the idea of a Royal Charter. I remember saying “this is ridiculous,” but it was seen as a way of ensuring that it wouldn’t be a government body enforcing regulation. (Interview 6)

Though neither Hacked Off nor the IIG rated this arcane Royal Charter format, it quickly became Conservative negotiators’ preferred method for skirting the statutory deadlock.

The detail of *Charter #1*’s regulatory provisions, and the precedents it set for subsequent policy proposals, are therefore worthy of brief analysis. The Charter states that the role of the board of the Recognition Panel<sup>43</sup> is to approve and verify new regulators, but only when the board is satisfied that the regulator meets “the requirements set out in recommendations 1 to 24 ... of the Leveson Report”. In a notably less prescriptive tone, the Charter also provides that the board “*may take into account* recommendations 34 to 47” (my emphasis). However, *Charter #1* makes no requirements for an arbitration service nor establishes the various statutory responsibilities for underpinning the system in law, both of which Leveson saw as essential features of any new self-regulatory model (2012b:1806-7).

Although a note in the draft suggests that “further definition of the criteria within the Charter remains an option for achieving greater certainty”, the specification of particular Leveson recommendations as necessary, optional or (by their absence) unwanted became the recurring point of contention between the competing pro- and anti-Leveson factions in these exclusive negotiations. The addition, removal and rewording of sections of text (and often just single words) in subsequent Charter proposals demonstrates the central role of these quasi-legislative documents in the post-Leveson process. Crucially, in terms of *Research Question (1)*, the various Charter drafts were both the principal objects of formal policymaking and the symbolic sites of contest where rival political ideas about press regulation were translated into

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<sup>43</sup> In a clear sign of the draft’s incipient, the Board was constituted of the current and future holders of “[List of Offices to be agreed]” (sic), presumably intended to be filled at a later date with the titles of political or legal grandees.

tangible structures and measures. As discussed below these minutiae matter for the kinds of regulatory models being proposed, but they are also important indications of who had power in these crucial drafting decisions and how they succeeded in imprinting their political objectives onto the formal details of Royal Charter drafts.

*With the press holding the pen*

It was publicly known from at least the end of December 2012 that the government planned to use a Royal Charter for a new regulatory framework. The prospective text of *Charter #1* was, however, first shared with only a small selection of party leaders and industry representatives. Scrutiny of this formative document was confined to the private channels between these figures and government policymakers. Parliamentary actors and other interest groups could only comment on the broader implications of a Royal Charter as a means of implementation, while insider negotiators and newspaper industry executives in particular had intimate influence on how *Charter #1* was reformulated.

In a 4 January letter to Oliver Letwin, IIG member Peter Wright raised his concern that “it is going to be very difficult to sell the package as it appears to stand at the moment to the industry at large.” Restating the industry’s principle objection to the government’s proposed laws for an arbitral complaints system, Wright’s letter also queried the structures and powers laid out in the Charter model. Addressing the vague and undefined ex-officio membership of the Panel’s board, Wright suggested “it would be highly desirable” for one of these figures to have working knowledge of the press industry. Similarly, Wright argued that “we do not think the industry will buy a literal acceptance of Leveson’s recommendations as viable recognition criteria ... We have drawn up our ‘red lines’ ... but they do not seem to be represented here.”

This letter gives one of the clearest demonstrations of how, even from the very start of the post-Leveson process, industry lobbyists had completely eschewed the conclusions of a

judge-led public inquiry and directed their efforts to maintaining exclusive control of self-regulation. More damning still is that Wright's letter was immediately successful in convincing senior Conservative policymakers, as the objections he raised were incorporated directly into the government's next Charter released publicly on 12 February (*Charter #2*). The prescriptive ex-officio executive board in the unpublished *Charter #1* was replaced with a four-to-eight member board appointed by a separate Appointments Committee, which itself included one person who "represents the interests of relevant publishers". Additionally *Charter #2* removed its precursor's explicit reference to the Leveson recognition criteria, and instead specifies bespoke criteria within the Charter text itself.

This introduced subtle but decisive deviations between the explicit provisions of the Leveson proposals and how these were reinterpreted in *Charter #2*. Leveson, for example, recommended that the editorial Standards Code "must ultimately be the responsibility of, and adopted by the Board, *advised by a Code Committee*" (2012b:1804, my emphasis). *Charter #2* instead requires that the Code should only be "adopted by the Board", meaning the industry's essential editorial standards would be written solely by a sub-committee of the same serving editors it was intended to regulate. The requirement that a regulator should "have the power to *direct*" apologies and corrections following breaches of the Standards Code (2012b:1804-5, my emphasis) was watered down in *Charter #2* to a "power *where appropriate to require remedial action*" (2013:16), leaving responsibility for the extent of these remedies to the publishers in control of the regulator. *Charter #1*'s provision that the Recognition Panel "may take into account" recommendations 34 through 47 was also reworded in *Charter #2* as "may *but need not* take into account". Furthermore, the Recognition Panel is specifically instructed to "not refuse to grant recognition ... by reason of a failure to comply" with these additional criteria.

These almost indistinguishable changes between the details of *Charters #1* and *#2* became the defining dynamic in how Leveson's recommendations were transformed into formal policy proposals. Perhaps more importantly, this technical haggling obfuscated the underlying purposes and effects of regulation that each requirement was designed to bring about. Through this writing and re-writing, government policymakers' proclaimed acceptance of Leveson's proposals deteriorated in concert with industry complaints about how they would operate in practice. It can be argued whether these concessions were made as a direct result of this industry pressure, or if they are more symbolic of a general correspondence between the broader aims of Conservative policymakers and corporate newspaper publishers. Nonetheless, the IIG successfully imprinted their political objectives into these formal drafts at the expense of the government's supposed commitment to the 'Leveson principles'. That the industry's concerns were embedded in the first publicly released policy draft gave these proposals a powerful position as the foundation on which subsequent deliberations were made.

In contrast to the industry's objections to *Charter #1*, IIG chair Paul Vickers welcomed *Charter #2* in a radiantly pluralist tone:

We welcome this very constructive announcement, the fruit of two months of intensive talks involving the newspaper and magazine industry and all three main political parties.<sup>44</sup>

Whether the IIG truly engaged with Labour or Liberal figures as extensively as they did with Conservatives is questionable. Editors and other press executives did meet a number of times with opposition negotiators, but not remotely to the same scale or with the same degree of collaboration on regulatory drafts. A public letter from Harriet Harman to Oliver Letwin detailed Labour's "substantive concerns" with *Charter #2*'s failures to meet Leveson's

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<sup>44</sup> *Press Gazette*, 'Press owners welcome Tory plan for independent regulator underpinned by Royal Charter', 13 February 2013.

recommendations,<sup>45</sup> further muddying the industry's claims to having engaged in wide-ranging consultation in the opening months of 2013. The changes in *Charter #2* also show how industry and government figures adopted a quasi-legislative role in amending and negotiating the specific wording of regulatory measures. Conservative ministers and press executives effectively acted as one coordinated unit while industry figures had fully ingratiated themselves into an official status as chief stakeholders in press regulation, to the almost total exclusion of any wider public or political involvement in preparing these formative policy drafts.

### *Parliament breaking the logjam*

Outside of these private negotiations, parliamentarians were growing increasingly frustrated at the lack of progress on agreeing a new regulatory framework. In an 11 January Lords debate on the Leveson Report, peers indicated they were ready to act where the government had not:

If we believe that the recommendations of Lord Justice Leveson require action, we on the Back Benches in this place have a special constitutional role to play in making that happen. There is an onus on us to ensure change.<sup>46</sup>

Soon, backbench MPs and peers attempted to piggyback the Leveson Report's contentious legislative measures into statute by tabling amendments to existing Bills passing through parliament. Labour peer Lord Puttnam, who tabled one such amendment to the Defamation Bill, claimed these

offer us the opportunity to break the logjam that would appear to have afflicted both the talks between the newspapers and the Government and the talks between the three main political parties themselves.<sup>47</sup>

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<sup>45</sup> Letter, 12 February 2013. Available online.

<sup>46</sup> Lord Alli, HL Deb 11 January 2013, v. 742 c. 381.

<sup>47</sup> HL Deb 5 February 2013, v. 743 c. 140.

Puttnam's proposed amendment created Leveson's desired recognition body in law, but is far more notable for empowering courts to award costs and damages in civil trials (principally libel and invasion of privacy cases) based on a publisher's membership of an approved regulator. Leveson recommended this as a "powerful incentive for a publisher to join a regulator" (2012b:1514), encouraging complainants and publishers to use a regulator's free arbitration service in place of legal action and improving access to justice for members of the public claiming against newspapers. This 'carrots and sticks' measure had been fiercely resisted by the industry both during the Inquiry and in negotiations with government, but the success or failure of post-Leveson reform hinged on these changes giving legal weight to any new regulatory framework.

Puttnam's 'Leveson amendment' transformed the final legislative stages of several Bills into a focal battleground between the government and those policymakers who, until now, had been excluded from deliberations. Cross-bench peer Lord Skidelsky, with the support of campaign group Hacked Off, opened a second frontline with amendments to the Enterprise and Regulatory Reform Bill.<sup>48</sup> The government's media minister in the Lords, Lord McNally, appealed to these backbenchers to withdraw their amendments and "allow those cross-party talks to reach their full and considered conclusion".<sup>49</sup> Anti-Leveson politicians, industry figures and libel reform campaigners attacked the amendment as a "political stunt" which risked "the future of the defamation bill".<sup>50</sup> Despite this, the Lords voted on 5 February to approve Puttnam's changes and the Conservative leadership, "unsure that it would be able to get

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<sup>48</sup> *Press Gazette*, 'Peers in fresh attempt to pass 'Leveson law' with changes to Enterprise and Regulatory Reform Bill', March 13 2013.

<sup>49</sup> *Ibid.* c. 148.

<sup>50</sup> *The Guardian*, 'The defamation bill is now in thrall to a politically motivated Leveson clause', 8 February 2013.



sufficient support in the Commons” to remove it, blocked the Bill from progressing any further.<sup>51</sup>

As another sign of the sporadic and unorthodox nature of the post-Leveson policy process, it is ironic that the Prime Minister’s intention to keep legislators out of decision-making ultimately led to far more drastic parliamentary intervention. The short campaign of backbench action rapidly shifted the balance of power away from the Conservatives’ private discussions with industry, with the intertwining mass of rival amendments, Charter proposals and political last stands accelerating decisions on press policy to their climax. By defeating the government in the Lords, pro-Leveson policymakers dragged discussions on press policy away from the private cross-party talks and industry negotiations, and bring them into the relatively public domain of parliamentary scrutiny. Anti-legislation newspapers and libel reform campaigners perceived the manoeuvres in the Lords as little more than political ‘gameplaying’ (Russell and Gover, 2017:102), but the close correspondence between the detail of these amendments and the Leveson recommendations indicates a genuine attempt by impatient peers to steer a particular policy outcome. Furthermore, it shows the widespread belief amongst parliamentarians that the Leveson Report was an authoritative, legitimate and compelling model for reform of press self-regulation.

### **DECISION AND DERISION – MARCH TO OCTOBER 2013**

Throughout February and into the first two weeks of March, the private cross-party talks and industry negotiations had focussed on the government’s draft Charter proposals. After the House of Lords pro-Leveson amendments, however, it appeared as if a majority coalition of Labour, Liberal Democrat and backbench Conservative MPs would force these proposals

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<sup>51</sup> *Press Gazette*, ‘Peers in fresh attempt to pass ‘Leveson law’ with changes to Enterprise and Regulatory Reform Bill’, March 13 2013.

onto the statute books. On March 14 the Prime Minister announced he was halting cross-party talks, claiming that “those who want ... a full legislative approach to Leveson have hijacked important parliamentary bills”.<sup>52</sup> Along with releasing a new draft Royal Charter, Conservative ministers tabled a string of amendments—including clauses to implement some though not all parts of Leveson’s ‘carrots and sticks’ changes in civil law—to the Crime and Courts Bill ahead of its third reading in the Commons on the following Monday, 18 March.

On 15 March, responding to what they saw as Cameron’s “historic mistake” of walking away from talks, the Labour and Liberal Democrat leaders jointly published their own ‘take it or leave it’ package and stated they would instruct their MPs to oppose the government’s plans at the Monday votes.<sup>53</sup> The Labour-Liberal Democrat proposals consisted of an alternative Royal Charter and a further amendment, this time to the Enterprise and Regulatory Reform Bill, prohibiting the Privy Council from altering the Charter in future without the approval of a two-thirds majority in both Houses. The Labour leader described this as “the minimum amount of legislation needed to guarantee its success and independence over time”, designed to “ensure that future governments cannot tamper with the new system.”<sup>54</sup>

### *Gambits, concessions and compromises*

The BBC’s political editor described the Prime Minister’s decision to abandon talks as a calculated political gambit, deliberately “demonstrating to the public that he is willing to deal with the issue of press excesses at the same time as indicating to the newspapers that he is fighting for press freedom”.<sup>55</sup> However, comparison of the rival Conservative (#3a) and

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<sup>52</sup> BBC News, ‘David Cameron halts press regulation talks’, 14 March 2013.

<sup>53</sup> Miliband quoted in *ibid.*

<sup>54</sup> *Daily Telegraph*, ‘Tories, Labour and Lib Dems set out rival plans for press regulation’, 15 March 2013.

<sup>55</sup> BBC News, ‘David Cameron halts press regulation talks’, 14 March 2013.

Labour-Liberal (#3b) Charters also shows that the March 14 gambit was as much a disagreement over detail as it was a wrestle for the balance of power in parliament.

*Charter #3a* contained several changes from the Conservatives' *Charter #2* that brought it closer in line with the Leveson recommendations. Whereas the 12 February framework (co-drafted by industry negotiators) designated some of the recognition criteria as "may but need not take into account", *Charter #3a* adopted these in their original Leveson Report wording as must-have features for any new regulator. These included the requirement for a ring-fenced fund for investigating systemic misconduct, and a whistleblowing hotline for newspaper staff to report unethical activity. The Conservatives' new *Charter #3a* also revised the definition of an "inexpensive" arbitration service—reflecting Peter Wright's concerns about encouraging a "claims-farming industry"—to require that arbitration should be free, reflecting Leveson's desire that the new framework enhance access to justice (2012c:1768).

While *Charter #3a* retained the Conservatives' material concessions to the industry inscribed in *Charter #2*, the Labour-Liberal Democrat *Charter #3b* reverted many of these and introduced several new provisions. This model removed the industry's implicit power of veto over appointments to the regulator—a residual demand from both the Hunt-Black plan and the editor's Delaunay checklist—and rebalanced the membership of the Code Committee to comprise "*equal proportions* of independent members, journalists and serving editors". Taken together, *Charter #3b*'s changes are clearly aimed at reducing the potential influence of editors and publishers in the new regulatory regime, and pulling reforms closer to the spirit and the letter of the Leveson recommendations.

The Prime Minister's parliamentary deadline brought new pressures to the debates, leading to a flurry of new negotiations over the weekend before the amendment votes. By Monday 18 March, against all predictions—and in contrast to the combative brinksmanship of

the previous week—all three parties had endorsed a new *cross-party* Royal Charter, and in an emergency debate the Commons endorsed its submission to the Privy Council. Along with the cross-party Charter, the agreement included “that all Leveson-related clauses ... will be opposed by all three main parties unless they are withdrawn”.<sup>56</sup> The backbench amendments had been blunted when, just hours before, a majority of MPs were prepared to impose pro-Leveson legislation and shatter the Conservative leadership’s political authority. In their place the Conservatives’ last-ditch amendments from the week before were reworded to include the two-thirds protection against Charter revisions and provisions to empower courts to award civil trial costs against publishers—regardless of whether they win or lose the trial— if they were not members of a recognised regulator. This single measure, introduced as Section 40 of the Crime and Courts Act, was to later become the lynchpin for empowering the whole package of post-Leveson reforms.

### *The infamous ‘pizza meeting’*

Through a convoluted mix of non-statutory self-regulation, statutory ‘protections’ to insulate the system and new court order ‘incentives’, the cross-party arrangements had seemingly neutralised the ‘threat’ of press regulation established in law.

As I believe we have shown today, statutory regulation of our media, and statutory regulation to create a recognition body, is not necessary to achieve the Leveson principles. We can do it— indeed we will do it—via a Royal Charter.<sup>57</sup>

Tellingly both the Conservative and Labour-Liberal groupings claimed victory, having adroitly pulled the other side back to talks and extracted vital policy concessions in their favour. Pro-reform campaigners, who had lobbied the Labour/Liberal Democrat negotiators throughout the

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<sup>56</sup> HC Deb 18 March 2013, v. 560 c. 635.

<sup>57</sup> HC Deb 18 March 2013, v. 560 c. 631.

successive draft Charter exchanges, believed the government was forced back to the table by the other parties' amendments:

The Conservatives probably didn't have the numbers to win given the forty or so Conservative people who were likely to vote with Labour and the Lib Dems. So for whatever reason, as soon as that calculus became apparent, it seems the government took a different track. (Interview 2)

Oliver Letwin, by contrast, placed greater emphasis on the success of the Prime Minister's 'gambit' in "[evoking] a response from the other two parties":

The intention of the Prime Minister on Thursday was fulfilled by the response on the Friday; namely to crystallise an agreement that effectively we could proceed with the Charter.<sup>58</sup>

Accounts from interviewees, together with testimonies by government and campaign figures to the CMS Committee, provide a whirlwind of detail of how the three parties reached this agreement over this weekend. The Prime Minister met with Letwin to review the Labour/Liberal Democrat *Charter #3b*, met again with the Deputy Prime Minister to reconcile the rival Charters' differences, and agreed to a revised joint proposal which was then put to the Labour leader. Whether true victory lay with the government or the other parties, all sides reported that agreement on the final terms of the cross-party Charter was reached by mid-afternoon on the Sunday before the votes. Based on the content of this new cross-party Charter (*#4a*), which Letwin summarised dizzily as "a revision of their version of our version of our Charter",<sup>59</sup> the government conceded the major policy objections made in the opposition's alternative Charter: of the twelve substantive revisions reflected in the cross-party Charter, nine directly adopted the wording of *Charter #3b*.

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<sup>58</sup> CMS Select Committee oral evidence, 16 April 2013. HC 819-iv Q405.

<sup>59</sup> *Ibid.*

In a final marathon session late on the Sunday night in the Labour leader's parliamentary office, key figures from the three main parties—along with four representatives of the Hacked Off group and what one interviewee described as “an army of civil servants” accompanying Oliver Letwin—worked over six hours to agree the procedural arrangements for implementing the cross-party Charter and its associated legislation. By around 6am on the Monday morning, the Prime Minister approved the package agreed overnight to present to parliament as government business.<sup>60</sup> Following the months of back-and-forth drafts, parliamentary debates and manoeuvres from parties, the industry and campaigners alike, it is telling that the final moments of post-Leveson decision-making were so visceral and personalised, and yet totally detached from public accountability or meaningful democratic scrutiny. After a five day period of political stalemates, hurried concessions and late-night ultimatum, the House of Commons agreed the cross-party Charter without division and the amendment Bill clauses were voted through by an unassailable cross-party majority.

The press reaction was fiercely negative, with coverage dominated by two common attacks: that the new system of regulation posed a serious threat to freedom of the press, and that the views of the industry had been ignored in private talks “fuelled by Kit Kats and delivery pizza”.<sup>61</sup> Many national and regional papers declared they would refuse to sign up to what one editor described as a “deal for state regulation botched together by politicians and the pressure group Hacked Off at a secret late-night meeting”.<sup>62</sup> In a late twist the industry group PressBoF, seizing on the procedural uncertainties of Royal Charters, countered parliament's proposals by publishing its own Charter on 25 April. This unexpected intervention, reportedly “the brainchild of a peer” with knowledge of the Privy Council's regal processes, exploited a

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<sup>60</sup> Ibid. pp. 12-13.

<sup>61</sup> *Daily Mail*, ‘How four Hacked Off campaigners sat in on the talks – but no-one from the newspaper industry’, 19 March 2013.

<sup>62</sup> *Press Gazette*, ‘Hacked Off claims press Royal Charter is a ‘desperate’ attempt to defy the will of parliament’, 25 April 2013.

constitutional quirk that “any proposal which is rendered controversial by a counter-petition is unlikely to succeed.”<sup>63</sup>

PressBoF described its Charter as “a workable, practical way swiftly to deliver the Leveson recommendations ... without any form of state-sponsored regulation”,<sup>64</sup> yet the proposals reversed substantial aspects of the cross-party framework. As analysis by the Media Standards Trust deftly summarised it,

The recognition process is owned by PressBoF; party-political peers are allowed to serve at all levels; the powers of the regulator are diluted; editors retain control of the Standards Code. (Ramsay, 2014:11)

The PressBoF Charter also removed the requirement for a two-thirds vote in parliament before amendments can be made, a purely symbolic revision given the requirement was now set in law. Instead board members of the regulators and “all trade associations represented” by the industry’s funding body would be granted a veto over changes, reaffirming the publishing groups’ expectation (first declared openly after the Delaunay meeting) that they should have ultimate control over self-regulation. This effort was in vain however as on 8 October, after a public consultation on the industry’s alternative proposals, the government dismissed the PressBoF Charter and submitted the cross-party package to the Privy Council.<sup>65</sup>

## **GONE AND FORGOTTEN: PRESS REGULATION AFTER LEVESON**

On 30 October 2013, following eleven months of parliamentary twists, government turns and mercurial revisions to policy drafts, the Privy Council officially granted the Royal Charter on Self-Regulation of the Press. In a last attempt to court industry approval, the government adopted the PressBoF proposal that any future amendments to the Charter would

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<sup>63</sup> *The Guardian*, ‘Parliament’s press Charter is a dead duck as publishers defy politicians’, 26 April 2013. See also <https://privycouncil.independent.gov.uk/royal-Charters/applying-for-a-royal-Charter/>

<sup>64</sup> *The Guardian*, ‘Press regulation: newspaper industry launched rival royal Charter’, 25 April 2013.

<sup>65</sup> For summary of ruling see DCMS letter to Clerk of the Privy Council, 8 October 2013.

also require the unanimous consent of the Board of the Recognition Panel. This did little to sway recalcitrant publishers, who mounted an eleventh-hour High Court challenge to block the Privy Council from bringing the Charter into effect. Industry lawyers claimed the government was “rollercoasting through” the process without fair consultation while PressBoF chair Lord Black said the Charter’s approval would have “enormous ramifications for free speech”.<sup>66</sup> Once the High Court rejected the challenge, the publishers then sought a Court of Appeal ruling, which was again rejected in May 2014.

It was not until November 2014 that the Press Recognition Panel (PRP), the recognition body constituted by the Royal Charter, was formally inaugurated to consider applications from prospective new press regulators. In that time the majority of national publishers had joined IPSO, the ‘Independent Press Standards Organisation’, which interim PCC chair Lord Hunt had begun creating in the immediate aftermath of the Leveson Report. IPSO operates a contract-based agreement with its member publishers, as originally proposed by the Hunt-Black plan and the IIG model presented during the post-Leveson negotiations. At time of writing IPSO regulates over 1,500 print newspapers including the majority of national titles,<sup>67</sup> however its funding body the Regulatory Funding Company (the rebranded successor to PressBoF) continues to embed commercial expediency and a paucity of editorial accountability at the heart of self-regulation. IPSO’s structures and powers satisfy just 12 of the 38 Leveson criteria that had dominated the intricate battles over Royal Charter detail. More importantly, IPSO has never sought formal recognition by the PRP, and the major publisher companies have maintained an uncompromising and vociferous opposition to the Royal Charter framework since the March 2013 cross-party settlement. “It’s an article of theology in the press,” IPSO’s

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<sup>66</sup> *Daily Express*, ‘Government-backed press regulation a step closer after court ruling’, 30 October 2012; *Daily Express*, ‘Legal review sought on press reform’, 30 October 2012.

<sup>67</sup> Notably the three outlets which appeared the most open to Leveson’s proposals, *The Guardian*, *The Independent* and *The Financial Times*, have not joined IPSO and instead operate their own internal regulatory procedures.



Chief Executive told an industry conference in 2015, “that they do not want to be part of a regulator that's covered by the Recognition Panel.”<sup>68</sup>

To date the PRP has officially recognised just one self-regulatory body, IMPRESS, which chiefly regulates hyper-local publishers and small news websites, and even this decision was challenged by anti-Leveson publishers and press freedom campaign groups. Critics attacked IMPRESS’s independence and its largest source of funding, the former Formula One chief Max Mosley.<sup>69</sup> The News Media Association, the rebranded publishers’ trade body, said IMPRESS did not merit recognition as “it is not representative of the press”, and further opposed its recognition on the basis that it would trigger the ‘carrot and stick’ legal changes agreed as part of the cross-party Charter deal.

Recognition of IMPRESS will not create an effective press regulator, but it will impose on 90 per cent of the newspaper and magazine industry who have joined an established self-regulatory body a system of penalties that was only ever intended to affect a recalcitrant minority. That would be a perverse outcome.<sup>70</sup>

As it happens, these fears were unfounded. The now-infamous Section 40 of the Crime and Courts Act was never brought into effect, and the framework set up by the Royal Charter is stranded in policy limbo. Nothing can enforce the regulatory criteria required by the PRP, yet there is no political will (or indeed the necessary parliamentary supermajority) for disbanding it. In March 2018, five years on from the cross-party agreement, the Conservative government declared it would repeal Section 40 following a rampant campaign by the press and a lethargic DCMS public consultation. In that same statement the Culture Secretary officially ended the Leveson Inquiry, claiming “we do not believe that reopening this costly and time consuming

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<sup>68</sup> *Press Gazette*, ‘Press regulator IPSO to commission external review to test independence and effectiveness’, 24 September 2015.

<sup>69</sup> Mosley has long been a *bête noir* of the national press, primarily because of his extensive and recurring legal battles with publishers beginning with a *NOTW* sex exposé in 2008.

<sup>70</sup> NMA submission to the Press Recognition Panel, March 2016.

public inquiry is the right way forward.”<sup>71</sup> Part two of the Inquiry, which would have investigated illegal practices and corruption at *NOTW* and the failed police investigations into phone hacking, may now never take place.

During the Leveson Inquiry, Leveson himself said he hoped the investigations would not be ignored and forgotten like the Royal Commissions and Reports of the past.

The one thing I am determined not to do is to produce a document which simply sits on the second shelf of a professor of journalism’s study for him to discuss with his students as yet another attempt that went nowhere.<sup>72</sup>

Fatefully this is precisely what has happened. IPSO is indistinguishable from the failed PCC it replaced, continuing the “pattern of cosmetic reform” that characterised all past interventions in press policy (Leveson, 2012b:1535). The system of industry-controlled self-regulation that allowed illegal and unethical practices at Britain’s biggest newspapers to go unchecked is effectively unchanged. With a new majority Conservative government led by one of the most outspoken anti-Leveson politicians, and following the resounding defeat of a Labour leader who actively rebuked the dominant right-wing publishing groups, this non-policy is unlikely to be challenged again anytime soon.

Returning to *Research Question (1)*, the post-Leveson debates reveal a great deal about the dynamics of power that are embedded in the structures, mechanisms and practices of British media policymaking. The institutional failures exposed by the phone hacking scandal and the Leveson Inquiry clearly defied ‘traditional’ methods of executive deliberation. Yet the reactive, frenetic and purposefully private backroom negotiations, organised between political elites, newspaper executives and a handful of campaigners, ensured that decision-making was still dominated by the same corporate press influence that pervades many of Britain’s democratic

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<sup>71</sup> HC Deb 1 March 2018, v. 636 c. 966.

<sup>72</sup> Leveson Inquiry hearing, 23 May 2012.

institutions. As for *Research Question (2)*, the informal structure of the post-Leveson processes—absent of any legal precedent or established practices—did allow a range of interests and stakeholders to intervene in unexpected ways as the topic or function of debate shifted. Hacked Off’s intimate lobbying in the chaotic aftermath of the Milly Dowler revelations focussed the Leveson Inquiry on regulatory reform. The Prime Minister’s formation of cross-party talks gave opposition parties an equitable role in the government’s Charter drafting. The solid bloc of pro-Leveson MPs in parliament consistently pressured the party leaders into adopting more of Leveson’s specific recommendations.

However, this does not mean that decisions on press policy were the results of a pluralist, balanced or representative political process. Rather, the formative decision by the Prime Minister to reject statutory implementation restricted the scope of the post-Leveson debates to the sole objective of the newspaper industry. Before any policymaker’s pen had even touched a draft document, all subsequent disagreements or revisions in policy were prescribed to a narrow range of potential solutions, while the overarching political dynamics of reform remained captured by elite industry interests. Whether the Leveson reforms posed a genuine threat to freedom of the press remains a subject of major (though only sometimes earnest) debate, but the post-Leveson debates from 2012 to 2014 were foremost a demonstration of how the entrenched influence of national newspaper publishers rendered political institutions completely powerless to change the failed system of self-regulation.

## **6. THE BBC CHARTER REVIEW**

The legal and constitutional foundation of the BBC as a public service broadcaster is its Royal Charter, which defines the Corporation's purposes, governance, the scope of its services and how these are regulated. The Charter also determines the relationship between the broadcaster and the government, specifying how the BBC is held accountable as a publicly-funded body while ensuring it maintains its essential political, editorial and creative independence. Each of the nine Charters granted to the BBC since its incorporation as a public body in 1927 has included an expiry date, specifying when a new Charter is required and therefore when government is likely to begin deliberating the BBC's future. This has established Charter renewal as a routine episode in British media policymaking, and Charter review is a product of history in its own right. New or evolving political dynamics and policy mechanisms have changed both the formal decision-making process and the BBC's role in UK media, such that the evolution of Charter review is emblematic of broader developments in British broadcasting policy and the dynamics of power that shape it.

In November 2016, following nearly two years of parliamentary inquiries, public consultations and negotiations with the BBC, the government finalised a renewed eleven-year Charter to continue the BBC until 2028. This new Charter brought about many significant changes from the previous Charter agreed in 2006. The BBC's two governing bodies were replaced with a single unitary board, while Ofcom took over regulation of BBC services and their market impact. At the core of the 2016 Charter is an all-encompassing requirement for 'distinctiveness', a term which throughout the renewal process had served as a rallying cry from both government and commercial broadcasters for a less expansive, more narrowly-focussed BBC and signified a fundamental redefinition of the political justifications for and social aims of public service broadcasting. The government's May 2016 White Paper

articulated distinctiveness as a radical departure from ideals of ‘universality’, and suggested that in order “to merit its special privileges and substantial public funding, the BBC needs to stand apart from other broadcasters, distinguishing itself from the market” (DCMS, 2016a:28). These debates, inexorably bound up in the fraught politics of the BBC’s independence, shaped many of the pivotal decisions of the 2016 Charter review which have determined how Britain’s largest and most important public media institution will operate over the next decade.

This chapter details the Charter renewal process in 2016, and analyses how the structure and substance of government decision-making was shaped over almost a decade of media scandals, political conflicts, public campaigns and corporate lobbying. Although the official practices of Charter review have developed over successive debates into a recognisable and established pattern, many of the formative moments and pivotal changes of BBC policymaking between 2007 and 2016 occurred in the margins of these quasi-legal processes. Central questions about the future of the BBC were framed through a combination of aggressive media coverage by its fiercest commercial opponents and the Conservative government’s ideologically-motivated policy objectives. Yet Charter review did not result in the death of the BBC or the abolition of its public funding, with a general sense of public and political esteem for this historic and uniquely British institution staving off more radical and destructive reform. The 2016 BBC Charter review is thus a rich case study of the paradoxical power dynamics between public participation and private elite influence over UK broadcast policymaking, and of how these battles changed the world’s largest public service broadcaster amongst accelerating changes and uncertain challenges for national and international media.

### **THE AGE OF PUBLIC VALUE – 2006 TO OCTOBER 2013**

The substantive process of government consultations and reports that led to the renewed 2016 BBC Charter officially started in 2015, yet the broader formation of the debates and issues

that defined these processes effectively began on 1 January 2007 with the commencement of the 2007-16 Charter period. The foundations of the 2016 Royal Charter started with the debates and decisions of its 2006 predecessor, with many of the dominant policy tensions of Charter review taking shape throughout this interim decade. This opening section details the salient policy changes implemented by the 2006 Charter and the political dynamics between the BBC and government from 2007 to 2016. Throughout this period the Corporation's political critics and commercial rivals attempted to reframe various public scandals involving the BBC as pressing issues of policy failure. These events helped to shape the proposals, values and range of actors engaged in the 2016 Charter review, and demonstrated how incipient conflicts in any policy process are percolated and defined long before the formal decision-making process has even begun.

#### *The 2006 Charter review*

The defining questions of Charter review in 2006 mirrored many of the same issues facing the BBC in 2016, including but not limited to

the willingness of licence fee payers to pay rising licence fees, concerns about programme quality and character, and concerns about the possibly adverse impact of a well-funded public sector incumbent on competitiveness, diversity and innovation in the broadcasting market as a whole. (Collins, 2007:168)

Two major events left a lasting impact on BBC policy during the 1997-2006 Charter period. The Communications Act 2003 shifted all regulation of broadcasting standards to the new 'super-regulator' Ofcom, laying the groundwork for governments to impose more and increasingly stringent market constraints on the BBC in the future (Doyle and Vick, 2005:82; Smith, 2006:936-7). Following a scathing feud with the Labour government over perceived bias in BBC coverage of the Iraq War (see Barnett, 2005:332-7), the 2004 Hutton Inquiry censured BBC management for failures in governance and editorial standards (2004:332). The

furor led to the unprecedented resignation of both the Director-General and the chair of the Board of Governors, marking one of the most significant political crises in the BBC's recent history. Just as regulation by Ofcom became the thin end of the wedge for greater market restrictions on the BBC's public services, the Hutton saga gave critics fresh ammunition to claim the BBC institutionally flawed and in need of swathing reform (Smith and Steemers, 2007:44).

Charter renewal in 2006 tracked the now-familiar pattern of consultations, government Papers and negotiation, and interviewees involved this recalled how the structure of decision-making put in place by Culture Secretary Tessa Jowell embodied the political approach of the New Labour government.

It was pretty clear from the way the process was set up, from the way she established the consultation, the people she had around her, to the general benign approach of the Labour Party and most Labour supporters towards the BBC, it was going to be a friendly settlement. (Interview 9)

This benign approach did not entirely protect the BBC from wide-ranging reforms. The government's March 2005 Green Paper combined the BBC's own policy vision, *Building Public Value* (BPV), with the recommendations of the government-appointed Charter review panel led by former Treasury economy Lord Burns. The Department for Culture, Media and Sport (DCMS) repeated the argument, voiced even more loudly since Hutton, that the role of the BBC Governors as judge and jury was "increasingly out of step with best corporate governance practice" (DCMS, 2005:6). Yet against the Burns Panel's proposals for an independent Public Service Broadcasting Commission (PBSC), the government resolved to create a new sovereign body *within* the BBC. The 'BBC Trust' would act as "a powerful advocate for the public interest, with ultimate power over the licence fee and the BBC", while

delivery of BBC services would belong to the formally constituted Executive Board (DCMS, 2005:8, 72).

Alongside the historic shakeup of corporate governance, the government's Green and White Papers (DCMS, 2005; 2006a) embraced 'public value' as the ethos for its reforms to the BBC's purpose and remit. First articulated by the BBC itself in *BPV*, the concept elaborated a new doctrine of public sector administration emphasising the public's "needs and aspirations rather than institutional or personal interests" (Collins, 2007:170, see also Moore, 1995 and Kelly et al., 2002). To provide greater accountability to licence fee payers' preferences, *BPV* proposed that every BBC service should contribute to at least one of five formalised Public Purposes: democratic value, cultural and creative value, educational value, social and community value, and global value (BBC, 2004:8). The renewed BBC Charter for 2007-2016 implemented these Public Purposes as the BBC's "main object" (DCMS, 2006c:2). Any new or substantially changed BBC service would face a Public Value Test, conducted by the BBC Trust, and a market impact assessment by Ofcom before approval. As Freedman noted shortly after their introduction, this shift to a quantitative, empirical approach for regulating the BBC's services "will generate enormous amounts of data ... that are far better suited to an understanding of broadcasting as a straightforward economic, rather than a complex social and cultural, practice" (2008:157).

Charter review in 2006 thus implemented a new theory of public service broadcasting that took the BBC's Reithian foundations—to inform, educate and entertain—and reconstituted them as measurable criteria within an increasingly marketised regulatory culture. *BPV* embodied the BBC's paradoxical influence on Charter review, representing both "the organisation's pre-emptive strike" (Oakley et al., 2006:4) and a high-minded manifesto "in its own defence and to secure its future" (Collins, 2007:165). Indeed in relation to *Research Question (4)*, these corporate maneuverers provide a useful demonstration of the power



relations between the BBC, its own policymaking processes and government. Anticipating aggressive government reform cheered on by its commercial rivals, the BBC offered to fundamentally reinvent itself yet ultimately ended up accepting a new Royal Charter that significantly diminished its status as a public institution. Coupled with a below-inflation licence fee settlement in 2007, the 2006 Charter heralded a new political pattern of ritual self-flagellation that defined the BBC's dealings with government, both throughout the renewed Charter period and during the 2016 review process.

### *The politics of licence fee settlements*

The value of the licence fee, the BBC's primary source of funding, has historically been negotiated outside the cycle of Charter review debates. However, renewed funding deals in January 2007 and October 2010 coloured the backdrop to the 2016 Charter review in two ways. First, these agreements intensified the trend of 'ring-fencing' and 'top-slicing' licence fee revenue to pay for government spending commitments. The 2007 deal introduced additional costs to the BBC including implementing the analogue-to-digital TV switchover, which created a funding gap of "around £2bn over the next six years".<sup>73</sup> The 2010 settlement froze the licence fee at £145.50 until 2017 (amounting to a 16 per cent cut in the total BBC budget) while expanding the ring-fenced digital switchover fund to pay for the national broadband infrastructure, shifting over £340m of public spending from the Treasury book's and onto the BBC's. Both of these settlements squeezed the Corporation's cash flow, forcing it to prioritise some activities over others and fuelling criticism about how the BBC spends licence fee payers' money.

Second, these deals were reached through secretive bartering, fierce confrontation and last-minute concessions, epitomised by the October 2010 licence fee settlement conducted as

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<sup>73</sup> BBC press release, 18 January 2007.

part of the Coalition government's extensive public sector spending review. The Culture Secretary announced the government's intention to shift the £556m cost of free over-75s TV licences (paid for by the Department for Work and Pensions since 1999) to the BBC. BBC negotiators responded that the plan was "unacceptable in principle" and would "transfer an uncapped liability for a Government welfare scheme to the licence fee payer",<sup>74</sup> offering instead to absorb the costs of the World Service and the Welsh-language broadcaster S4C (then paid by the Foreign Office and DCMS respectively) in exchange for a fully renewed licence fee deal. As the government dug in its heels, the BBC braced for a standoff. Members of the Trust prepared to publicly oppose the forced costs, and even threatened to resign en masse if the government imposed a deal without the BBC's consent.

This brinkmanship is all the more extraordinary given the costly liabilities the BBC eventually accepted, which the Director-General strangely welcomed as "a realistic deal in exceptional circumstances securing a strong independent BBC for the next six years".<sup>75</sup> After "all-night horse-trading" with government ministers (Snoddy, 2015:23), and without any consultation or public scrutiny, the BBC had conceded a raft of new costs to prevent one massive financial shock. Regardless of whether negotiations favoured the BBC or the Treasury, the deal incurred a considerable reduction in the BBC's financial independence and, as the CMS Select Committee summarised, presented the BBC as "little different to a Government department or agency" (2011:14). This erratic and decidedly undemocratic process is emblematic of the power imbalance between the BBC and government during funding settlements, and these brief but intense skirmishes created a precedent for how the protracted battles of Charter renewal would unfold in 2016.

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<sup>74</sup> Letter from Chairman of the BBC Trust to the Prime Minister, 17 October 2010.

<sup>75</sup> BBC Press Release, 20 October 2010.

### The BBC under fire

Just as the Hutton Inquiry set the tone for Charter renewal in 2006, between 2010 and 2013 the BBC was beset with crises that defined the core policy questions of the 2016 Charter review. Following revelations of endemic sexual abuse by the deceased BBC presenter Jimmy Savile, the BBC brought further criticism after editors cancelled a 2011 *Newsnight* investigation into the “cesspit” culture of ignored accusations and talent impunity.<sup>76</sup> Then in May 2013 the BBC abandoned its £100m Digital Media Initiative (DMI) for transitioning video and audio material to a bespoke digital archive. The Director-General admitted that DMI had “wasted a huge amount of licence fee payers’ money”,<sup>77</sup> and parliament’s Public Accounts Committee attacked the BBC Trust for “a culture of complacency” in its oversight and scrutiny of large projects (2014:3).

The BBC attracted more political scorn after its efforts to shrink senior management were revealed to have cost more than £25m in severance payments. “Weak governance arrangements,” the National Audit Office concluded, had “led to payments that exceeded contractual obligations and put public trust at risk” (2013:9). Briefings and correspondence between executives revealed the chaotic, opaque lines of accountability between the Trust and BBC Executive, and acrimonious testimony from BBC bosses at the Public Accounts Committee cemented popular perceptions that the BBC was overly hierarchical, stolid and remote.<sup>78</sup>

The dominant interpretations of Savile-*Newsnight*, DMI and the staff severance scandals as failures of *policy* were primarily driven by newspapers with consistently anti-BBC

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<sup>76</sup> *Daily Mirror*, ‘BBC axe investigation into Sir Jimmy Savile and schoolgirls’, 8 Jan 2012. Lord Patten speech to the Broadcasting Press Guild, 12 October 2012. See also blog post explaining *Newsnight*’s decision-making by programme editor Peter Rippon, 2 October 2012.

<sup>77</sup> BBC press release, 24 May 2013.

<sup>78</sup> See PAC oral evidence, 9 September 2013 (Q 412, HC 476-ii:48).

editorial lines. An established set of backbench Conservative MPs used the thick atmosphere of outrage to reassert their enduring demand for reform:

There is only one way to change the culture at the BBC; abolish the licence fee. If the BBC had to strive and stretch for every subscription, it would soon learn to be more careful with other people's money.<sup>79</sup>

Even figures in government hinted at across-the-board reform of the BBC, with one DCMS source quoted saying “it is clear that the Trust, which is both a cheerleader for the BBC and its regulator, does not work.”<sup>80</sup> The role of scandal and political furore is not new to the Charter review process. But these events are nonetheless useful for demonstrating how, even though formal BBC decision-making takes place through recognised official mechanisms, the foundations and justifications for these are defined through deeply political interpretations in which the agenda-setting power of elite media institutions plays a determining role.

### **CROWDING OUT AND CAVING IN – OCTOBER 2013 TO JULY 2015**

As the end of the 2007-16 Charter period drew closer, political and media attention turned to forthcoming BBC Charter renewal. The CMS Select Committee’s extensive inquiry on the defining issues of Charter review produced the first official articulation of BBC policy issues and laid the foundations for the government’s subsequent proposals. As this inquiry unfurled, the BBC instigated a number of pre-emptive reforms while continuing to wrestle with the Trust’s strained cheerleader-regulator responsibilities. The looming 2015 general election pulled the political realities of Charter review into the open, with the Conservative Party’s attacks on perceived news bias and barely-veiled threats of policy retribution further souring its already irritable relationship with the BBC. The emerging policy agenda focussed on four

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<sup>79</sup> Douglas Carswell MP in *Daily Telegraph*, ‘Wasteful, self-serving and cumbersome. The only way to change the BBC is to scrap the licence fee’, 27 August 2013.

<sup>80</sup> *Independent*, ‘Patten to fight for job as MPs weight BBC Trust’s future’, 9 September 2013.

main areas that comprised the substantive detail of the Royal Charter: governance and regulation of the BBC; the BBC's purposes and values; the scale and scope of the BBC's services; and funding. Though previous Charter debates have always covered these topics, its most hostile critics persistently asserted the BBC's recent corporate failings as existential challenges to the public service broadcasting ideals that have historically structured these as policy criteria.

### *'The future of the BBC'*

Launched in October 2013, the CMS Committee's 'Future of the BBC' inquiry eschewed a forensic post-mortem of the on-going scandals in favour of a more wide-ranging review of BBC policy. Over 120 organisations and individuals submitted written evidence, and the Committee held in-depth hearings with senior BBC figures, commercial media executives, industry and audience associations, academics and commentators. This apparent plurality supports the notion that Select Committees serve as important bodies for involving multiple interests and groups in policy deliberation, gathering evidence, and fostering public debate, all of which help to inform the parliamentary policymaking process (Russell and Gover, 2017:228-9).

Yet the institutional politics of these inquiries can also limit deliberations, particularly through Committee members' own policy preferences and their influence on how witnesses and evidence are selected. This directorial steering was especially evident during the Future of the BBC inquiry under the chairmanship of Conservative MP John Whittingdale. One interviewee, who had both advised and testified to previous CMS inquiries, recalled how the Committee's focus appeared predetermined by Whittingdale's own views on the BBC.

I did feel that they were sort of going through the motions. In Commons Select Committees it is a matter of what the Chair wants, and to what extent he or she is going to be prepared to compromise on the back of the other Committee members. (Interview 9)

Whittingdale—a staunch opponent of the licence fee, which he described as a regressive and compulsory “stealth poll tax”<sup>81</sup>—opened the CMS inquiry with a litany of pro-market arguments against the BBC’s dominance of UK broadcasting. In his view “the explosion in the past few years in the number of different content outlets” meant that debates on the BBC’s future needed to consider “what the BBC should be doing—and, indeed, *what it should no longer be doing*—in this new environment.”<sup>82</sup>

In a further show of sensitivity to commercial media interests, the Committee appointed BSkyB’s former director of public affairs, Ray Gallagher, as a specialist advisor to its BBC inquiry. Gallagher’s appointment represented a major success for BSkyB’s lobbying efforts, one of many examples of the Murdoch-run company ingratiating itself with pivotal politicians and cementing its interests at the core of broadcasting policy debates (Davies, 2014:225). Yet the formation of the CMS Committee’s inquiry also shows the degree of political correspondence between commercial media interests and elite policymaking actors. Both groups conceptualise the purpose and objectives of media policymaking as exercises of industrial management benefitting from the input and expertise of industry executives, rather than as fundamental on-going examinations into the social and cultural role of media institutions in public life.

Commercial media groups’ submissions to the inquiry repeated many of the same arguments for reining in the BBC’s market share as Whittingdale had espoused, and

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<sup>81</sup> HC Deb 21 June 2006, v. 447 c. 1353.

<sup>82</sup> HC Deb 21 October 2013, v. 569 c. 61. My emphasis.

demonstrate, in the vein of *Research Question (3)*, the significance of language and policy values as a form of power resource in policymaking. Global Radio, the UK's largest commercial radio broadcaster, claimed that "far too often the BBC strays into areas where the private sector is already operating and serving consumers" (2013:2). ITV argued that in order to justify the privilege of public funding the BBC "must deliver services and programme genres that the market will not deliver" (2013:2). Even on the often dry topic of governance, these groups blamed the overlap between BBC oversight and management for the expansion of BBC services into market 'territory'. Commercial broadcasters criticised the BBC Trust setting the BBC's strategy while regulating its market impact; in a telling admission of priorities, BSkyB's director of policy complained of "a situation where the Public Value Tests are not transparent and where public value trumps market impact every time."<sup>83</sup>

These appeals for a 'market gap' policy of Charter renewal were not left unchallenged. Supporters of the BBC as a universal public service broadcaster, such as Voice of the Listener and Viewer (VLV) and the NUJ, argued forcefully for retaining BBC services "characterised by equity and excellence and delivered to wide range of audiences" (VLV, 2013:4). Media researchers and academics submitted market analysis indicating that "well-funded PSB supplied at scale does not 'crowd out' commercial expenditure on programming, but serves UK audiences and the UK economy by contributing to a 'virtuous' cycle of investment and competition" (Enders Analysis, 2013:1).

Many of the arguments in favour of the BBC's existing scale and scope were, however, subsumed within the broader perception that the Corporation had become bloated and unresponsive. In its February 2015 report the Select Committee recommended abolishing the BBC Trust—"far too protective of the BBC as an institution, rather than acting as an effective

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<sup>83</sup> CMS Select Committee oral evidence, 17 June 2014. HC 315 Q388.

and objective regulator” (2015:124)—and establishing a unitary board overseen by an independent ‘Public Service Broadcasting Commission’ (as the Burns Panel had recommended in 2006). Whittingdale told the Commons that the Committee had been “unconvinced by the argument that it [the BBC] should continue to try to provide something for everyone”,<sup>84</sup> and the report proposed lowering the threshold for triggering Public Value Tests “where there is prima facie evidence of the BBC crowding out others’ endeavours and having an adverse market impact” (2015:118-9). Although the Committee endorsed retaining the regulatory mechanisms introduced by the 2006 Charter—PVTs, the Public Purposes and service licences—its report advocated reforming these to promote a competitive and uninhibited media market, just as commercial broadcasters had proposed.

The ‘Future of the BBC’ report did include some comparatively progressive recommendations such as criticising the government and the BBC for their 2010 licence fee negotiations and arguing that in future “the process must be open and transparent, licence fee payers must be consulted and Parliament should have an opportunity to debate the level of funding being set” (2015:123). However, the wider political dynamics of the CMS inquiry suggest that it reached its findings in a less open and pluralistic manner than the Committee expected of others. Throughout its deliberations and evidence-gathering, the Committee accepted the premise that increased audience choice and rapid technological change were *a priori* justifications for a less ‘universal’ BBC. The report thus marginalised pro-universal arguments in the subsequent debates, and positioned the commercial media industry’s preferred ‘market gap’ model for the BBC at the centre of the Charter review policy agenda. As one academic commentator remarked,

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<sup>84</sup> HC Deb 26 February 2015, v. 593 c. 498.



the ultimate aim of this Report appears to be a smaller, poorer, less publicly attuned BBC filling in the market gaps, rather than a thriving and dynamic institution which serves its audiences and operates in the public interest.<sup>85</sup>

### *Pre-emptive reform*

The BBC made numerous changes to both its broadcasting services and internal organisation in the final years of the 2007-2016 Charter period. A joint review by the Executive and Trust attempted to better distinguish the roles of the two governing bodies (2013:6), while the Executive implemented new rules on fiscal prudence after the NAO laid bare the public cost of the DMI failure (NAO, 2014a; 2014b) In March 2014 the BBC Executive proposed cutting costs for its BBC Three channel (aimed at 16 to 34-year-olds) by reorganising it as an online-only service. Despite a campaign to ‘Save BBC Three’ attracting over 300,000 signatures, the Trust approved a Public Value Test of the move claiming “the long-term future of broadcasting seems likely to be online and the BBC needs to find innovative ways to support the audience move in that direction” (BBC Trust, 2015b:4). Genuine public engagement was notably absent from these efforts at reflexivity and adapting public service broadcasting to new challenges.

The BBC’s institutional autonomy and its reaction to scrutiny intersected even more starkly in 2014 and early 2015, as senior executives began articulating their own Charter review agenda. Many of these appeals tacitly accepted the view that the BBC needed to limit its activities where they encroached on market competition. In a July 2014 speech titled ‘Compete or Compare’, the BBC’s Director-General Tony Hall proposed removing the ‘in-house’ and independent production quotas, replacing ‘managed competition’ in BBC commissioning with “a true level playing-field”. Pact, the independent producers association, and the BBC

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<sup>85</sup> Steve Barnett in The Conversation (online), ‘Future of the BBC should not be left to this committee of MPs’, 26 February 2015.

Executive issued a joint statement outlining a new commercial subsidy, ‘BBC Studios’, which would “bring substantial benefits in terms of opening up new commissioning opportunities to competition”. The new Chair of the Trust, Rona Fairhead, similarly signalled that the BBC had accepted an inevitable total overhaul of its governance structure, describing the CMS Committee’s proposals for external regulation as “the front-runner” approach.<sup>86</sup>

These statements and speeches from senior BBC figures suggest something of a double-edged nature to the Corporation’s influence and role during the preliminary stages of Charter review. On the one hand, decisions on creative output, institutional procedures and public engagement formed the “continuous process” (Hill and Varone, 2017:239) of implementing the policy framework set by the 2006 Charter and making changes where required to reflect the evolving political, technological and social contexts of British media. On the other hand, the BBC as a policy actor is not value-neutral, and its pre-emptive reforms were guided as much by political tactics as by organisational imperative.

Within the BBC’s numerous reviews, reports and public statements in this period, there are recurring references to enhancing the ‘distinctiveness’ of BBC services and the overarching need to “offer something distinctive from commercial networks” (BBC, 2013). This became an almost talismanic rationale for how the BBC operated between 2013 and 2015, and the term would later be assimilated as the Conservative government’s guiding policy narrative during Charter review (see Chapter 7). Much like the notion of ‘anticipated reactions’ (Bachrach and Baratz, 1963:635; Lukes, 2005:45), the BBC acceded to elements of the market gap argument in order to deter some of the government’s more extreme Charter review proposals. Although the BBC had a critical role in constructing the political agenda of the 2016 Charter review, its own nascent attempts at steering this agenda in a favourable direction were clearly aimed at

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<sup>86</sup> Speech to the Oxford Media Convention, 4 March 2015.

mitigating the policy implications of anti-BBC critiques rather than actively opposing the free market politics of broadcasting they entailed. Changes to BBC services and prospective policy announcements in this pre-Charter period corresponded directly with the criticisms levelled against the Corporation by its rivals, suggesting in relation to *Research Question (2)* and *(3)* that the extent of BBC influence over its own policy debates is drastically curtailed by the deeper prevalence of commercial media logic in broadcast policymaking.

### *The government goes to war*

In July 2015 the government published a Green Paper as its first major contribution to Charter review, yet the Conservative Party's political strategy for Charter renewal had been evolving long before this official consultation process was set in motion. In May 2014 the Culture Secretary Sajid Javid announced that the government would not begin the review until after the general election in a year's time. This delay reflected the political custom of distancing Charter renewal from election cycles, supposedly to inoculate the BBC against political pressure and allow it to report freely as the parties vie for power.

Persistent criticisms of BBC election coverage throughout the campaigning period, along with veiled threats of policy retribution from Conservative politicians (eagerly reported by right-wing newspapers), suggest that any such high-minded support for BBC independence was short-lived. The BBC's handling of its TV leaders debates, in particular the prospect that the Prime Minister would be 'empty-chaired' if he decided not to attend, was seized on as evidence that the BBC had "abandoned all attempts to conceal its left-wing bias."<sup>87</sup> Conservative MPs frequently attacked what they perceived as the BBC's "appalling left-wing bias" in its election coverage,<sup>88</sup> with one arguing "you only have to consider a range of topics such as climate change, the EU and immigration to see that the BBC treats those who have

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<sup>87</sup> *Daily Mail*, 'Auntie's true colours', 9 March 2015.

<sup>88</sup> *The Sun*, 'Tories: We'll sort out left-wing bias', 26 April 2015.

concerns about such issues with an institutional disdain”.<sup>89</sup> Emboldened by the Conservative Party’s unexpected election victory on 7 May, the Prime Minister appointed John Whittingdale as the new Culture Secretary with an explicit instruction to “sort out the BBC”.<sup>90</sup> The first decisive battle of pre-Charter review conflict erupted soon after when, a week before the government’s Summer Budget, Whittingdale informed the Director-General that the BBC would be required to bear the cost of free TV licences for the over-75s.

Much like when this was first floated in 2010, the Culture Secretary justified the BBC shouldering additional costs as part of the government’s broader austerity agenda, or “what we need to do as a country to get our house in order”.<sup>91</sup> Unlike 2010, however, this was an imposition and not a proposal. “Perhaps learning from the dramatic brinkmanship of five years earlier,” Snoddy suggests, the government “made it clear there was no room for the BBC to negotiate on the principle” (2015:20). Through private meetings and phone calls in the few days before the Budget, BBC executives extracted a handful of compensations from the Treasury: an index-linked rise in the licence fee; the release of the broadband ring-fence fund; phasing in the cost of paying for over-75s concessions over three years from 2018; and closing the ‘iPlayer loophole’ that allowed viewers to access on-demand BBC content without a television licence.

The government made clear, however, that these mitigations were dependent on assessment of the BBC’s purpose and scope, severing the supposed distinction between the fiscal trade-offs of licence fee settlements and the political negotiations of Charter review. The BBC Trust had “put the government off” imposing drastic cuts in BBC funding in 2010, but “only until the next time” (Snoddy, 2015:26). The Director-General again welcomed the 2015

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<sup>89</sup> *Daily Telegraph*, ‘Why I am going to war with the BBC’, 21 March 2015.

<sup>90</sup> *Daily Telegraph*, ‘Tories go to war with BBC’, 11 May 2015.

<sup>91</sup> *Daily Telegraph*, ‘BBC must help shoulder cuts burden, Osbourne says’, 6 July 2015.

settlement as “the right deal for the BBC in difficult economic times”, but in letters to ministers the Chair of the BBC Trust lamented “the process by which it has been reached”. Labour’s Shadow Culture Secretary condemned the “smash-and-grab raid on the BBC”<sup>92</sup> while former Director-General and crossbench peer John Birt castigated the pattern of

opportunistic, expedient and unprincipled diktats issued to the BBC in the dead of night, a pistol to its head, absent any democratic debate—diktats that have sidelined the licence fee payers, the trust that represents them, the department concerned and Parliament itself.<sup>93</sup>

Snoddy’s account of negotiations—complete with ministers’ flimsy assurances, sudden changes of heart and despondent BBC executives—hints at a fatal imbalance in the BBC’s relationship with government. A policy expert for one of Charter review’s central stakeholder groups also recalled how the settlement defied even the Culture Secretary’s own expectations for licence fee negotiations.

It grates to this day and shows how realpolitik can change everything. John Whittingdale in his Select Committee report said no more licence fee negotiations should be held behind closed doors as it was in 2010. Well, draw your conclusions from that! The findings of the report might as well have been a complete waste of paper. A chair of a Select Committee makes recommendations, then becomes Secretary of State and doesn’t follow up on it. (Interview 11)

Another interviewee argued that BBC executives surrendered to a second, even more damaging back-room deal because they were faced with a fervently ideological Culture Secretary and the mass of hostile press reports on waste, bias and bloat.

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<sup>92</sup> HC Deb 6 July 2015, v. 598 c. 26.

<sup>93</sup> HL Deb 14 July 2015, v. 764 c. 525.

The BBC was in a very vulnerable position and felt itself to be in a very vulnerable position. I think it played its cards very badly but there is a sort of a ritual dance about it, this sort of *pas de deux*. It's become more government-led over the last couple of funding negotiations, but the BBC may have felt they had no choice. (Interview 9)

The 2015 settlement thus demonstrated a critical weakness in the BBC's independence and its ability to defend its public service interests against outside threats. The deal left the Corporation in an even more compromised position, just as the real battle for its future was beginning, and the over-75s concession has kept the BBC in a crushing financial and political vice grip to this day.

### **THE LARGEST EVER PUBLIC CONSULTATION – JULY 2015 TO MAY 2016**

The government formalised its BBC reform package in its May 2016 White Paper (DCMS, 2016a). This pivotal document was itself the product of a ten-month process comprising the full arsenal of formalised Charter review practices: an extensive public consultation on the government's Green Paper (DCMS, 2015); a parallel public consultation by the BBC Trust on the BBC Executive's Charter manifesto; a flurry of independent studies commissioned by both DCMS and the BBC; an expert advisory panel conducting research and stakeholder engagement; and frequent private negotiations with both BBC executives and lobbyists from the wider broadcasting industry.

At first glance this was an exhaustively comprehensive evidence-led exercise, inviting the full plurality of public and private interests to forge the future of public service broadcasting. However, the popular impression of open and consultative policymaking (regularly celebrated by the Culture Secretary) obscures the constraints, conflicts and biases built into the government's actual methods of decision-making. Far from entailing a simple set of unambiguous 'issues' to be untangled and 'solved', the dominant questions and official

procedures of Charter renewal in 2016 largely reinforced the aims and grievances of the BBC's political and commercial opponents.

### Public consultations and the Green Paper agenda

The DCMS Green Paper structured its public consultation around 19 thematic questions (2015:22-3), many of which presupposed reforming the BBC as a 'market gap' public service broadcaster. Press reports ahead of its publication hinted at a "root-and-branch" evaluation of the BBC's entire operations: the government would, according to 'DCMS sources', call for the BBC to "stop chasing viewers" in competition with ITV's primetime Saturday programming, with popular BBC shows like *Strictly Come Dancing* and *The Voice* targeted as "the first that should go".<sup>94</sup> The Green Paper was not so overtly extreme, but nonetheless framed its evaluation of the BBC around commercial concerns:

Q4. Is the expansion of the BBC's services justified in the context of increased choice for consumers? Is the BBC crowding out commercial competition and, if so, is this justified?

Q9. Is the BBC's content sufficiently high quality and distinctive from that of other broadcasters? What reforms could improve it?

The inference throughout was that the government had already decided on what changes *should* be implemented in Charter review, emphasising a competitive market over any notion that the BBC could maintain its current scale (let alone do more). Although the BBC itself had previously acceded to many of the Green Paper's suggested areas for reform, the Corporation nonetheless cautioned that the uncompromising tone of the Green Paper seemed to "herald a much diminished, less popular BBC."<sup>95</sup>

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<sup>94</sup> *The Sunday Times*, 'Tories give BBC reform ultimatum', 12 July 2015; *Daily Express*, 'BBC impartiality under MP scrutiny as corp told 'scrap The Voice and licence fee'', 12 July 2015.

<sup>95</sup> BBC press release, 16 July 2015.

By the end of its twelve-week submission period the Green Paper had garnered over 192,000 responses, accounting for what the government described as “one of the largest ever public consultations” (DCMS, 2016a:6). This unprecedented volume of interest reflects the sheer breadth of media policy issues swept up in the gravity of Charter review. Yet within this diverse corpus of proposals from commercial media, civil society groups, campaigners and numerous other stakeholders, there are two distinct and conflicting accounts for reforming the BBC’s governance, purposes, scale and funding.

Commercial broadcasters asserted the same ‘market gap’ theory of public service broadcasting that BBC critics had promulgated throughout the preceding Charter period. ITV recommended that the next Charter should include “an explicit obligation” on the BBC to offer “only services and content which is innovative and distinctive from that provided by the market” (2015:17). Sky, ITV and the Commercial Broadcasters Association (COBA) all favoured transferring regulation of the BBC to Ofcom, emphasising “limiting market impact” as a central criteria for approving and assessing BBC services (ITV, 2015:46). On Public Value Tests, the instrument of choice for holding back the BBC’s encroachment into commercial territory, COBA supported a “rebalanced” regime “to minimise the risk of negative market impact” (2015:15) while Sky argued that BBC services that entailed any lessening of competition should be rejected “irrespective of any claimed ‘public value’” (2015:17). Rather than shrinking BBC services by directly reducing or replacing its public funding, commercial rivals instead recommended stringent regulatory and structural constraints, confining the BBC’s output to a niche of ‘distinctive’ services that would not compete with those offered by the market.

In contrast, submissions from advocacy groups and smaller industry stakeholders broadly supported sustaining the BBC’s public service offer. Pact suggested that the BBC’s expansion was not “excessive given the cost of the licence fee” and, “with regards to television,



the BBC's current footprint improves viewer choice" (2015:13). VLV pointed to the economic benefits of a large public broadcaster, which do not

impede the commercial market or growth, [but] actually enhances it by building the overall size and skills in the market, giving it global scale and attracting inward investment. (VLV, 2015:4)

Whereas commercial broadcasters highlighted drama, entertainment and comedy as crowded genres, for Pact these formed "part of this country's cultural heritage" that suited the public service aims of the BBC (2015:10). VLV similarly proclaimed the benefits of a universal BBC, holding that "the provision of high quality services for all homes should remain a high public policy priority for reasons of social equity, cultural cohesion and educational development" (2015:15). Ranging from pragmatic and cautious to loyal defences of the BBC as a cultural and democratic institution, these submissions argued that, as the campaign group Save Our BBC colourfully summarised it, "the BBC and PSB are for citizens and about citizenship. Broadcasting is a civil and societal service, not equivalent to a can of beans" (2015).

The BBC Executive's submission to the Green Paper consultation, *British, Bold, Creative*, laid out a determined case for the BBC's wide-ranging social goals that retain "widespread public support" (2015c:9), yet its recommendations still associated these goals with an increasingly marketised mode of public service broadcasting. On governance, the BBC Executive supported replacing the existing dual model with a unitary board, accepting as a corollary "the move to external regulation" (BBC, 2015c:89) that its commercial rivals had long lobbied for. On scale and scope the Executive strongly refuted the 'crowding out' hypothesis, and suggested that the test of the BBC's output should be that "*the range of programmes in a BBC service* should be clearly distinguishable from its commercial competitors" (BBC, 2015a:24, my emphasis). This is a subtle though significant difference from proposals by ITV and Sky that *all BBC content and programmes* should be distinct from

its competitors, but the Executive nonetheless adopted distinctiveness from the market as the central evaluative criteria for regulating the BBC.

The centrepiece of *British, Bold, Creative* was an expanded proposal for BBC Studios, which included the scrapping of the 50 per cent in-house commissioning guarantee. As a response to the increasingly global production sector, these reforms would supposedly “drive creativity and value for money for audiences and licence fee payers by promoting competition within the supply base” (2015b:19). BBC Studios received a mixed response, with production companies and other stakeholder groups raising concerns about the new venture having an unfair advantage in BBC commissioning or breaching EU state aid law. Yet the proposals also epitomised a latent acceptance of competitors’ criticisms about the BBC and its position in the market. *British, Bold, Creative* celebrated the BBC’s underlying social and culture aims, but framed these within a policy agenda that prioritised distinctiveness, value for money and minimal competition with the market. This tallies closely with D’Arma’s analysis of these BBC ‘Charter manifestos’ (2018:220-3) and, as per *Research Question (3)*, reveals the intimate role of ideology in steering the language of policy debate. These documents have given the Corporation a central role in interpreting the core issues of Charter reviews, yet have also successively shifted the BBC’s articulation of its own purpose further and further into neo-liberal discourses of economic growth and unrestrained commercial competition.

The BBC Trust ran its own parallel consultation, titled *Tomorrow’s BBC*, reflecting the Trust’s foundational duty to represent licence fee payers’ interests and give the public “a central voice in the process of Charter Review” (BBC Trust, 2015a:6). Several interviewees pointed out the irony of the Trust inquiring on the future of the BBC while facing certain abolition, but nonetheless saw it as having an important role:

It was three-pronged. The Trust were saying “we’ve got a job to do, here we are”, it was also pushing back against the government’s agenda, but it was also a genuine attempt to canvass public opinion. (Interview 9)

Holding public seminars across the country and collecting a further 40,000 public responses, the *Tomorrow’s BBC* report opened by noting “an extraordinary degree of popular support for a BBC that remains independent and universal”, adding that 56 per cent of responses “want the BBC to provide more” while 60 per cent said the BBC’s content was already distinctive (2015c:1).

The Trust’s response to the Green Paper also opposed the solidifying definition of distinctiveness, and rejected the notion that the BBC’s market impact is solely negative. It instead championed the wider economic benefits of public service broadcasting at scale, and asserted that any new scheme of regulation for the BBC “should be different from those applied to its commercial competitors” (2015c:53). The Trust called for a series of further measures to protect the BBC’s independence from government, particularly during licence fee negotiations which “should include opportunity for input from licence fee payers and proper democratic scrutiny” (BBC Trust, 2015c:39).

From these numerous tracts of debate it appears as though the Green Paper consultation provided a multi-faceted space for public and stakeholder engagement in the policymaking process. Yet the government did not appear to incorporate the mass response (and the conflicting views within it) into its decision-making in a comparably pluralist way. The DCMS’s consultation summary, published in March 2016, quantified the general sentiments of thousands of individual public responses but gave far greater prominence to arguments that reinforced the policy ‘problems’ inferred by the Green Paper. The summary noted that 66 per cent of responses felt the BBC had a positive market impact, yet distilled these responses to market gap benefits such as how the BBC “pioneers and kick-starts services that commercial

providers would find it difficult to lead” (DCMS, 2016b:12). Although just three per cent of responses said that the BBC has a negative market impact, DCMS devoted two full pages to showcasing complaints from rival media organisations about over-extended BBC services undermining commercial competition (2016b:12-14).

This predisposition to conservative, pro-market ideals is evident not only in the government’s unequal evaluation of responses, but also in its treatment of different types of submissions and respondents. In early 2016 the Culture Secretary stated that over 90 per cent of the 190,000 submissions had been sent via the online campaign platform 38 Degrees, which had encouraged the public to oppose the Green Paper’s “plans to rip out of the heart of the BBC”<sup>96</sup>. Whittingdale told the Commons that the scale of 38 Degrees-inspired input

does not mean they are not valid expressions of opinion; it just means that *perhaps they are not wholly representative of public opinion at large*.<sup>97</sup>

In one sentence the Culture Secretary revealed the self-defeating logic that pervades attempts by elite policymaking institutions to demonstrate public involvement in decision-making. At best, public opinion is little more than an accessory to supposedly more considered, ‘expert’ testimony. At worst, it obscures the ‘true’ consensus policymakers are searching for when they open up their policy formulation to general engagement (Freedman, 2008:102-4).

Shortly after the DCMS published its Green Paper summary, the *Radio Times* magazine alleged that Department officials had never requested the password to unlock the encrypted USB drive containing 6,000 readers’ consultation responses. A DCMS spokesman reiterated the government’s commitment that all responses “will feed into the process”<sup>98</sup>, but the

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<sup>96</sup> 38 Degrees blog, ‘Have your say on the future of the BBC’, 2 September 2015.

<sup>97</sup> HC Deb 21 January 2016, v. 604 c. 1536. My emphasis.

<sup>98</sup> *Press Gazette*, ‘DCMS did not open memory stick containing 6,000 BBC consultation responses from Radio Times readers’, March 15 2016.

omission—whether a result of in-built bias or unfortunate accident—further compounds the impression of policymakers’ dismissive attitude to public input.

I think there are holes in the process. They were completely overwhelmed at the DCMS but they were caught out by that Radio Times dongle. We had to put quite a lot of pressure on them to release the summary of responses, but I think they were hoping to get away with not doing that, just drafting the Charter and saying “it reflects the public’s view”. (Interview 11)

This raises a significant matter in relation to *Research Question (1)* and how the structure of policymaking is both produced by and reproduces an imbalance of power and status between different actors and interests. The Green Paper framed the consultation questions around the government’s preferred policy outcome and, despite its creditable pluralist aims and the avalanche of diverse submissions it received, the government’s partial handling of these responses suggests that this mass participatory policymaking exercise would always attach greater value to like-minded commercial concerns at the expense of a genuine consideration of active public input.

#### *Expertise, economics and ‘independent’ reports*

It is perhaps unsurprising, given the questionable purpose of the Green Paper consultation, that both the BBC and DCMS commissioned numerous reports and studies to bolster their respective policy arguments. Indeed descriptions of these reports appear to elevate their supposedly apolitical, expert contributions above the noise and unreliability of public opinion. Despite being ostensibly an exercise in *public* evidence gathering, the Green Paper stated “there are also some areas where studies, reviews and research are needed to add technical expertise and independence from Government” (2015:17). Following the mass response from 38 Degrees members, DCMS sources were quoted saying the government would

“*in the interest of balance ... conduct further polling research and focus group studies*”.<sup>99</sup> These are of course laudable aims central to ideals of evidence-based policymaking, yet these reviews fulfilled a more directly partisan objective of lending empirical authenticity to certain political claims while disputing or discrediting contrary proposals.

Research by GfK, one of the world’s largest polling companies, duly produced useful statistical supplements for the government’s White Paper (DCMS, 2016a:28-33). 43 per cent of 2,000 people surveyed believed BBC One and ITV were “quite similar apart from the adverts,” while 35 per cent did not believe the BBC’s programmes are “more daring or innovative than those made by other broadcasters” (GfK, 2016:63). Curiously, government statements did not mention that 52 per cent of those respondents did not see the BBC as crowding out commercial competition (2016:60), or include polling of a further 2,900 people, commissioned by the BBC Trust, which found 56 per cent thought the BBC should provide more services and programmes compared to just seven per cent who wanted fewer (2015d:1). The government’s concern for balance did not, it seems, entail reflecting the full range and diversity of public sentiments about complicated questions of media policy. In the context of *Research Question (2)*, the selective and partial use of polls and focus groups implies instead that some forms of public engagement were not considered reliable or legitimate, and needed to be ‘balanced’ with hand-picked polling results or normatively authoritative research that reinforced policymakers’ existing proposals.

To support this, DCMS commissioned two media industry consultancy firms, Oliver & Ohlbaum and Oxera, to produce ‘an assessment of market impact and distinctiveness’. The *O&O Report* overflows with market indices, revenue projections, audience viewing trends and programme genre tallies but, as the title suggests, it focussed these on the extent to which BBC

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<sup>99</sup> *Independent*, ‘If Britain’s creative industries are to stay world beaters, Culture Secretary John Whittingdale must fight for them’, 18 January 2016. My emphasis.

services crowd out commercial alternatives. It found, for example, that “a more distinctive BBC One [with] less competitive scheduling” could “increase commercial ad funded channel revenue by £33m to £40m per year.” In exchange for a precisely calculated 2.1 to 2.5 per cent drop in audience share, the BBC would gain a conspicuously non-specific boost in the “consumer and public value of BBC One output” (2016:51). Despite the wealth of hard data offered by the *O&O Report*, its analysis accepted as given the government’s assertion that limited competition with for-profit media companies is preferable to any social (and even economic) benefits of a large, popular public service broadcaster.

The BBC Trust amassed its own statistics arsenal with studies of the BBC’s price-setting model and potential reforms for protecting the BBC’s financial independence (Dassiou, 2016; Helm, 2016; Moore, 2016). Two reports for the Trust, by the auditing and consultancy firm KPMG, were similarly laden with facts and findings but contained markedly different conclusions from *O&O*.

Based on the available data, our econometric analysis finds that there is no evidence that the BBC crowds out private sector broadcasting activity in news and entertainment. (KPMG, 2015a:27)

The BBC’s investment and innovation related to the online market has positive technology spillover benefits to firms in the wider market. (KPMG, 2015b:36)

Just as the Trust made KPMG’s analysis a core part of its Green Paper submission, the Culture Secretary welcomed the *O&O Report* as “very thorough analysis [which] will play a key role in informing our thinking.” Whittingdale championed in particular the prospect that a more narrowly-focussed BBC could “increase commercial revenue by over £100m per year by the end of the next Charter period.”<sup>100</sup> BBC executives, on the other hand, were quick to dispute Oliver & Ohlbaum’s conclusions which its Director of Policy said had been “designed for the

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<sup>100</sup> Speech to the Oxford Media Convention, 2 March 2016.

convenience of its competitors not the enjoyment of audiences, to the long-term detriment of both.”<sup>101</sup> None of the assorted opinion polls or quantitative studies commissioned by government or the BBC produced results incompatible with or in contradiction of the others. Yet far from adding technical expertise or definitive answers on the BBC’s market impact or public attitudes to its services, these studies served more to give a veneer of authenticity and the support of ‘hard data’ to each side’s subjective political claims.

Aside from economic studies and audience polls, this central stage of the Charter review process saw a variety of qualitative reports and reviews from committees of the Welsh Assembly and Scottish Parliament, the House of Lords Communications Committee, and a second CMS Select Committee inquiry, along with many other official bodies. However, the report that had the clearest material impact on shaping the government’s White Paper proposals was the March 2016 Clementi Review on BBC governance and regulation, commissioned by DCMS. Sir David Clementi (a former Deputy Governor of the Bank of England) formalised the political consensus of the previous few years, recommending the abolition of the BBC Trust, the creation of a unitary board and moving regulation of the BBC’s services over to an independent authority.

Many of Clementi’s proposals reflected the same concerns for ‘distinctiveness’ and market impact of the BBC’s commercial rivals. Whereas the CMS Committee (amongst many others, including the Burns panel ten years earlier) had recommended creating a new PSB commission, Clementi recommended that Ofcom take over regulation of the BBC’s strategy, performance and competition issues.

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<sup>101</sup> BBC response to the O&O market impact report (online), 2 March 2016.



Current trends will bring the BBC into greater contact/competition with commercial players, and this argues for a regulator with a wide knowledge of the broadcasting industry. (2016:39)

This ‘wide knowledge’ would be exercised through setting obligations on the BBC with particular regard for “competition policy”. Ofcom would, for example, issue Operating Licences for individual BBC services, redefining the Service Licences introduced by the 2006 Charter to include “performance measures such as distinctiveness” (Clementi, 2016:52-3). Ofcom’s established regulatory presence is of course a practical justification for avoiding the bureaucratic complications of a new, overlapping regime. But Ofcom’s founding purpose is to promote competition across the UK media and communications sector, and its authority over the BBC’s public service activities clearly conflicts with its inherent inclination towards the interests of commercial media organisations.

The Clementi report also recommended that the new BBC unitary board structure its engagement with licence fee payers “in a way that understands their interests *as citizens as well as consumers*” (Clementi, 2016:65. My emphasis). This same citizen/consumer definition of the public’s relationship with broadcast media had dominated debates around the creation of Ofcom in 2003 (Livingstone et al., 2007; Smith, 2006). Furthermore it reflects the deeper current running throughout the Clementi review: that the BBC’s governance and regulation should exist primarily to safeguard an open and competitive market, rather than develop and advance the public service objectives the Corporation exists to fulfil. The Culture Secretary praised Sir David for his “fully evidenced based” proposals which offered “streamlined regulatory arrangements that have public interest and market sensitivity at their heart.”<sup>102</sup> The government’s White Paper adopted the Clementi model in full, “keeping the good but changing

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<sup>102</sup> Speech to the Oxford Media Convention, 2 March 2016.

where necessary” the flaws popularly perceived to beset the Trust-Executive framework (DCMS, 2016a:47).

Aside from the politics of its recommendations, the Clementi Review epitomised a particularly influential method of elite policy formulation during this penultimate phase of BBC decision-making, with the Report’s appendix highlighting the variety of industry bodies, commercial broadcasters and insider figures Clementi consulted as part of his ‘evidence gathering’ on the BBC. Moreover, in respect of *Research Question (1)*, the Review symbolises a fundamental and on-going historical shift in patterns of media policymaking, where the increasing salience of “economic and consumerist values” as policy aims valorises the quantitative assessment of policy outcomes (van Cuilenberg and McQuail, 2003:200). The centrality of expert reports and economic analyses in both the BBC’s and the government’s Charter renewal contributions reveals the normative value these actors ascribed to “unreflexive technical rationality” within the contemporary media policymaking paradigm (Freedman, 2014:68). The formative role of private consultancies, PR firms and independent analysis—and the apparent minimal impact of the many thousands of Green Paper responses from the public and non-commercial media interests—suggests that the core dynamics of the Charter renewal process were geared towards prioritising ‘hard’, professional evidence to resolve unambiguous problems facing the BBC, rather than enabling a deeper interrogation of the social and cultural purposes of public service broadcasting.

## **A BROADCASTER OF DISTINCTION – MAY TO DECEMBER 2016**

The final moments of Charter renewal marked a decided withdrawal from its earlier public settings and into private, bureaucratic channels of elite decision-making. Politicians scrutinised the DCMS White Paper on Charter review, yet the government’s formal policy measures were enacted primarily in the text of successive Royal Charter drafts. Senior BBC

and DCMS figures wrangled over their precise wording and technical detail, while MPs and peers scrutinised the plans but were ultimately excluded from any formal role in deliberations. Implementation continued beyond the Royal Charter's approval in December 2016, as the transition from old to new regulatory models exposed the immediate political challenges and contradictions of the BBC's reformed policy framework.

### *The DCMS White Paper*

In a speech to a students' Conservative Association in early May 2016, the Culture Secretary ruminated that scrapping the BBC was "occasionally a tempting prospect".<sup>103</sup> This unguarded moment reinforced the growing feeling that the imminent White Paper would signal the end for the BBC as a universal public service broadcaster. Press reports claimed the government's official Charter proposals would subject the BBC to "unprecedented new checks on the quality of its television and radio programmes" and introduce "new powers to stop the broadcaster competing head-on with ITV for peak-time ratings".<sup>104</sup> Other 'leaked' plans included forcing the BBC to divest its share in the commercial network UKTV, re-writing the BBC's mission to exclude "left-wing bias", and compelling the BBC to publish the names and pay details of all on-air talent earning over £150,000.<sup>105</sup>

Whether a classic case of hardball negotiation or because of an eleventh-hour retreat, the White Paper was not the death warrant some had feared (or, in the case of anti-BBC newspapers, hoped). Titled *A BBC for the future: a broadcaster of distinction*, the paper formally articulated 'distinctiveness' as the organising theory for a more narrowly-focussed, market-conscious BBC. Emphasising the uncertainties brought about by an increasingly

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<sup>103</sup> Quoted in Varsity (online), 'Whittingdale: Ken Livingstone is "dangerously mad"', 2 May 2016.

<sup>104</sup> *The Sunday Telegraph*, 'BBC faces quality check after five years', 1 May 2016; *The Sunday Times*, 'Strictly no X Factor clashes, BBC told: BBC anger at curbs', 1 May 2016.

<sup>105</sup> *Daily Telegraph*, 'John Whittingdale considering forcing BBC to sell UKTV stake', 18 April 2016; *Express Online*, 'So it IS biased! BBC to re-write mission statement to include NO left-wing bias', 11 May 2016; *The Times*, 'Get serious, white paper orders BBC', 9 May 2016.

fragmented, crowded and competitive media landscape, it opened by stating that “the BBC is going to have to work hard to maintain its privileged position over the coming decade” (DCMS, 2016a:21). This truism was not followed by a considered reimagining of the universality of PSB in the digital age, and the White Paper instead called for the BBC to “do more to stand apart from the competition, rather than looking to replicate services consumers are already getting elsewhere” (2016a:23). The renewed mission statement for the BBC places this concern front and centre:

To act in the public interest, serving all audiences with impartial, high-quality and distinctive media content and services that inform, educate and entertain. (DCMS, 2016a:29)

While at first glance an amenable elaboration on the BBC’s founding Reithian triptych, the ‘public interest’ it foregrounds is defined principally as the BBC adding “public value in a diverse, competitive, and pluralistic environment, where viewers and listeners have increasing choice of media content and providers” (2016a:29).

Many of the new framework’s specific proposals had competitiveness and increased consumer choice at their heart. The White Paper detailed the practical meaning of distinctiveness as a new top-level Public Purpose, requiring the BBC to be “substantially different to other providers *across each and every service*” and specifies original UK programming, the mix of content genres and risk-taking as means of achieving this (DCMS, 2016a:33-4, my emphasis). Although the original 2006 Public Purposes featured a nascent recognition of distinctiveness in requiring that the BBC “[enrich] the cultural life of the UK through creative excellence in distinctive and original content” (DCMS, 2006b:3), the 2016 White Paper recast it as shorthand for the BBC’s market impact rather than a by-product of its wider social and cultural benefits to the public. The White Paper takes up ten pages detailing concerns about the BBC ‘crowding out’ its commercial competitors and gives special

prominence to the *O&O Report*'s claims about the adverse impact of the BBC on commercial competitors, even repeating verbatim ITV's criticism of BBC One's "static daytime scheduling" (DCMS, 2016a:33; ITV, 2015:6).

Reforms to governance and regulation set out in the White Paper further exemplify the shift in BBC policy towards prioritising commercial interests and market values. Along with adopting the Clementi Review's proposal for a unitary board, Ofcom's expanded regulatory powers over the BBC emphasise "measurable quantitative obligations" for "protecting the interests of third parties" and lessening "market uncertainty" (DCMS, 2016a:54-7). Many of the mechanical changes entailed in regulation by Ofcom prioritise giving the BBC's commercial competitors a greater say in scrutinising the BBC's 'Service Licences' and contributing to Public Value Tests.

The government also offered its in-principle approval for the BBC Studios proposals, but included a new requirement that all BBC commissioning be opened to competition (retaining the statutory sector-wide independent quota of 25 per cent) by the end of the renewed Charter period, in order to

provide a welcome boost to the creative economy [and ensure] the BBC secures the best possible creative ideas and provides audiences with the best possible content at the best possible price. (DCMS, 2016a:82)

This radical overhaul of BBC commissioning went far beyond the Studios proposal agreed between the BBC Executive and Pact in late 2015, which had already offered to extend competition in BBC production to at least 70 per cent. As well as tightening market impact measures to ensure the BBC "treads more lightly and considerately around its commercial competitors," (2016a:64), the new Charter would also expect the BBC to support the struggling local newspaper industry through partnerships with corporate publishers.

The White Paper's demotion of the BBC's social and cultural purposes is exemplified by the government's revisions to the Public Purposes. The new Charter's proposed remit of "providing impartial news and information" (DCMS, 2016a:12) recognises the important function of a public service broadcaster as a trusted news source, but removes the emphasis in the 2006 Charter on "sustaining citizenship and civil society" (DCMS, 2006b:3). The new Purposes also ditched the requirement for the BBC "to deliver to the public the benefit of emerging communications technologies" (2006c:3). The renewed fifth Purpose on "reflecting the UK, its culture and values to the world" removes the prior expectation to make "people in the UK aware of international issues and of different cultures and viewpoints of *people living outside the UK*" (DCMS, 2006b:4, emphasis added; 2016a:12). Although there is a welcome formal commitment to ensuring the BBC reflects "the diversity of the UK both in its content and as an organisation", the instruction for BBC international news to be "firmly based on British values" (DCMS, 2016a:12) suggests that the wider politics of the on-going EU referendum campaign (and the Culture Secretary's own anti-EU views) had a strong residual influence on the White Paper.<sup>106</sup>

The Culture Secretary presented the White Paper to the House of Commons on 12 May 2016 as a set of progressive and necessary reforms for Charter renewal:

We want the BBC to thrive, to make fantastic programmes for audiences and to act as an engine for growth and creativity. Our reforms give the BBC much greater independence from Government ... At the same time, these reforms will assist the BBC to fulfil its own stated desire to become more distinctive and better reflect the diverse nature of its audience.<sup>107</sup>

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<sup>106</sup> The EU referendum was announced on 2 February 2016, less than two weeks before DCMS published its consultation summary. The vote itself, on 23 June 2016, took place just over a month after the publication of the White Paper.

<sup>107</sup> HC Deb 12 May 2016, v. 609 c. 733.

MPs and peers welcomed certain proposals, particularly the new diversity requirements and the creation of an 11-year Charter period to separate the renewal process from the electoral cycle. However, both the Labour opposition and ‘pro-BBC’ Conservatives in the Lords challenged the significant shifts in policy brought about by the licence fee settlement, the changing of the BBC’s core mission and the process of appointments to the new governing board. One peer cautioned that the requirement for distinctiveness would make the BBC “move off doing popular programmes which, from the consultation, is what the public and licence fee payers wants”.<sup>108</sup> Labour’s Shadow Culture Secretary, Maria Eagle MP, warned that the proposed mid-term Charter ‘health check’—designed “to check the effectiveness” of the new governance and regulatory arrangements (DCMS, 2016a:14)—would be “destabilising for the BBC” and could be used to “reopen the fundamental tenets that underpin the Charter halfway through its term.”<sup>109</sup> The Labour Party tabled a Commons motion on 8 June, noting that the White Paper “fails to provide an acceptable basis for the Charter renewal”, however this was easily voted down by a solid Conservative majority.<sup>110</sup> Two members of the House of Lords also put forward a draft ‘BBC Royal Charter Bill’, requiring that the draft Charter be debated and approved by both Houses of Parliament (as Whittingdale’s own CMS Committee report had recommended), but their proposals floundered before the final Charter was agreed.

#### *Negotiations and Royal Charter minutiae*

The British political landscape underwent major upheaval in the four months between the White Paper and the first Royal Charter draft. Following the 23 June public vote to leave the European Union, the new Prime Minister Theresa May quickly culled many of the former leader’s loyalists in the Cabinet. In place of John Whittingdale, who had supported one of her

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<sup>108</sup> Lord Alli, HC Deb 12 May 2016, v. 771 c. 1826.

<sup>109</sup> HC Deb 8 June 2016, v. 611 c. 1212-3.

<sup>110</sup> *Ibid.*, c. 1208.

rivals in the awkward and abortive Conservative leadership contest, May appointed the relatively fresh-faced junior minister Karen Bradley MP as Culture Secretary.

Appointments were also a major issue of Charter review during the brief and brutal transition of power in Downing Street. Prior to the White Paper's publication, Whittingdale had wanted the majority of the new unitary board chosen by government and was seeking to sack Rona Fairhead as Chair of the BBC Trust. Rumours and press reports suggested the Culture Secretary had lined up Archie Norman, a former ITV chairman, as Fairhead's replacement. Fairhead outflanked Whittingdale by appealing directly to the then-Prime Minister David Cameron, who had supported and approved her initial appointment, and secured an agreement to chair the new body until 2018.<sup>111</sup>

On 13 September, however, Fairhead resigned as Trust Chair after the government announced a fresh open appointment process for the chair of the unitary board, another push by the new Prime Minister "to unpick the legacy of her predecessor".<sup>112</sup> The first official draft of the Royal Charter, published two days later, further relaxed the Clementi-inspired balance of board appointments. This shift reflected some of the concerns raised by the Director-General that a board with a greater number of executive directors "would act more cohesively" (CMS Committee, 2016:5). The government signalled in turn that "some changes can be made to secure the independence of the Board". Thus the revised composition of the Board scrapped the role of a government-appointed Deputy-Chair and, aside from the non-executive Chair and the four non-executive 'nations' representatives, four executive and five non-executive roles on the fourteen-strong Unitary Board would now be appointed by the BBC itself (DCMS, 2016c:13-15).

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<sup>111</sup> *Daily Telegraph*, 'Channel 4 to escape full privatisation', 10 May 2016.

<sup>112</sup> *Daily Telegraph*, 'BBC chairman Rona Fairhead steps down after Theresa May asks her to reapply for the job in reversal of David Cameron decision', 13 September 2016.



The Royal Charter and its accompanying Framework Agreement (which gives fuller detail to many of the Charter’s core terms and provisions) nonetheless implemented in full the government’s White Paper policy of a tightly regulated *distinctive* BBC. The Charter and Framework Agreement saw little amendment before the final texts were officially agreed in November 2016. Few people outside government or the BBC had any input into these formal texts, with those that did saying the talks “were more in terms of sense-checking our understanding of what they were trying to do” rather than direct negotiation of provisions (Interview 10). A second draft was published on 1 November, containing “minor and technical changes” following debates in the Commons, Lords and the devolved national legislatures throughout September and October.

Although these last-minute negotiations had little substantive impact on the government’s policy, a small number of changes entail subtle revisions that secure some of the BBC’s powers and duties under the new Charter. The first draft Charter, for example, empowered Ofcom to conduct ad-hoc ‘competition reviews’ where it believed “a UK public service is having an adverse impact on fair and effective competition” (2016d:7). The updated draft raises the trigger for these regulatory interventions to “significant adverse impact” (2016e:11). Yet despite the pivotal influence these amended provisions may exhibit in future struggles between the BBC’s independence and Ofcom’s regulatory authority, the fact that the Charter faced effectively no public scrutiny—and implemented the major elements of the government’s White Paper policies without change—highlights the rapid withdrawal of the final moments of Charter review into private, bureaucratic and almost perfunctory channels of official decision-making.

## UNFINISHED BUSINESS: THE BBC'S NEW CHARTER

The BBC and the Secretary of State signed the Framework Agreement on 7 November 2016, and on 16 November the Privy Council ordered the BBC be granted its new Royal Charter beginning 1 January 2017. The intensive ten year-long process of Charter review, which had opened with wide-ranging debates about the BBC's future in the face of rapidly evolving markets and technologies, thus ended with the stark anachronism of the next decade in its almost 100-year history consigned in ink on a sheet of vellum. There remained, however, a number of crucial decisions during the transition from the old Charter model to the new arrangements.

On 1 September 2016 the Commons approved a statutory instrument to close the 'iPlayer loophole' as agreed during the 2015 licence fee settlement, and in October 2017 Ofcom issued its first Operating Licence for the BBC, detailing the remit and programming requirements for each BBC service:

Distinctiveness lies at the core of the Charter, and the majority of the conditions we are placing on the BBC across its services are designed to promote it. (Ofcom, 2017:7)

Ofcom's direct role in implementing Charter policy, and the BBC's stretched connections across the various bodies and agencies of the British media policy landscape, reveals another useful dynamic pertinent to *Research Question (1)*. Somewhat emblematically for the contemporary mode of media policymaking through arms-length regulation (Abramson, 2001:302; Feintuck and Varney, 2006:96-7; Freedman, 2008:13-15), the practical implementation of the 2016 Charter renewal's proposals was applied chiefly through a series of legislative and regulatory apparatus entirely separate from the public Charter review process itself.

The appointment of the first Chair to the BBC's new unitary board provided the final political flourish. The shortlisting panel comprised figures from the traditional organs of state power: a former Royal Navy vice-admiral, a former Private Secretary to the Queen, the civil service chief of DCMS and a former Chair of Ofcom. After the panel had reviewed the applications, including one unnamed applicant who was reconsidered following a request from Downing Street, the Secretary of State recommended the final candidate for approval by the Prime Minister. The chosen chair was Sir David Clementi, who had not applied for the role but somewhat suspiciously was "asked to put his name forward" by senior government figures.<sup>113</sup> Unsurprisingly the decision raised concerns about Clementi's independence, given he would manage the very same system he had designed on the government's behalf. One senior BBC source said the appointment "failed the sniff test",<sup>114</sup> and the Labour Shadow Culture Secretary attacked the "depressing lack of imagination from a government which has an appalling record when it comes to diversity in public life". The BBC's 2017-2027 Charter period thus began with the same fraught political dynamics that have characterised much of its history: a government eager to pay lip-service to the BBC's independence but steering and influencing its activities through politicised appointments, restrictive funding settlements and ideologically-driven revisions to its fundamental public service remit.

In the years since the 2016 Royal Charter was debated, decided and implemented, the BBC has faced the accelerating rise of streaming and on-demand services, the continued splintering and decline of its traditional 'linear' audiences, and repeated criticisms of its corporate insularity, cultural homogeneity in output and institutional bias in its news and journalism. These issues coalesced when Prime Minister Boris Johnson, emboldened by the Conservatives' decisive election victory in December 2019, announced a review into

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<sup>113</sup> *The Guardian*, 'Sir David Clementi: City grandee ready to do the business at the BBC', 10 January 2017.

<sup>114</sup> *The Telegraph*, 'Former Bank chief handed BBC role he created', 11 January 2017.

decriminalising non-payment of the licence fee. Doing so would cut the BBC's guaranteed public funding out from underneath it just as the Corporation heads into its mid-term review in 2022, for which the same recurring ideological and corporate challenges to public service broadcasting will almost certainly find new vigour in co-opting the genuine challenges of a rapidly evolving global media ecology.

The current perilous state of the UK's largest public broadcaster has been made substantially worse (or far more malleable, depending on your politics) precisely because of the cumulative policy decisions concluding with the 2016 Royal Charter. Formally premised on a momentous opportunity for wide-ranging public debate on the future of the BBC, the actual policymaking process of Charter review between 2010 and 2016 was dominated by faux-democratic modes of decision-making, unaccountable elite lobbying practices and entrenched ideological prejudices. While historical precedent and the over-riding impression of deep public esteem may have saved the BBC from radical free market reforms, these processes nonetheless shrunk the meaning of public service broadcasting and shifted it further into the domain of commercial regulation. Paradoxically, the BBC laid much of the essential political, financial and ideological groundwork for this quiet revolution itself. Although the most recent BBC Charter renewal featured a swathe of public exercises and decidedly modern debates, it was riven with the same skewed relationships of elite power—between the BBC and the state, between the government and commercial media interests, between BBC policy and the public—that have defined BBC policymaking for almost 100 years.

## 7. LANGUAGE, VALUES AND MEDIA POLICY NARRATIVES

The organised official processes of post-Leveson and BBC policymaking clearly produced distinct structures of power, yet these debates also show the fundamental role of ideas, principles and language in shaping how policy decisions are made. Policy narratives are therefore an essential object of study for exploring how different dynamics of power influence the discursive qualities of the policy process, and for unpicking how media policy narratives justify or delegitimise different forms of political action. For this research, a media policy narrative refers to a set of politically or philosophically inter-related ideas or values of media that form the discursive basis on which arguments for or against media policies are built (see also Pickard, 2013:338 and Shanahan et al., 2011:374). Through constructing and mobilising specific images of media's ideal social, political or democratic function, these narratives create the boundaries of acceptable issues and proposals available for public deliberation. Policy narratives are not simply instrumental arguments designed to sway policymakers, but are "simultaneously the driving force and the desired result of media policy actions" (Freedman, 2008:54). How one set of policy values or a particular linguistic frame comes to mould and define a policy debate is closely related to the generation and circulation of discursive power within political processes, and crucially to the distribution of power between different actors or institutions across society.

Focussing on *Research Question (3)*, this chapter thus examines how the shape and content of policy debate is influenced by the language and rhetorical framing of media policy narratives and competing political values. Building on Fischer's view of policymaking as a "discursive struggle over the definitions of problems" (2003:60), these sections analyse the various narratives and rhetorical forms that competing policy actors used to articulate and justify their policy goals in the BBC and post-Leveson debates. The chapter begins by

exploring the most prominent media policy narratives in each case study debate and detailing their core ideals, arguments and ideological interpretations of media policy. Next, it considers the distinct rhetorical devices and narrative framing techniques of media policymaking, and analyses how these influenced the official discourses in the two case study debates. The chapter concludes with a brief discussion of policy ‘meta-narratives’ (Fischer, 2003:173), analysing the broader effects of discursive power on the values, meanings and principles that shape contemporary media policymaking.

## **PRIMARY NARRATIVES OF PRESS AND BROADCAST MEDIA POLICY**

### *Press freedom and responsibility in the wake of the phone hacking scandal*

The post-Leveson debates on press regulation were sharply divided between two distinct and seemingly irreconcilable discourses, each reflecting many of the salient political arguments that have defined debates on press policy throughout the 20<sup>th</sup> century. On one side, a ‘responsibility’ narrative asserted that politicians and the newspaper industry had a duty to the public—and particularly to victims of press malpractice—to radically reform press regulation following the phone hacking scandal. Many of the arguments of ‘pro-Leveson’ campaigners and reform-minded policymakers told a wider critique of “a problem of culture” across both the national newspaper industry and the existing regulatory regime (Cathcart, 2012:70). This critique seized on a range of issues investigated at the Leveson Inquiry and framed them in two common accounts of the need for ‘responsible’ press policy reform.

One underlying argument of the responsibility narrative asserted that phone hacking epitomised a long-term trend of unethical reporting and declining journalistic standards in the British press, which was closely tied to the “incessant circulation war” (Leveson, 2012b:719) between competing popular commercial newspapers. This had, their argument went, created a constant demand for exclusive scoops and titillating exposés which in turn led to an increasing

use of more devious and dubious journalistic methods. As one repentant former tabloid reporter lamented, “the truth-seeking impulse of journalism proper will always be tainted by the excess of its entertainment-driven cousin” (Peppiatt, 2012:20).

The second underlying claim for ‘responsible’ reform of press policy claimed that endemic cases of libellous reporting, privacy intrusions and ‘hounding’ by Britain’s leading newspapers had laid bare the systemic failures of the non-policy of press self-regulation as a policy model. Emphasising the penetration of the PCC’s structure and regulatory functions by the press industry, a leading Hacked Off figure argued that self-regulation was “a confidence trick, perpetrated upon the British public and parliament by editors and proprietors who wanted to protect their operations from scrutiny and criticism” (Cathcart, 2012:56). The unethical practices revealed by the hacking scandal were not deeply unfortunate mistakes, as many in the industry claimed, but reflected the broken culture of powerful newspaper publishers holding exclusive control of their own regulation. This underlying critique of *structural* failings in Britain’s newspaper industry buttressed the responsibility narrative’s formation as a concerted argument for major reforms. At its core was a condemnation of the historical abuses of power within the newspaper industry, and a deeper sense that the press had a social and moral obligation to the public which the dominant commercial model of regulation had suppressed.

The second primary policy narrative in the Leveson debates, the ‘freedom’ narrative’, directly opposed these claims, and centred on the classical liberal theories of freedom of expression and its essential role in the democratic functioning of modern society. Particularly prominent in national press coverage of the Leveson debates (Ogbebor, 2018; Ramsay, 2014), this narrative held that any form of state involvement in press regulation poses an existential threat to the freedom of the press, its ability to hold the powerful to account and the public’s right to know about the activities of the powerful. One interviewee, a former editor and vocal critic of the pro-Leveson policy agenda, offered a stark definition of these absolutist principles:

This desperate attempt to pretend that in a binary choice there is in fact a third way, it's majestically Blairite and nonsensical. There is no middle way. If you involve the state in the regulation of press, what you've got is state regulation. It doesn't matter how arms-length it is, it doesn't matter how many different names you call it. It is like pretending that there is a halfway point between life and death. (Interview 1)

Following the phone hacking scandal, the freedom narrative took form in a series of recurring challenges to the Leveson Inquiry's investigations, the enduring opprobrium over phone hacking and the demands for radical reform of self-regulation. One such line of argument held that the interception of voice mail messages, already a criminal offence for which some *NOTW* journalists and editors were eventually jailed, did not justify the scale of political outrage or the public inquiry it produced. The reaction to phone hacking was a "shattering moral panic" (Crook, 2012:84) in which the public was "invited to accept that telephone hacking is intrinsically threatening to ethical, public interest journalism when it isn't" (Luckhurst, 2012a:203).

The freedom narrative frequently invoked a moral distinction between the democratic, liberal and liberating role of the commercial press and the aims of those in favour of press reform. This characterised campaigners and pro-Leveson politicians as anti-democratic firebrands and paternalist prudes, incensed by the popular appeal and commercial success of the tabloid press. Such claims emphasised a populist conception of press marketization (Curran, 2002:22) in which the free market is the driving force behind a free press and the democratising effects it creates. The consumer-reader, rather than any political or media institution, is sovereign and the public itself is the best judge of 'public interest' by expressing its cumulative needs and wants in the marketplace of ideas. One editor described the political reaction against hacking at *NOTW* as "a reflection of the contempt felt for people who consume and sometimes even enjoy" tabloid newspapers (Hume, 2012:59). Along with its historical and philosophical foundations, the freedom narrative also embodied the current market libertarian



paradigm of Western media policy, in which “policy has to follow the logic of the marketplace and the technology and the wishes of consumers (and citizens) rather than impose its goals” (Van Cuilenburg and McQuail, 2003:200).

Unlike the subdued or stoic nature of past press policy debates, the language and arguments surrounding the post-Leveson process were deeply personalised and politically and emotionally charged. Pro-Leveson policy actors couched their appeals in terms that called upon the personal experiences of phone hacking ‘victims’ and the “abuses of power by people who boast that they hold power to account” (Cathcart, 2012:28). Phone hacking had exposed self-regulation organised solely by the industry as “nonsense” (Mair, 2012:222) and politicians “[owed] it to the victims of these scandals [who have] waited too long for an independent press watchdog in which they can put their trust”.<sup>115</sup> Changes in law were required to create a more effective system of self-regulation as the national press had proved “it cannot be trusted to carry out that change itself” (Cathcart, 2012:56).

Conversely, anti-Leveson proposals stressed that press self-regulation would “not require the intervention of government or the use of statute which would be hugely damaging to a free press and therefore to democracy itself” (Free Speech Network, 2012:2). Instead, the industry’s own “reinvention of the self-regulatory system” (Satchwell in SoE, 2012:7) was promoted as notionally accepting Leveson’s criticisms of the PCC while being the only means of ensuring “that the body did not have too great a power to effect censorship or licensing powers” (Lord Judge quoted in SoE, 2012:7).

### *Distinctiveness, universality and the purpose of public service broadcasting*

Debates on the future of the BBC were far less overtly split, as the major discursive contests of Charter review coalesced around a single term and its implied reconceptualization

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<sup>115</sup> HC Deb 29 November 2012, v. 554 c. 471-2.

of the fundamental purposes of public service broadcasting. As traced in the previous chapter, distinctiveness served as the rationale and mantra driving the Conservative government's Charter reform agenda. Officially articulated in the DCMS White Paper to mean that "the BBC should be substantially different to other providers across each and every service" (2016a:32), this definition was founded on several long-standing commercial criticisms of the BBC.

Principal amongst these was a belief that the BBC, with its public funding and remit to provide 'something for everyone', unduly distorts the broadcasting market by competing in areas where other broadcasters rely on commercial funding. Implicit in such an account is the same free market logic that pervades most areas of contemporary media policy, in particular the premise that broadcasting is best organised through open competition between companies, who stand or fall on their appeal to the largest or most profitable audiences (and can thus sell advertising at a premium). The BBC impedes 'true' competition by not playing by the same economic rules as its rivals, as ITV argued in its Charter review submissions:

There is little point in publicly funding services and content which the market can and does provide and, indeed, doing so could be actively harmful to the public interest by crowding out commercial investment. (2015:52)

A second, connected strand in the calls for a more 'distinctive' BBC argued that the increasing plurality of media sources weakens the traditional justifications for public intervention in media markets. This supposed explosion of consumer choice was one of the main reasons government and commercial broadcasters gave for proposing to restrict the BBC's scope of services, and for requiring it to "prioritise its resources in areas where viewers' needs are not being adequately met" (Sky, 2015:12).

Many such claims mirrored the 'market failure' or 'market gap' definition of public service broadcasting. In this sense the distinctiveness narrative was just the latest iteration of neo-liberal thought which since the 1980s has justified reorganising media policy around

market growth and scaling back public media interventions (Feintuck and Varney, 2006:47; Holland et al., 2013:144; Humpreys, 1996:235-7). But ‘distinctiveness’ as articulated during the Charter review debates differed from this established free market critique of the BBC in two important ways. First, its proponents actively distanced themselves from the market failure label while nonetheless advocating for controls on BBC content that ‘crowds out’ commercial competitors. ITV’s plea for the BBC to produce “services that the market cannot”, the company suggested, “is not an argument for a narrow, unpopular, BBC focussed on market failure genres only, but for a BBC that *does things differently to the market*” (2015:4, my emphasis).

Secondly, and somewhat ironically given the political significance of this vague concept, the BBC itself played a pivotal role in imbuing ‘distinctiveness’ with a central role in Charter review’s discursive contests (Goddard, 2017). The term can be found at least as far back as 1992 in a strategy paper titled *Extending Choice*, in which the Corporation defended the “distinction and quality” of its services amidst the emerging multi-channel broadcasting market. The term existed without any special definition or significance<sup>116</sup> across UK broadcasting policy until 2010, when a BBC strategy review, *Putting Quality First*, announced the Corporation would seek to “make its output innovative and different to what is available elsewhere”. Though cautious to state that “distinctiveness is not about market impact,” the BBC nonetheless tasked itself as part of Charter review to improve distinctiveness “in markets where there is a broad range of commercial provision” (BBC Trust, 2010:5).

Defining ‘distinctiveness’ was the pivotal discursive contest of Charter review, yet its underlying market-centred objection to PSB was still challenged by an enduring belief in public service broadcasting as an essential contribution to the political and cultural development of society. Historically the BBC has symbolised this purpose in the well-worn Reithian ethic—to

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<sup>116</sup> The word featured only in the 1980 Broadcasting Act, affording Channel 4 “a distinctive character”, then marginally in the 2006 BBC Charter’s public purposes for “excellence in distinctive and original content”.

inform, educate and entertain—but during Charter review this found a more concerted expression in the ‘universality’ policy narrative. This emphasised the wider benefits of a large public service broadcaster, funded by a compulsory licence fee but free at the point of use. As the BBC itself argued in its DCMS consultation submission,

The case for the BBC starts from a different set of considerations about the sort of society we want. Access to culture, media and information should be a basic human right, ensured regardless of a person’s ability to pay for it. [The BBC] also has an instrumental purpose: to deliver external benefits to society through, for example, creating a richer culture, promoting democratic debate and building a stronger sense of community through shared experiences. (BBC, 2015c:9; see also Heath, 2015:36)

Support for a ‘universal’ BBC often went further than a simple recitation of these lofty ideals. The Conservative government and commercial broadcasters argued that changes in broadcasting had made it less important for the BBC to be providing as much as it has and ‘crowding out’ others. Campaigners and civil society groups, in response, saw these changes as even greater justification for the BBC funding a wide range of content aimed at all audiences and guided by social and cultural goals instead of just profit. Some asserted that the BBC should produce popular, high quality services across the breadth of genres, regardless of their impact on commercial competitors, because providing content for all audiences is an essential cultural offer of PSB. “The danger of pursuing a ‘more narrowly-focussed’ BBC,” VLV argued,

is that the BBC will be restricted to only broadcast ‘worthy’, less popular content and its popularity will decline, making a universal fee unsustainable; and this in turn would undermine the model upon which the BBC is based. (2015:13; see also Channel 4, 2015:2)

Others like the NUJ cautioned that, by cutting the size and scope of the BBC, “the people of the UK will have reduced choices in their viewing and listening and they will have to pay more for them” (2015:11). The BBC’s receipt of public funding allots it a central and decisive role

in the UK's media 'ecology', "building the overall size and skills in the market, giving it global scale and attracting inward investment" but without commercial constraints on its operations (VLV, 2015:4). The clash between the distinctiveness and universality narratives rested on a fundamental question: whether future BBC policy should support the commercial interests of the UK's media markets, or whether the Corporation's historic social mission still held relevance in the context of rapid economic, technological and audience changes. The opposing ideological accounts of media's purpose entailed in these positions had a fundamental structuring effect on how the central decisions of BBC Charter review were articulated, just as the responsibility/freedom contests did for the post-Leveson debates. Yet the notions of fostering a distinct BBC and preserving a universal one are at face value beneficial and complementary policy objectives, and appeals in favour of one were frequently couched with expressions of support for the other. The discursive contests of Charter review were thus not so much a head-to-head clash as a finessed struggle to define the practical regulatory meaning of these terms, while at the same time asserting two very different normative ideals of broadcasting policy.

## **JUSTIFYING MEDIA POLICY INTERVENTIONS**

Clearly no policy agenda emerges fully assembled. The collective understanding of a problem and the scope of appropriate solutions which inform the policymaking process will to a large degree reflect "the individual perceptions, social representations, material interests and moral values of the actors concerned" (Hill and Varone, 2017:166). Agenda-setting is a vital method of meaning-making and the contests over interpreting a policy issue substantially impact how decision-makers formulate policy change. Actors that engage in and influence this formative process decisively shape the discursive territory of a policy debate, and define its central issue according to symbols, language and ideological values that reinforce their own policy interests. "A group that can create and promote the most effective depiction of an issue

has an advantage in the battle over what, if anything, will be done about a problem” (Birkland, 2017:71).

The phone hacking scandal and BBC Charter review were evidently not cases of disinterested institutional fault or matter-of-fact changes in circumstance. The core issues of these policy debates attracted public salience precisely because of their deeply emotive nature and their correlation with extant political trends, which accelerated their interpretation as pressing policy challenges. The hacking of a murdered schoolgirl’s phone and recurring cases of swollen BBC governance transgressed general codes of how media institutions should act, a feeling reflected in the immediate political responses to and media coverage of these unfolding scandals. MPs described the revelations in the *Guardian*’s July 2011 Milly Dowler reports as “a national newspaper playing God with a family’s emotions”<sup>117</sup> and called for the government to listen to “the ordinary person in the street who is outraged at what has gone on in News International”.<sup>118</sup> The Jimmy Savile affair, according to some national newspapers, demonstrated a rigid, top-down “silo mentality” at the heart of the BBC’s corporate structure,<sup>119</sup> while the failure of DMI project and staff payoffs compounded the evidence of a “citadel of profligacy” which left licence fee payers “fearing that the gold-plated BBC gravy train will rumble on unhindered.”<sup>120</sup>

Notably, these scandals were understood primarily in relation to notions of collective public opinion and outrage. Institutional failure or ineffective implementation were not sufficient factors on their own for these issues of media policy breaking onto the political agenda. More importantly, the realisation of these debates as policy ‘issues’ rested on

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<sup>117</sup> HC Deb 5 July 2011, v. 530 c. 1372.

<sup>118</sup> HC Deb 6 July 2011, v. 530 c. 1572.

<sup>119</sup> *The Observer*, ‘Civil war over Savile reveals crisis at the heart of the BBC’, 28 October 2012.

<sup>120</sup> *Daily Mail*, ‘The citadel of profligacy: or how the BBC flushed another £200m of your money down the drain’, 8 June 2013.

normative social values that are, in the main, constructed by cultural and political elites (in particular media outlets and elected representatives). That a leading tabloid newspaper—for decades Britain’s self-appointed moral arbiter of public and political life—had targeted ordinary members of the public for scoops made it impossible for the scandal to not gain solid public traction. Its salience was further supported by the government’s questionable regulatory choices regarding the BSkyB deal and the Prime Minister’s personal relationship with *NOTW* executives (see Davies, 2014 and Watson and Hickman, 2014). These factors cemented a wider perception of a political class “who for years have unashamedly courted Rupert Murdoch’s newspapers”,<sup>121</sup> and who would be judged by an enraged public on how they squared their elite loyalties with their representative duties.

Pro-Leveson interviewees closely involved in lobbying senior politicians alongside phone hacking victims recalled the feeling of widespread public support:

There was an enormous amount of public outrage and public pressure for something more to happen ... It wasn't entirely the Dowlers but they were extremely important and central to it. (Interview 5)

There was a remarkable consensus that they [politicians] couldn't get away with *not* doing anything. (Interview 4)

The Prime Minister announced the public inquiry into phone hacking with a similar focus on public opinion, claiming that the public “will be revolted by what they have heard and seen on their television screens”.<sup>122</sup> The prevailing response to phone hacking established the central messages and language of the responsibility narrative in the nascent discourse of press regulation debates, particularly that victims of phone hacking were owed action by political leaders—a phrase repeated frequently during the negotiations on implementing Leveson’s

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<sup>121</sup> *Daily Mail*, ‘A most squalid and shameful saga’, 6 July 2011.

<sup>122</sup> HC Deb 6 July 2011, v. 530 c. 1502.

recommendations. This discourse was also instrumental in setting the Inquiry's remit for recommending new regulation which "demands the highest ethical and professional standards"<sup>123</sup>, embedding the perception of an irresponsible press at the heart of policymaking.

The scandalisation of the BBC's corporate failures was no less dependent on a discourse of incensed public sensibilities. However, pressing issues in Charter renewal in 2016 were distilled over a much longer period, and involved a more concerted discursive emphasis on prevailing conservative criticisms of publicly-funded broadcasting rather than sudden and unexpected explosions of public outrage. The BBC is "an institution featherbedded with free money," one Telegraph columnist complained in an emblematic report from 2013, suggesting that DMI, Savile and exorbitant staff payoffs showed "a top-heavy management culture imperiously aloof to the point of contempt over what its audience wants, likes or needs."<sup>124</sup> Industry stakeholders similarly chastised the apparent disconnect between ideals of what the BBC claimed to do and what it had actually done with its public funding:

The problem is the BBC is very good at spending a lot of money—like, *our* money—on failed initiatives that some executive has dreamed up from some management consultancy recommendations. I mean God knows how much over 20 years has been flushed down the toilet with no actual benefit to the British licence fee payer. If that was a private sector company all the executives would've been sacked. (Interview 10)

The image of the BBC as a bloated, out-of-touch, inefficient monolith typified criticisms of its corporate failings. "The BBC was being asked questions about pay, perks and public money which *it found uncomfortable to answer*" was the BBC Trust chair's self-flagellating summary of the events of 2012 and 2013.<sup>125</sup>

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<sup>123</sup> HC Deb 13 July 2011, v. 531 c. 312.

<sup>124</sup> *Daily Telegraph*, 'BBC a total waste of money: more evidence', 1 July 2013.

<sup>125</sup> Chris Patten Speech to Prix Italia, 22 September 2013. My emphasis.



The collective interpretation of these public scandals cemented the premise of systemic, institutional crisis at the BBC caused by a complacent and self-interested bureaucratic culture supposedly innate to state-funded bodies. As David Elstein, a former broadcasting executive and prominent critic of the licence fee, described it shortly after the Savile affair:

The central issue confronting the BBC is not whether this or that executive—or even the chairman of the BBC Trust himself—might need to be replaced, or whether the BBC was culpable for alleged crimes in the past. *It is about the basic structure and governance of the Corporation.*<sup>126</sup>

Such comments were commonplace prior to Charter review and had a decisive effect on the scope of debate, in particular the taken-for-granted claim (instanced in Select Committee reports and the Green Paper’s consultation questions) that wholesale reform of governance was not only necessary but inevitable.

These two cases demonstrate how media policy issues can emerge onto the political agenda through the narrative articulation of scandal. In the wake of high-profile failures at Britain’s two central media institutions, the dominant discourses were defined by those groups that leveraged normative expectations of public accountability and moral outrage in support of their own interests. The two debates also demonstrate how the power dynamics inherent to agenda-setting *change* when the focus of policy debate shifts, from ‘identifying problems’ and deciding to act on them, to constructing the active terms on which these decisions are actually taken.

Despite the early dominance of the responsibility narrative in framing the government’s response to phone hacking, commentary during the Leveson Inquiry itself overwhelmingly reflected the freedom policy narrative. Four-fifths of news articles published by Britain’s major

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<sup>126</sup> *The Times*, ‘Ditch the BBC Trust – a bad idea from Day 1’, 8 November 2012. My emphasis.

national print titles between July 2011 and November 2012 criticised the Inquiry or its likely outcomes as posing a fundamental threat to freedom of expression (Ramsay, 2013:11). In these accounts, politicians were exploiting the Leveson Inquiry to “muzzle newspapers in revenge for exposing [the] expenses fraud”.<sup>127</sup> The demands for tighter regulation from witnesses at the Inquiry posed “an insidious threat to the right to know”<sup>128</sup>. According to an editorial in *The Times*, “some of the most remarkable journalistic investigations in recent history could have fallen foul of Leveson’s moral arbiters” if the government introduced new laws aimed at the press.<sup>129</sup> One Conservative MP argued that such a remedy would equate to “pruning a bonsai with a chainsaw”. The Education Secretary, Michael Gove, introduced one of the oft-repeated epithets of the post-Leveson debates when he claimed “there is a chilling atmosphere towards freedom of expression which emanates from the debate around Leveson”.<sup>130</sup>

As the formal processes of Charter review kicked into gear, the 2015 general election similarly served to amplify overtly political interpretations of the BBC’s failures as core issues of media policy. Under the headline ‘Tories go to war over BBC’s institutional arrogance’<sup>131</sup> one MP warned the BBC to “be very careful about how they use their privileged position”, while the Culture Secretary threatened a full investigation on political bias solely on the basis that one election discussion on BBC radio “came across very, very anti-Tory.” In a *Radio Times* interview the Chancellor questioned “why the BBC is so frightened of regulation by Ofcom” and accused the Corporation of “suffocating local news”.<sup>132</sup> *The Times*, embracing martial metaphor, concurred; “the BBC has parked its tanks on local newspapers’ front lawns” and “has no business in duplicating the efforts of commercial local outlets fighting for their

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<sup>127</sup> *Daily Mail*, ‘This threat to press freedom: Mail Editor tells Leveson inquiry politicians want to muzzle newspapers in revenge for exposing expenses fraud’, 13 October 2011.

<sup>128</sup> *Daily Mail*, 30 October 2012.

<sup>129</sup> *Sunday Times*, ‘Censored’, 21 October 2012.

<sup>130</sup> *The Sun*, ‘Press probe fear’, 22 February 2012.

<sup>131</sup> *Daily Telegraph*, 6 March 2015

<sup>132</sup> *Radio Times Magazine*, 18-24 April 2015 pp. 24-26.

lives.”<sup>133</sup> These calls echoed long-standing criticisms about the BBC’s impact on its commercial competitors, epitomised in a 2009 speech by BSkyB’s chair, James Murdoch, who denounced the Corporation as a “land-grab” that “seeks to compete head-on for audiences with commercial providers [to] dampen opposition to a compulsory licence fee”.<sup>134</sup>

By the time Charter review was firmly on the public agenda, the longer-term campaigns for a distinct public service identity in BBC output had been subsumed within the commercial criticisms of its competitors. The unprecedented political pressure on the BBC during the general election had effectively been naturalised through the dominant interpretation of the previous years’ scandals set by its fiercest ideological critics. This all-encompassing narrative of institutional crisis laid the discursive foundations for the BBC’s surrender to the hammer-blow licence fee settlement in July 2015, and its broader pattern of least-worst option concessions throughout Charter review.

Given the myriad complexities and subjective perspectives that constitute any realm of public life, the process of agenda-setting may seem like a necessary means for translating hard-to-capture issues into tangible and rationalised questions of policy. After all, policymakers can only act on a finite number of problems in a limited window of time, and their decisions will depend on the information and understandings available to them. However, as is evident from the discursive contests surrounding phone hacking and BBC scandals, their interpretation as public crises (and thence as urgent questions of media policy) was sharply inflected by the material and ideological interests that mobilised around these events, as well as the political and social contexts in which they unfurled. This raises an important matter, addressed by *Research Question (4)* and expanded on in the next chapter, in relation to the specific power of media to influence policymaking. The power of agenda-setting is disproportionately weighted

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<sup>133</sup> *The Times*, 14 April 2015.

<sup>134</sup> MacTaggart lecture to the Edinburgh Television Festival, 28 August 2009.

in favour of media outlets, especially newspapers, partly because they provide political elites with both access to a collective frame of reference and narrative justifications where their ideological interests intersect.

## **VALUE FRAMING AND DISCURSIVE CAPTURE**

As Chapters 5 and 6 detailed, media policymaking unfolds over a variety of political, regulatory and legislative decisions, and competing actors and interests cumulatively form solutions through their engagement in and influence over official decision-making processes. Yet this formulation is in part a product of the mobilisation of discourses, and the extent to which official decisions and potential policy solutions entrench dominant political narratives into the practical effects of media policy. The two debates also demonstrate how the technical language and substantive meaning of regulatory measures, legal powers and official decisions repeat and reinforce particular underlying narrative expressions of media policy values. The vast majority of tangible changes made as a result of the two case study debates affected quota figures, governance arrangements and other ‘concrete’ regulatory measures, but perhaps the most significant factor influencing these decisions was how over-arching principles—i.e. freedom, universality, distinctiveness, responsibility—were translated from ideal, normative objectives into tangible, implementable legal and regulatory requirements.

One strikingly similar feature of both debates is how claims central to the responsibility and universality narratives were diminished by political and media actors opposed to these ideals, who nonetheless repeated some of the main discursive appeals and idioms of these narratives but repurposed and re-articulated them in support of contrary principles. Lord Leveson framed his proposed reforms of self-regulation as designed to “support press freedom, provide stability and *guarantee for the public* that this new body is independent and effective” (2012a). This insistence on public trust as a necessary feature of any new regulatory

framework—a core value of the ‘responsibility’ narrative which defined the Inquiry’s formation—was echoed by the Prime Minister:

These are the Leveson principles ... If they can be put in place, we will truly have a regulatory system that delivers public confidence, justice for victims, and a step change in the way the press is regulated in our country.<sup>135</sup>

Likewise the government’s BBC Green Paper on opened with an affirmation of universalist values:

The rationale for a publicly-funded BBC that “informs, educates and entertains” as part of a wider public service broadcasting ecology remains strong even in the current media age. The Government is therefore committed both to the future of the BBC and to its underlying Reithian mission. (DCMS, 2015:7)

However, the government’s notional support for these social objectives of press and broadcasting policy contrasts sharply with how these principles were dissected in the substantive processes of policy formulation.

Prior to the Leveson Report’s publication, the Prime Minister had cautioned that “heavy-handed state intervention” in press regulation would be “bonkers”<sup>136</sup> and later described Leveson’s legislative proposals as amounting to “crossing the Rubicon of writing elements of press regulation into the law of the land”.<sup>137</sup> Far from being a murky platitude or cursory political rhetoric, the Prime Minister’s apparent endorsement of ‘Leveson principles’ represented an inherent contradiction in the government’s policy discourse. On the one hand the government claimed to fully support the Leveson recommendations while on the other rejecting its lynchpin proposal for statutory reform, without which, Leveson had declared, effective self-regulation “cannot be realised” (2012a:5). It also provided a crucial justification

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<sup>135</sup> HC Deb 29 November 2012, v. 553 c. 448.

<sup>136</sup> BBC One, ‘The Andrew Marr Show’, 7 Oct 2012.

<sup>137</sup> HC Deb 29 November 2012, v. 553 c.449.

for the newspaper industry's internal reforms, paying lip service to the amiable notion of 'Leveson principles' without actually accepting the specific criteria of the Leveson Report. The PCC chair Lord Hunt explained his attempts at a contract-based model of self-regulation:

By endorsing [Leveson's] wish that the best way forward was for publishers to sign up to a self-regulatory body, as long as it was genuine and *followed certain principles*, there would be no problem. ... I endorsed, in my view, *almost all* of the Leveson principles. (Interview 6)

Pro-Leveson actors saw this emphasis on 'Leveson principles' as a political tactic to give the press "the space to reinterpret what Leveson really meant, and therefore to do the bare minimum to achieve these quite vague principles" (Interview 2).

The Delaunay meeting of newspaper editors in December 2012 exemplified these contrasting interpretations of the Leveson Report and the weight assigned to its proposals. One editor remarked how the meeting had "found it quite easy to sort of tick them [the Leveson criteria] off one by one"<sup>138</sup>, yet the meeting memo released shows many of the proposals 'accepted' with heavy, almost invalidating caveats. A Hacked Off director viewed this as spurning the self-evident authority of the recommendations:

We'd had a full fucking public inquiry, and these people are treating it like a menu. The arrogance of it was simply breath-taking. (Interview 4)

These two discursive approaches to framing policy objectives had a clear impact on the texts of the draft Royal Charters, and demonstrate how the core political values of the opposing freedom and responsibility narratives were variously translated into the detail and methods of each faction's broader policy demands.

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<sup>138</sup> BBC Radio 4, 'The Media Show', 5 December 2012.

Universality underwent a similar redefinition and remoulding in the official texts and government proposals of BBC Charter review. The Green Paper's attempts to instrumentalise the term exemplified the subtle ways in which the language of official documents and explanatory claims can impact the formulation of policy proposals. The consultation asked respondents to address "which elements of universality are most important for the BBC?", explaining that the word "means different things to different people" (DCMS, 2015:22;31). Yet the 'elements' of universality listed in the consultation—offering all types of content for all audiences, providing coverage of unifying national events or being available and accessible for free on all platforms—are not mutually exclusive. They represent the intrinsic characteristics which *taken together* fulfil the deeper democratising mission embodied in 'universality' as the historic justification for public service broadcasting. This deconstruction provided the essential grounding for the market impact criticisms entailed in the distinctiveness narrative, such as ITV's long-standing complaint that the BBC increasingly produces "highly popular and often derivative and indistinct content which drives viewing share but gradually makes it harder and harder for mainstream rivals to compete" (ITV, 2015:21). In light of the "proliferation of choice," the Green Paper argued that the BBC's services risked "failing to be sufficiently distinct not only from commercial output, but from other BBC services" (2015:47). This emphasis on market impact compounds through a discussion of "the positive and negative effects the BBC can have on the wider market", which detailed at length five harms the BBC causes its competitors in television, radio, local news and online platforms against just two general benefits from the BBC's economic contribution to creative industries (2015:50-1).

The ideological orientation of the Green Paper positioned the needs of the market as a greater policy priority than the diffuse social benefits of universal public service broadcasting. Figures from campaign groups and civil society associations recalled how the tone of the consultation document marginalised more qualitative topics, such as the social and cultural

value of the BBC's output, which in turn diminished the scope for lay public engagement in Charter review:

The questions in the Green Paper were not accessible to your average punter, and I think that's a failing. If you want a democracy to work effectively you need to run a public consultation in a way such that the public can respond to them. (Interview 11)

As well as presenting the public consultation as an inquiry into the BBC's negative commercial impact, the Green Paper also articulated the core decisions of Charter review as technical, empirical questions of how this impact could be limited rather than openly interrogating whether this was actually a desirable or effective approach to BBC policy. This writing-out becomes all the more apparent in light of the fact that the word 'universality', previously the BBC's core rationale, did not appear once in the government's flagship White Paper.

These vernacular emphases are not just marginal differences between the officious tone of government statements and the more free-flowing, value-laden rhetoric of public debates on media policy. Rather, the choice of language reflects specific decisions about which values and ideas ought to be prioritised as policy objectives. In the post-Leveson negotiations, government ministers referred to the cross-party agreement amendments tabled in the Commons as merely "a dab of statute", statutory "protection" or legal "recognition".<sup>139</sup> Even pro-Leveson actors were careful to avoid describing their demands as legislative. The Labour Party described its draft Bill as only "legal *backing* for a new system of independent self-regulation of the press"<sup>140</sup>, while Hacked Off qualified their proposals as "essential to *underpin* a regulatory system that breaks the historic pattern of failure" (2012). One Hacked Off interviewee recalled how the group finessed their language to mirror this cautious tone.

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<sup>139</sup> HL Deb 18 March 2013, v. 744 c. 437; HC Deb 18 March 2013, v. 560 c. 631.

<sup>140</sup> *Independent*, 'Tories dismiss Labour plans for Leveson', 10 December 2012. My emphasis.



Well it was legislative, really. We were saying it wasn't because *it made sense to say that*. (Interview 3)

These notably ambiguous phrases straddle the thin discursive line between nuanced statutory oversight and the absolutist principles of the freedom narrative. It is a sign of the entrenched political dynamics of elite media policymaking that non-elite groups decided to adapt proposals such that they repeat the language of executive policymakers, suggesting that avoiding references to legislative change was felt to be a 'common-sense' approach. However, in the case of the post-Leveson negotiations, the overarching rationale for genuine structural reform, as proposed in the Leveson Report, was lost amid the muddled technicalities of how to define (or avoid defining) statutory implementation. Industry actors, along with those newspapers that had aided in institutionalising this narrative, easily dismissed these awkwardly-worded proposals as clear violations of press freedom.

Distinctiveness similarly would not have achieved its discursive significance were it not for the BBC's consistent use of the term in its own policy engagement. This was pivotal in evolving the term from an amenable if vague platitude into a precisely defined regulatory criterion for restricting the BBC's market impact. Commercial broadcasters emphatically mobilised this history as both an example of the failure of BBC governance to enforce any real change and a confirmation of the consensus for regulatory reform.

Every time the Charter comes up for renewal, the BBC goes back to saying it will focus on distinctiveness ... we have no disagreement with that as a strategy, that sounds exactly the right thing to do ... our issue is less with what they say they are going to do and more with delivering that on the ground.<sup>141</sup>

Having used the term extensively in the past the BBC struggled to argue against new market impact regulations, or in favour of its traditional universal remit, once the debate was limited

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<sup>141</sup> ITV CEO Adam Crozier speaking at the CMS Select Committee's BBC Charter review Inquiry, 8 December 2015. HC 398 Q555.

to a market impact notion of distinctiveness. When the BBC proposed that this “should be judged at the level of services rather than programmes” (BBC, 2015a:24), commercial broadcasters dismissed this as far too general to effectively police the Corporation crowding out popular genres, particularly peak-time entertainment and drama.

It's the classic thing where the BBC says “well Radio 3's very distinctive, we've got masses of distinctive content in our overall offer”. That just masks all of those shows on BBC One where it is not very distinctive from the commercial offer at all. That's where the money is, but to say “look at all these amazing orchestras!”... the BBC can get very pious about its own distinctiveness. (Interview 13)

The government evidently agreed with this view. Across the renewed 2016 Charter's arsenal of Public Interest Tests, Competition Assessments and Competition Reviews, Ofcom is empowered to

ensure [there is] no adverse impact on fair and effective competition which is not necessary for the effective fulfilment of the Mission and the promotion of the Public Purposes. (DCMS, 2016d:5)

Distinctiveness had been thoroughly defined as both the rationale and the narrative mechanism for implementing a radically redefined philosophy of public service broadcasting into the practical rules and codes that govern the BBC's entire operations.

It is not unusual that the language of media policymaking is so infused with subjective interpretation and competing values that shape the acceptable boundaries of political deliberation. Yet these discursive contests also work at a more fundamental level to restrict the very language of public policy deliberation. Once a particular narrative frame is established in official policymaking practices, the scope of possible outcomes, arguments and meanings is preconfigured to only a narrow vernacular that repeats and reaffirms the ideological claims of this dominant discourse.

The easier it was for the industry to disassociate themselves from the original central issue, to actually say “no, this is just trying to stop us doing our job”, being able to occupy that rhetoric made it really hard for us to reclaim the debate and talk about market power. It’s got nothing to do with freedom of the press but that’s a very simple message. (Interview 3)

The issue was when you came up against “yes of course OK we accept the BBC must make comedy, but it must be distinctive.” Well, what does that actually mean? What they would like it to mean is comedy that doesn’t get many listeners or viewers or many hits online and potentially takes away from commercial providers. In other words, something that isn’t successful. (Interview 9)

Thus, one of the most significant effects of discourse as a form of power is its ability to mask the contestable or controversial aspects of a dominant policy narrative as ordinary, normal or matter-of-fact. “Ideas that do not draw on or interact with the available discourses,” meanwhile, are dismissed as “strange or irrelevant” (Fischer, 2003:83). Those interests that align with or contribute to the construction of a dominant narrative prosper, while counter-narratives or subordinate ideas that have been organised out of debate are marginalised.

## **DEMOCRACY, PUBLIC INTEREST AND THE LANGUAGE OF LEGITIMACY**

Given the highly combative and value-laden nature of the policymaking process, it is apparent that the legitimacy of a media policy decision, i.e. the public and political recognition that any change in law or regulation is ‘right’, does not rest solely on the legislative or constitutional authority by which that decision was made. Legitimacy is chiefly a discursive construct that arises from how the actions and motivations of policy actors fulfil (or are seen to fulfil) shared standards and ideals about the nature of policymaking in democratic societies. These standards can be summarised in three normative characteristics: that decisions result from fair and open bargaining encompassing the balance of interests in society; that competing actors and interests have a justifiable claim for their role in the decision-making process; and

that decisions are made in the public interest, both in the sense that they represent a public consensus for change and that any change brings about positive benefits for the public at large.

These criteria amount to the necessary conditions of a notionally pluralist and democratic policy process, but as with any other idealised concept they are subject to contestation and interpretation. Policy actors' appeals to the 'legitimacy' of their actions reveal contrasting accounts of what makes a policy decision fair, or democratic, or in the public interest, and these are in themselves reflective of opposing narratives about the fundamental relationship between media, policymaking and democratic institutions. In both case study debates different actors employed the language of legitimacy in various ways to accept or reject media policy decisions, and these claims helped to justify actions or reaction during the practical stages of policy implementation. These narrative devices also involved different perceptions regarding what types of interest or forms of political engagement are considered legitimate, but crucially they also demonstrate how these competing ideological conceptions of the democratic process impacted directly on the outcome of the media policymaking process.

If legitimacy derives from a fair and balanced policy process, the post-Leveson and BBC Charter review debates demonstrate how executive policymakers try to validate their decisions using avowedly pluralist language. In the Prime Minister's words, the March 2013 cross-party agreement on press regulation "benefited hugely from hundreds of hours of detailed negotiations with representatives of victims, all main political parties and the press themselves".<sup>142</sup> For the Culture Secretary the 2016 DCMS White Paper on Charter review was the "culmination of 10 months' work", taking into account both the 190,000 public consultation

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<sup>142</sup>HC Deb 18 March 2013, v. 560 c. 636.

submissions and the contributions of “all the stakeholders, BBC representatives and others who helped inform our deliberations”.<sup>143</sup>

Both of these statements celebrate a lengthy media policy process involving numerous interests as the best possible guarantee that decisions were reached through fair and balanced means. Of course government policymakers and political actors can be expected to invoke democratic norms to promote their own democratic credentials. Such claims, however, can also obscure and even naturalise the instabilities and inequalities inherent to media policymaking. Many of the most significant decisions in both case studies resulted from deliberations between only a small set of elite or established ‘insider’ actors, while the influence of more public forms of engagement was minimal. Furthermore, these decisions often involved policymakers making subjective choices between irreconcilable narratives about the fundamental purposes of press and broadcast media. This contradiction—between the official claims of balance or fairness and the partial and political realities behind these claims—speaks to the broader inequalities of power that structure media policymaking, and the varying ability of different policy actors to challenge the discursive construction of policy decisions as legitimate.

It is highly likely (and suggested by several key informants involved in Charter review) that the BBC felt compelled to accept the onerous cost of over-75s licences in the 2015 funding negotiations, rather than risk a damaging public confrontation with a hostile and newly emboldened majority Conservative government in advance of Charter review. What is more revealing for the role of discourses in policymaking is that the BBC’s Director-General described this deal as “the right deal for the BBC in difficult economic circumstances”.<sup>144</sup> This legitimised both the draconian process of the settlement—in which, as the BBC Trust lamented,

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<sup>143</sup>HC Deb 12 June 2016, v. 609 c. 729.

<sup>144</sup> Press release, 6 July 2015.

the public “have not been given any say in the major decisions about the BBC’s future”<sup>145</sup>— and the use of the BBC’s licence fee funding as an arm of the government’s austerity policies.

In contrast, anti-Leveson actors openly challenged the legitimacy of the March 2013 cross-party deal, and frequently referenced it as the political justification for rejecting the Royal Charter recognition scheme. Prior to this deal, industry negotiators had echoed the pluralist claims of executive policymakers, with one IIG member describing the February 2012 draft charter as “the fruit of two months of intensive talks involving the newspapers and magazine industry and all three main political parties”.<sup>146</sup> Later press coverage, however, condemned the cross-party Charter as a secretive deal “fuelled by Kit Kats and delivery pizza”, “hammered out at 2am in the office of the Labour leader” without any press industry involvement.<sup>147</sup> The recurring image of the ‘pizza deal’ as a shady decision discredited by its frivolous circumstances persists even today as a powerful rhetorical device to support on-going industry opposition to political involvement in press regulation.

Rival claims about balance or fairness also tended to involve idealised views about which actors should (or should not) contribute to a media policy decision for it to be considered legitimate. One basic ideal of policymaking holds that deliberative processes should involve actors who exhibit some sort of professional expertise or relevant insight that informs effective and appropriate decisions. However, definitions of the ideal *types* of expertise or insight involve ideological conceptions about the overarching aims of media policy, and about which select groups within the wide array of public and private stakeholders can contribute meaningfully to media policymaking.

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<sup>145</sup> Letter to Chancellor of the Exchequer and Culture Secretary, 6 July 2015.

<sup>146</sup> *Press Gazette*, ‘Press owners welcome Tory plan for independent regulator underpinned by Royal Charter’, 13 February 2013.

<sup>147</sup> *Daily Mail*, ‘How four Hacked Off campaigners sat in on talks’, March 2013; *Mail on Sunday*, ‘Letwin: Hacked Off “are actually mad”’, 24 March 2013.

Press criticism of the figures involved in the March 2013 cross-party deal articulated many of the same opposing narrative claims about which political principles should guide press policymaking. Hacked Off's close role in negotiating the provisions of the deal was described in press reports as "a sort of coup by people even more unaccountable and unrepresentative than the average newspaper owner", while the Privy Council's formal approval of the Charter amounted to "members of a secret body founded in the Middle Ages ... forcing the Queen to sign a politician's charter ending 300 years of press freedom".<sup>148</sup> For pro-Leveson actors, private industry access to senior policymakers fuelled claims that significant proposals were rewritten "either with the press holding the pen or with the press dictating the words".<sup>149</sup> One Hacked Off interviewee downplayed the supposed impact of the 'pizza meeting' against what they saw as a major power imbalance throughout the rest of the policy process:

The press lobby had had endless influence, endless input, so it wasn't as if we'd managed to get this one meeting at the last moment and changed everything. It didn't, it changed a couple of tiny bits. It's a bit of a joke, really. (Interview 3)

These accounts correspond closely to the 'gains' and 'losses' of these competing factions throughout the timeline of the post-Leveson negotiations, yet the differing views on the legitimacy of involving certain actors in decision-making also repeat the underlying political values of the policy narratives these figures advocated.

Even within the multi-faceted and sprawling BBC Charter review process, the legitimacy of different stakeholder groups' engagement in policymaking was nonetheless inflected by the dominant interpretation of the BBC's purposes as a 'distinctive' broadcaster. This focus on competition and crowding out gave priority to industry voices who echoed the

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<sup>148</sup> *Daily Telegraph*, 'The truth about Hacked Off's media coup', 30 March 2013; *Daily Mail*, 'Approved behind closed doors, curbs that end three centuries of press freedom', 31 October 2013.

<sup>149</sup> Brian Cathcart speaking at the CMS Committee's 'regulation of the press' inquiry, 19 March 2013. HC 819-iii Q254.

government's concerns around market impact, while any other input that emphasised social or cultural values of public service broadcasting was diminished. The Culture Secretary dismissed the mass public response to the Green Paper consultation as "not wholly representative" while newspaper reports thundered that the process had been "hijacked" by the "left-wing", "rent-a-mob" clicktivism group 38 Degrees.<sup>150</sup> This vocal aversion to public engagement presented Charter review as principally a process for experts and established industry voices, and redefined the mechanisms for public input as merely providing indicative lay support for pre-determined objectives. Although legitimacy is clearly a fundamental democratic requirement of public policy decisions, the discursive construction of 'legitimacy' is nonetheless governed by the same elite political actors and vested media interests that dominate how the policy process itself is structured.

It is worth dwelling briefly on notions of 'the public interest', and how policymakers seek to connect ostensibly democratic processes with the political and policy expectations of the public at large. During the Leveson negotiations the Culture Secretary called on the other parties to "put to one side the political and turn to focus on our principles"<sup>151</sup>, while the Deputy Prime Minister lauded the March 2013 cross-party agreement as a victory for "putting narrow interests aside".<sup>152</sup> The DCMS consultation paper on BBC Charter review also championed reform of the BBC's governance as a chance to "ensure the interests of the British public are properly represented" (2015:134). These appeals exude many of the ideal standards of pluralist policymaking: elected decision-makers strive for consensus, consultation and objectivity, while the actual decision-making process is structured "to insulate it from the domination of special interests and to incorporate the views of multiple stakeholders" (Freedman, 2008:33).

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<sup>150</sup> *Daily Telegraph*, 'BBC Charter review consultation hijacked by left-wing campaign group', 23 January 2016; *Daily Mail*, 'Survey on BBC's future hijacked by Left-wingers', 25 January 2016.

<sup>151</sup> HC Deb 3 December 2012, v. 554 c. 597.

<sup>152</sup> HC Deb 18 March 2013, v. 560 c. 640.



However, this rhetoric of acting in the public interest belies the subjective ways in which 'the public' is conceived, and the ideological values that take precedence when such conceptions are mobilised in the policy process. Throughout the Leveson negotiations and BBC Charter review, the prevalent expression of the public's relationship with media was either as a single-minded uniform stakeholder among many, or as mere consumers of media products. The emphasis on studies, reviews and opinion polls as means of gauging public involvement in policymaking (explored further in the next chapter) reinforces the premise of a 'public interest' that is measurable, quantifiable and reducible to partial assessments of political salience or economic value. Claims that a policy decision is legitimate on the basis of its reflecting the public interest thus do not entail a genuine engagement with the interests and demands of the public as a democratic collective, but rather tend to reinforce the dominant interpretations of the relationship between the policymaking process and 'the public' in the guise of a homogenous consumer mass.

This is not to say that policymakers' triumphant appeals to pluralism, consultation and listening to all sides are made duplicitously or out of cynical political ruse. Rather, the language of legitimacy highlights the circuitous and self-rationalising nature of policy discourses. Policymaking processes that are shaped by and organised around partial and interest-led interpretations, and which then produce outcomes that conform to and validate these narratives, appear legitimate precisely because they reflect that narrative's ideal conception of media policymaking. At the surface such decisions appear as the products of bureaucratic and routinized processes, premised on pluralist conceptions of how problems are identified and the appropriate means of resolving them through policy change. However, this naturalisation ought to be seen as a product of the unequal power relations inherent to the discursive construction of legitimacy. The discursive formation of decisions and policymaking behaviours as 'legitimate' rests principally with actors who are already primary definers of these common

sense conditions—namely, political and media elites—rather than resulting from the accumulated assent of public and private interests engaged in the policy process.

## **MEDIA POLICY AS NATIONAL IDENTITY**

Numerous theorists have examined mass media's social and political role in “buttressing and (re)producing a sense of nationhood” (Rosie et al., 2006:328; see also Anderson, 1991; Brookes, 1999; Schlesinger, 1991). National identity is a complex cultural construct which inducts disparate individuals into an imagined community of shared beliefs and mores inherent to (and expected of) their common membership of a nation-state. Critical research has focussed on how the mediation of contemporary British nationhood has often articulated a reductive identity contrasting ‘good’ British values with ‘bad’ non-British values, the latter typically associated with ethnic, religious or cultural minorities (see *inter alia* Black, 2016; Creeber, 2004; Innes, 2010; Lentin and Titley, 2012; Saeed, 2007). The articulation of national identity is thus a powerful discursive device for normalising political attitudes and behaviours, based on how they are perceived to embody the dominant expressions of that nation's essential moral character or ‘invented traditions’ (Hobsbawm and Ranger, 1983).

Such idealised traits are, however, clearly subjective and reliant upon “the mythical construction of a seamless history” (Brookes, 1999:248) which inevitably emphasises narratively useful aspects over the fuller, nuanced reality. In recent years any notion of a uniform British national identity has eroded under intense contestation and uncertainty: from without, by economic and political shifts of globalisation and Britain's ever-diminishing status as a global power; and, from within, by rising social and economic inequality across the UK paired with an increasingly multi-cultural and multi-ethnic population. These crises in ‘Britishness’ culminated in June 2016 with the public referendum on Britain's membership of the European Union. The immediate political build-up to and aftermath of the Brexit vote

overlapped considerably with the central media policy questions of the phone hacking scandal and BBC Charter review. What role do national newspapers play, for example, in fostering or countering prejudice against minority groups? How might the BBC as a *national* broadcaster provide a unique voice for communities outside the predominantly white English, middle-class and London-centric tone of mainstream British television? What image of Britain do print and broadcasting media represent, and is this the same country the public see and experience in their own lives?

These questions naturally feature in the deeper and on-going interrogation of what makes up British society. Throughout both case studies, policymakers and stakeholders invoked idealised notions of British national identity to explain their policy objectives. In these accounts, media policy decisions reflected a shared vision of uniquely British political traditions and moral codes. Notably, these appeals amounted to more than rote patriotic rhetoric. The visions of Britishness espoused in various policy proposals also entailed competing normative visions of core British values of society and nationhood, as well as contrasting ideals about media's place in British society and Britain's place in the world.

One persistent expression of media policy as a facet of national identity evoked a sense of the British press and the BBC as historic and distinctly national institutions. This linked the political and social development of the UK to the structural development of mass media, and therefore asserted these institutions as reflections of uniquely British legacies that should be preserved and protected through policy. Reforming press regulation through statute, according to one leader article in the *Daily Mail*, “would unravel liberties that have been Britons’ birthright for 300 years”.<sup>153</sup> The rhetoric of 300 years of press freedom in Britain—referring to the abolition of government print licencing in 1695—featured in many anti-Leveson editorials,

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<sup>153</sup> *Daily Mail*, ‘Grotesque legacy of censors who failed us’, 10 December 2012.

linking the evolution of Britain's liberal-democratic institutions with the freedom of the press from state interference. *The Sun*, for example, criticized the March 2013 cross-party Royal Charter as "ending three centuries of press freedom at the stroke of a pen". Rally against legislative proposals that were "utterly alien to our traditions in this country",<sup>154</sup> Conservative politicians like Boris Johnson, then the Mayor of London, lauded "the free, dynamic, irreverent and independent media [that is] one of the glories of this country".<sup>155</sup>

Official government papers on BBC Charter review often opened with appeals to history and tradition as defining attributes of the BBC's contribution to British society. The DCMS consultation described the Corporation as being "at the very heart of Britain" (2015:2), and the White Paper praised it as "a revered national institution, and familiar treasured companion" (2016a:5). As the BBC's own account of its national significance suggests, these statements speak to a sense of the BBC as an intrinsic part of a particularly British way of life and, because of its universal funding and purposes, intimately connected with every British citizen:

For 93 years, the BBC has played this role in our culture; we are part of what makes us the UK. We reflect and celebrate its different Nations and communities. We are part of the fabric of the country. We're part of how other people see us and why many people abroad would like to have a BBC of their own. (BBC, 2015a:5)

Claims of communal ownership materialise in familiar phrases such as 'our BBC' or 'Auntie Beeb', and the BBC's universal mission is celebrated as part of its "particularly British" ethos (BBC, 2015c:18). Yet as a policy narrative this language entails an explicit (though, in the case of some government and commercial figures, begrudging) recognition of the BBC's entrenched

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<sup>154</sup> HC Deb 29 November 2011, v. 554 c. 460.

<sup>155</sup> Johnson delivered this speech in a video broadcast at the launch event of the Free Speech Network, 25 October 2012.

place at the centre of the British broadcasting marketplace, granted the right to act under different rules and expectations due to the sheer weight of its history:

Our view was always that the BBC was there first, and the others came in with their eyes open. It's a national treasure, and the experience of public service broadcasters in other parts—mainly old Commonwealth countries so like Australia and Canada—is that once you tinkered with it, it was lost and devalued, you couldn't resurrect it. (Interview 12)

These appeals emphasise the unique and *uniquely British* legacies of media institutions as part of the social and cultural fabric that bind the public as a national community.

Other discourses offered an image of British media policy as having a powerful international influence, empowering the UK as a global standard-bearer for liberal-democratic values. Anti-Leveson accounts credited Britain's history of press freedom with making the country a global beacon for freedom and democracy, a reputation that would diminish if pro-Leveson press reforms were enacted. Luckhurst's 2012 pamphlet '*Responsibility Without Power*' provides an evocative image of the alleged international consequences of legislative changes to press regulation:

Westminster's statutory backing for a Press Ombudsman would become President Putin's State Censorship Committee, Robert Mugabe's Ministry of Truth or Mahmoud Ahmadinejad's Board of Righteousness. Look, they would gloat, the mother of democracy understands the need for the state to ensure that journalists behave. (2012b:28)

Industry stakeholders and press freedom campaign groups claimed the March 2013 cross-party charter agreement had created a global 'chilling effect' on journalists who had previously viewed Britain as an inspiration for press freedom worldwide:

The example parliament is setting has already been noted by a range of regimes around the world, and many journalists have expressed concern at the impact it will have on the political controls they may come to face in their own countries.<sup>156</sup>

I went to Hong Kong and I met representatives of justice and the international commission of jurists from thirty different countries. They all said to me “what the hell’s going on in the UK? Why are you trying to fetter your free press?” ... I constantly get confronted by a belief in the rest of the world that the UK has over-reacted in their attempts to marshal the free press. (Interview 6)

This same rhetoric of international British influence manifested in references to the BBC amplifying the UK’s ‘soft power’. Many policy actors praised the role of the BBC World Service in extending “the social and informational benefits of the BBC to people in countries where there is less access to accurate, impartial information” (VLV, 2015:22). As well as effecting a journalistic *noblesse oblige*, the World Service and the BBC’s international projects produce “tangible knock-on benefits for the UK, encouraging people to do business, visit and study here” (Fairhead, 2015:12). Here the BBC is a significant exporter of British culture just as it creates additional economic value for the UK both through selling popular, profitable British programming overseas and re-investing its success in Britain’s creative industries.

British values and British identity have a special place in the world—and the BBC, alongside others in our creative industries, has a vital role in *building the UK’s global brand and influence*. (BBC, 2015c:7, my emphasis)

The BBC’s own Charter review submissions emphasised the Corporation’s place as “a key source of the UK’s competitive advantage in global media” (Heath, 2015:39), and government documents likewise highlighted the international status of the BBC as “a valuable engine of growth and an international benchmark for television, radio, online and journalism” (DCMS, 2015:3).

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<sup>156</sup> Index on Censorship (online), ‘Leveson, the Royal Charter and press regulation’, 11 April 2013.

These appeals to British traditions and historical legacy imply that the specific organisation of British print and broadcast media is because of an innate national character, rather than the product of often inconsistent technical decisions and political conflicts. The ‘Whig history’ (Curran, 2000) of 300 years of unblemished press freedom in Britain offers a powerful narrative base for opposing state interference in the press, yet neglects the long history of cooperation and deference between the actions of government and the interests of the British corporate press. Likewise the emotive defence of the BBC as a national treasure, representing the ‘best of British’, casually elides the complex and persistent struggle within and around the Corporation between the principle of independent, democratic public service and the realities of a state institution closely intertwined with social, cultural and political elites (Mills, 2016), as well as the problems of which ‘image’ of Britain the BBC represents and presents to the public.

Furthermore these exceptionalist appeals to British national identity mask their underlying ideological conceptions of the purpose of media policy. Anti-Leveson opposition to legislative involvement in press regulation was presented as an essential characteristic of British political and democratic culture, rather than the instrumental policy goal of an industry seeking to preserve its regulatory and commercial interests. Examples of statute-based regulation in developed democracies like the Nordic countries (consistently the highest-ranking countries in global press freedom reports<sup>157</sup>) or Ireland barely featured as potential models for reform, even though the statute-based Irish Press Council counts the Irish editions of anti-Leveson titles amongst its members. “The sky does not seem to have fallen in in those countries,” (Interview 8) as one interviewee put it, yet such options were dismissed by the press

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<sup>157</sup> See Reporters Without Borders World Press Freedom Index.

and Conservative policymakers primarily because they would be ‘un-British’ rather than due to any particularly fault in their implementation.

Likewise the focus on the BBC World Service as a triumph of British soft power frames the BBC’s ‘global brand’ as an arm of the British state’s diplomatic and foreign policy objectives. This attitude becomes clearer still in light of the 2015 licence fee settlement when, despite compelling the BBC to aid its policy of economic austerity, the Conservative government protected the Foreign Office grand-in-aid for the World Service. Reform of the BBC’s Public Purposes further hints at the impact of national identity on media policy. In its 2006 Charter the BBC had a central mission of “bringing the UK to the world *and the world to the UK*,” through making people in the UK “aware of international issues and of the different cultures and viewpoints of people living outside the UK.” However the 2016 DCMS White Paper entirely removed the BBC’s duty to ‘bring the world to the UK’, requiring only that the Corporation reflect “the UK, its culture and values to the world” (2016a:12). Given the White Paper’s publication less than a month before the EU referendum—and the Culture Secretary’s strong support for the Leave campaign—this shrinking of Britons’ cultural window to the world appears closely intertwined with the fractious public debates about Britain’s place in and relationship with other countries and cultures.

Policy actors rightly recognise media policy as a vital component in the discursive construction of nationhood, and acknowledge that the organisation and governance of media matters for the broader social and political development of a national community. However, idealised characteristics of British press and broadcasting policy also reinforce a deeply ideological vision of what sort of nation Britain is. The dominant expressions of media policy as a proxy for national identity evoke an objective value of tradition and institutional history, exemplified by the inter-relationship between Britain’s liberal-democratic media and its austere policymaking institutions. This value is premised on political principles of individual liberty,



the political autonomy of the press and an entrepreneurial market economy as intrinsic absolutes. The freedom and distinctiveness narratives that most directly emphasised these libertarian, free market principles were thus made to appear as natural and historically contiguous descriptions of British media policy, rather than the partial interpretations of politically and commercially motivated actors. The two case studies suggest that national identity remains an important factor in the discursive construction and political assessment of media policy change, but that the symbolic power to define and express this identity as a policy narrative rests with the same established forces and institutions—namely government, parliament and the social-cultural complex of the mass media—who benefit from the dominant neo-liberal frame which idealises media and policymaking as principally an economic concern.

### **A MEDIA POLICY META-NARRATIVE?**

It is impossible to chart every narrative twist and turn in a policy debate effectively. Nonetheless, the previous discussions demonstrate how competing ideas and values of media policy are mobilised through distinct rhetorical techniques and discursive devices, and the impact this competition has on decision-making. These discussions also lend support to the view that policymaking is first and foremost a battle of ideas (Fischer, 2003), a struggle to command the meanings and narrative frameworks with which policymakers interpret and decide on policy problems.

Yet these narratives, and the rhetorical devices actors used to deploy them within the policy process, reveal a deeper relationship between the language and values of media policy and the dynamics of power that structure the decision-making process. Across both policymaking processes, the most decisive effect of policy narratives was the progressive restricting and narrowing of the discursive boundaries in which pivotal decisions were made. This was a persistent dynamic throughout the ‘formal’ mechanisms of policymaking—

parliamentary debates, government reports and stakeholder negotiations—as well as the wider political and social space of policy debate played out in news reports, public events and interest group campaigning. Once a narrative frame was adopted and repeated in the dominant language of official processes, the terms of debate in subsequent stages became defined by an increasingly smaller and smaller set of potential interpretations and meanings.

In contemporary accounts of policymaking, this discursive ‘funnelling’ is posed as a necessary effect of the rationalisation that is both necessary and intrinsic to any public policy process. But this rationalising isn’t a natural or objective process: it reflects the political biases of policymakers, the ability of other policy actors to articulate and disseminate their demands in ways that appeal to them, and the hegemonic values that structure how such discursive formations unfold. This funnelling privileges and naturalises the demands, status and values of these groups, but crucially also diminishes the scope for counter-narratives or alternative values to influence policymaking. From this we can begin to understand how issues as emotive, explosive and loaded with potential as phone hacking, or a topic as essential to public media provision as the future of the BBC, can become construed as little more than technical and insular matters to be resolved principally through bargaining with elite media stakeholders.

This does not mean that discursive processes are predetermined or inflexible. The two case studies demonstrate the lively interplay between competing ideas and arguments, the fluid cumulative shaping of ideas and issues into policy decisions, and the unique political and institutional forms of press and broadcast policymaking that produce new or unexpected discursive arenas. Yet both debates still operated within the same wider ideological context, and their core narrative contests reflect both the entrenched boundaries of political discussion and the underlying dynamics of discursive power that exemplify contemporary British media policymaking. The over-arching ‘meta-narrative’ (Fischer, 2003:173) connecting the post-Leveson and BBC policy narratives is the essential question of the relationship between the

media and the public, and what kinds of political systems can or should govern this relationship. Implicit in the central arguments of the ‘responsibility versus freedom’ and ‘universality versus distinctiveness’ frames is an enduring philosophical conflict between social and commercial ideals of mass media in modern democracies.

Over the last 40 years British media policy has increasingly articulated the cultural and democratising effects of the press and public broadcasting as by-products of market activity, rather than meaningful goals in their own right. Furthermore, these conflicts played out in discursive spaces (both institutional and textual) that are predominantly governed by elite political practices and private media interests. The result is a media policymaking process officially articulated as open, depoliticised, balanced and led by experts, but with its aims, interpretations and language ultimately defined by a pervasive neo-liberal discourse that puts elite bargaining, free markets, and deregulation ahead of any legitimate public say in how media are organised.

## 8. STRUCTURE VERSUS AGENCY IN THE MEDIA POLICY PROCESS

Neither the official decision-making structures nor discursive dynamics can fully explain why certain people were more or less influential than others at different times throughout the evolving structures and discourses of the two case studies. Both cases involved a wide array of policy actors and groups who all performed distinct roles and utilised various forms of engagement to achieve their objectives. It follows that policymaking is not an autonomous process but is at its core a lived activity, shaped and steered by human actors with competing ideas and goals. Influencing policy is not, however, solely the result of intent and will, of being in the right place at the right time, or even of having convincing arguments and powerful demands that sway the minds of rationally-guided policymakers. The interpersonal dynamics of the post-Leveson negotiations and BBC Charter review were tightly organised around defined physical settings (e.g. parliamentary chambers, government offices) and operated under unique institutional frameworks. An individual's capacity to influence such processes is deeply contingent on their own position in relation to these places and spaces, as well as the actions and behaviours made possible or impossible by these structures. Analysing how such systems develop is thus essential for explaining why certain policy actors are successful at influencing policy while others are not, and highlights the fundamental connection between *behavioural* and *structural* forms of power.

This chapter seeks to analyse this interplay between structure and agency in media policymaking. It details how actors are organised, how institutional cultures circulate, and how specific channels and techniques for engaging in decision-making produce and distribute different forms of power. The first section examines the differing structures and arrangements of key figures and groups across the post-Leveson and Charter review debates, and analyses

how these ‘policy networks’ produced distinct hierarchies that preconfigured actors’ roles and influence in policymaking. Then the chapter details the campaigning tactics and lobbying practices actors used to influence policy decisions, and what the efficacy of these different forms reveal about the disparities in access to and influence over core sites of executive decision-making. Thus these discussions consider a range of deeper issues relating to *Research Questions (2) and (4)* concerning the distribution of power and influence between different types of actors and interests in media policymaking. Through this the analysis from the previous three chapters is integrated to explore whether these two case studies are evidence of balanced, equitable democratic policymaking, or instead produced and were structured by institutional biases and ‘rules of the game’ that diminished the agency of some actors while privileging others.

### **MEDIA POLICY NETWORKS: ORGANISED PLURALISM OR STRUCTURED INEQUALITIES?**

The unique organisation of the post-Leveson and BBC Charter review policy networks, and the patterns of interaction they created, reflect cumulative historical precedents as well as each debate’s specific political and social circumstances. After decades of a total void in public press policy deliberation, and in the shadow of visceral reactions to the phone hacking scandal, competing actors’ frenetic activities and relationships within the disorganised arena of the post-Leveson debates seemed almost inevitable. By contrast BBC Charter review is a routine event in British broadcasting policy, and the methods and interactions that pressure groups used to enhance their influences in these established processes adopted similarly bureaucratic and consultative behaviours.

From these unique foundations and contexts, we can conceive of figurative network ‘maps’ that illustrate the connections, relationships and flows of influence that comprised the

post-Leveson debates in 2012 and 2013 (Figure 2) and the BBC Charter renewal process from 2015 to 2016 (Figure 3). These maps illustrate the defining network characteristics that structured different actors' interactions with the policymaking process, with each set of actors corresponding to broadly cohesive interest groups or distinct political units of cooperating individuals. These 'nodes' are not intended to represent the entire corpus of individual figures and formal organisations involved in the two debates, and the connections only account for the most prominent flows of influence between these actors. Indeed each the lines connecting one set of actors with another could easily correspond to any number of the specific forms of behavioural and structural power itemised in Chapter 2's Figure 1. The complexity of these interacting forces and relationships is precisely what makes the policy networks model an interesting if overly normative framework for analysis. Thus Figures 2. and 3. below are intended more as a figurative illustration of discrete power relations between actors specific to the two case study debates, rather than a reconceptualisation of the systemic function of power within media policymaking.

Figure 2. Post-Leveson policy network, November 2012 - March 2013

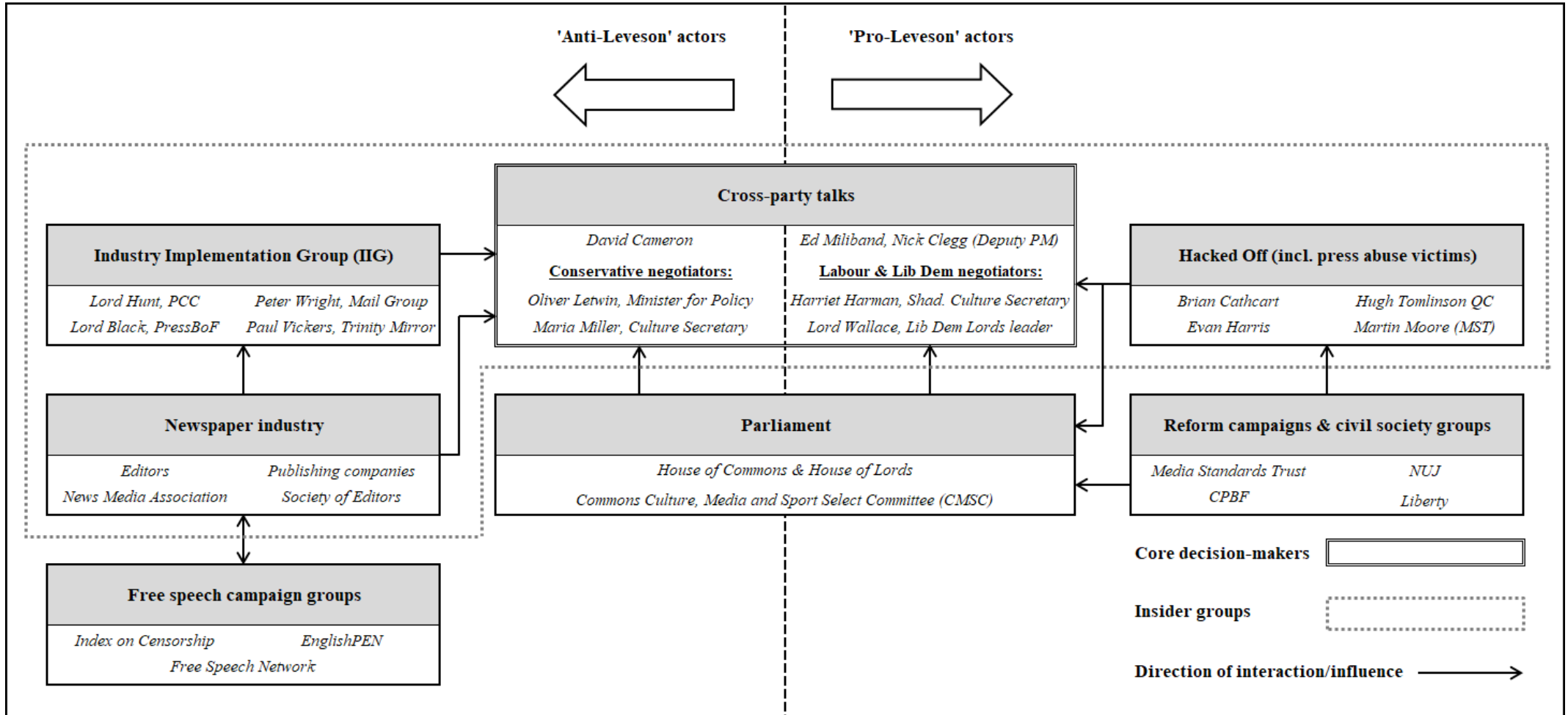
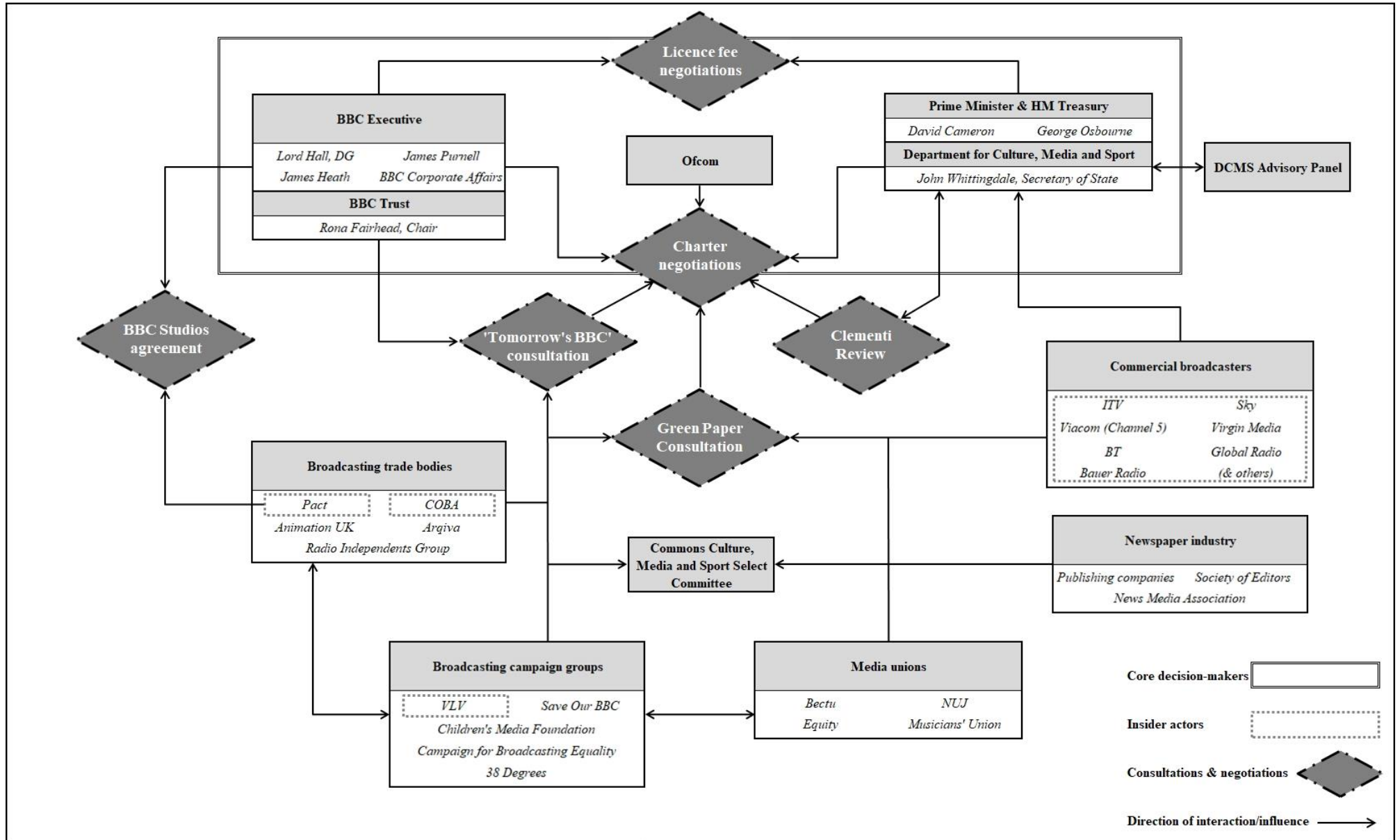


Figure 3. BBC Charter review policy network, January 2015 - September 2016





The people and groups involved in the post-Leveson debates were divided into diametrically opposed pro- and anti-statute camps, with effectively no interaction across this divide and all substantive deliberations and political pressure directed towards the cross-party talks between leading politicians, the newspaper industry and representatives of phone hacking victims. Actors involved in Charter review were assembled much more complexly into numerous clusters of broadcasting companies, public campaign groups, industry stakeholders and various political bodies, all engaged in multiple intersecting consultations and reviews feeding into the government's central Charter negotiations with the BBC. Yet these contrasting network structures also imply that different sets of actors and forms of political interaction had varying levels of influence and engagement between the two debates. These arrangements also invite us to interrogate in more detail the pluralist assumptions of 'networked' policymaking that idealise bargaining and intermediation between multiple, dispersed groups as guarantees of democratic policy decisions. The following discussions provide a more detailed account of how each of these individual relationships functioned in practice, elaborates on what these interpersonal dynamics reveal about the hierarchies and ordering of different groups within media policymaking, and explores these connections and conflicts as unique and uniquely structured manifestations of various forms of behavioural and structural power. By interrogating the two policy networks and analysing how each functional layer of actors was composed, we can begin to unpick this premise of natural or necessary hierarchy, and instead expose the political biases and internal contradictions that shape how media policymaking is organised.

#### *Core policymakers and uncertain authority*

In almost all areas of British public policy, a senior government minister with departmental responsibility commands the core processes of executive decision-making for their relevant policy area. This minister, closely supported by a team of civil servants, political

advisors and junior ministers, prepares the detailed provisions of policy change and then presents them for parliamentary scrutiny on behalf of the government. In this archetypical model of Westminster policymaking, ministers are the idealised centre of power, with unique and exclusive access to professional research and professional advice for informing their day-to-day legislative activities. Yet their actions are still fixed within the institutional guide-rails of personal accountability (to Cabinet and, via parliament, to the public) as well as their interdependence with stakeholders with whom they seek to build consensus (Rhodes, 2003:7-9; Russell and Gover, 2017:47).

In the post-Leveson debates and BBC Charter review, the Secretary of State for Culture, Media and Sport was the central figure for major moments of policy decision. Conservative MP Maria Miller, who held the post from September 2012 to April 2014, was integral to the cross-party talks on press regulation. John Whittingdale, another Conservative MP, steered the majority of the government's Charter renewal process from May 2015 to July 2016, before being replaced by Karen Bradley MP who gave final approval to the renewed BBC Royal Charter. Although these figures fulfilled the constitutional duties attached to their ministerial role, their individual influence in the interpersonal dynamics of media policymaking was far from absolute. On the contrary, the 'core' decision-making actors in both debates comprised a small but diffused cluster of government and parliamentary elites with competing loyalties and objectives, whose political machinations and personal conflicts often diluted, and sometimes even circumvented, the functional authority of the Secretary of State. While official policymaking power may be concentrated in individual actors who hold formally constituted, normatively authoritative positions, the effects and limits of this authority are ultimately dependent on the distribution of political power within specific elite policymaking systems.

This differential nature of executive power is especially apparent in the two case study debates. David Cameron's decision to call a judicial inquiry on phone hacking was heavily

influenced by the fragility of the 2010-15 coalition government and his own attempts to retain majority control of the Commons. One interviewee highly critical of the Leveson Inquiry's genesis described it as "a classic piece of Cameron managerialism" (Interview 1), as the Prime Minister appears to confirm in his own account of the period:

On press regulation there was no Conservative-Lib Dem coalition and a Labour opposition; there was, effectively, a Labour-Lib Dem coalition and a Conservative opposition. It was dangerous territory to be in. (2019:259)

The ad hoc composition of post-Leveson negotiations further demonstrates the prioritisation of political concerns—trying to navigate this supposed 'dangerous territory' of MPs ready to act against the government—over tackling the systemic failures in press regulation exposed by the Inquiry.

The Prime Minister's stated aim of reaching a cross-party consensus on *non-statutory* reform altered the arrangement of official decision-making actors in three fundamental ways: first, it prevented parliament from exercising its democratic scrutiny on proposals and, as already detailed, emboldened pro-Leveson politicians to implement their demands by more drastic means; second, it gave Labour's shadow Culture Secretary Harriet Harman and Liberal peer Jim Wallace, deputised by their respective parties, unique positions as non-government core policymakers with effective vetoes over the private negotiations; and third, it allowed for much more direct personal interventions from the three party leaders as talks unfolded. David Cameron frequently sought to reconfigure the balance of power in these negotiations, most notably by imposing his Cabinet Office 'fixer', Oliver Letwin, as the government's lead negotiator. Multiple interviewees remarked that the Prime Minister had "changed his mind about who was leading the negotiations" (Interview 6), allegedly because he did not believe Miller was capable of negotiating a settlement that would preserve his sensitive relationship

with the newspaper industry, or produce a commanding political victory over his Labour and Liberal Democrat adversaries.

Personal politics played an equally decisive role in Charter review. For campaigners who supported universal public broadcasting, John Whittingdale's appointment as Culture Secretary confirmed that the Prime Minister was seeking to 'sort out' the BBC following the 2015 election.

As soon as he was appointed, I was appalled and feared the worst, and I was proved right in every respect ... He is an ideologically committed right-wing Conservative: pro-Murdoch, pro-Thatcher, pro-free market, and has never really liked the BBC despite claiming that he does. (Interview 9)

The chief executive of Pact similarly suggested that Whittingdale was more inclined to accommodate ideas or policies sharing his own market-absolutist view, rather than seek to balance the wide range of competing public and private interests engaged in Charter renewal:

Although I know him well, I don't think he necessarily thinks any of my members should survive or not. He would say it's entirely up to their own wit and creativity. He is a believer in the free market and creativity and entrepreneurship. (Interview 10)

Whittingdale's personal policy views were embedded throughout the organisation of the government's formal Charter renewal process, not least in his hiring of former BSkyB executive Ray Gallagher as his ministerial special advisor. Of the eight 'industry experts' from publishers, commercial broadcasters and internet companies appointed by the Secretary of State to the DCMS Charter review advisory panel, many of them held direct financial interests in competition with the BBC.<sup>158</sup> Only one member of the panel, VLV president Dame Colette

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<sup>158</sup> DCMS press release, 'Industry experts to advise government on BBC Charter Review', 12 July 2015.

Bowe, represented any overt sympathy to audience concerns or traditional principles of public service broadcasting.

These choices demonstrate once again how the normative role of ministers as even-handed facilitators is, in reality, highly subject to personal and political biases that tilt the structure of decision-making in favour of partial interests. But just as with Maria Miller's subdued role in the post-Leveson negotiations, Whittingdale's individual authority was at times overtaken by other senior government figures intervening in BBC policy. Behind-the-scenes accounts of the 2015 licence fee deal paint the Secretary of State as little more than a messenger for the Chancellor's austerity-driven funding settlement (Snoddy, 2015), and Whittingdale's more extreme proposals for reforming BBC governance were removed from the White Paper following a last-minute intervention by the Prime Minister – supposedly following persuasion by his close acquaintance Rona Fairhead, who Cameron had personally appointed as BBC Trust chair.<sup>159</sup>

The principal executive actors in these two seminal media policy debates epitomised Westminster power, yet their roles were organised in ways that were distinctly unlike the normative models of Westminster decision-making. Opportunities for democratic parliamentary scrutiny were diminished or cursory, and ultimate approval for legal changes to the obscure Royal Charter format lay with government ministers from beyond the immediately accountable departments. By arranging the cross-party talks and the BBC Charter negotiations in this way, government policymakers engendered patterns of elite intermediation—between politicians, the press industry and a selection of campaigners, or between the government, the BBC and a selection of leading commercial stakeholders—as the ideal and most effective means of formulating policy change. These arrangements were of course founded on the decidedly

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<sup>159</sup> *The Guardian*, 'BBC chief voices fears over ministerial influence outlined in white paper', 12 May 2016.

partisan and ideological bases: a Conservative Prime Minister desperate to prevent an embarrassing parliamentary defeat and preserve a supportive relationship with the reeling press industry; and a Conservative Culture Secretary determined to advance the marketisation of public broadcasting, buttressed by an unexpected election majority and a convenient backdrop of damaging public scandals at the BBC. However, the interactions within these two sets of core actors also demonstrates the fragility of ministerial authority, and the extent to which messy political conflicts produce instability and sudden shifts in the balance of power between government and non-government actors.

### *The elite insularity of insider actors*

If the locus of core decision-making power changes as the policy process and its political constraints evolve, we also need to consider the role of non-core actors and their place in policymaking. Given the intricacies of most policy and regulatory issues, together with the multiple everyday demands that individuals in government and parliamentary positions face (Davis, 2010:55-63), it is unsurprising that policymakers and their supporting officials build functional relationships with select groups who offer information, advice and other sector-specific expertise to inform their deliberations. This selection results in a distinction between ‘insider’ and ‘outsider’ status (Grant, 1995), with policymakers recognising insider actors as pivotal players whose input is essential for informing the policymaking process. Yet the means by which this status is obtained or granted is itself a reflection of underlying power dynamics, and identifying the characteristics that delineate insiders and outsiders is essential for unpicking how such imbalances become built into the political organisation of policymaking.

Several major media organisations appeared to hold positions as *innate* insider actors within the two policy networks, with their regular direct access to core policymakers construed as essential to executive deliberation. Editors and executives from national and regional

publishers were frequently invited to private discussions on post-Leveson policy with Conservative policymakers. The industry's representatives in the IIG had exclusive access to the government's draft Royal Charter proposals, often before other negotiators had seen them. Despite the usual corporate competitiveness between national newspaper brands, the IIG adopted an influential position representing the principal demands and interests of the industry:

Trying to get newspaper people to agree on any common pattern of action is considerably harder than herding rabid cats. A committee approach was never going to deliver, so there was an unspoken consensus that those who had the time to do it would be given leeway to act on the industry's behalf, and people would watch carefully. (Interview 1)

This handful of corporate press actors, united in their opposition to statutory regulation and seemingly endorsed by the industry at large, held significant sway in approving or rejecting the cross-party proposals on behalf of the entire newspaper industry (despite several groups within the press industry being fully supportive of pro-Leveson proposals).

BBC bosses have always held a fixed role at the pinnacle of the Charter renewal process, but over the course of recent debates the Corporation has contended with the government consulting closely with some of its biggest commercial challengers. DCMS officials presented many of the Department's proposed reforms to ITV, Sky and Viacom as well as trade associations, commercial radio networks and newspaper publishers, and frequently based their revisions on industry feedback. The general plurality of insider industry voices partly reflects the number of different broadcasting interests swept up in the orbit of Charter review and its impact on the UK media landscape. However, much of the government consultations with industry stakeholders was segmented and compartmentalised, with each group pursuing its own partial goals in individual strands of negotiation. Alongside the central tussles between the BBC and DCMS, these intertwining relationships between industry and

government created a number of smaller sites of decision-making which compounded the support for commercial reforms across multiple aspects of Charter renewal policy.

Media companies were clearly not the only insider actors engaged in the two debates, as a small number of campaign groups and special interest organisations were also involved in the higher strata of core deliberation. Figures from the Hacked Off campaign attended a number of private meetings with senior party politicians, and in BBC Charter review VLV was similarly consulted by DCMS officials and invited to ‘roundtable’ discussions alongside industry representatives. The influence of these campaigns on pivotal moments of policy decision (see below) suggests that ‘insider’ media policymaking practices are not solely dominated by commercial industry interests, and that the informal channels operating behind and around official decision-making are much more contested and messier than normative models of policy networks portray.

Notably, the unique roles and arrangements of both industry and campaign insiders in the two debates were heavily dependent on actors demonstrating elite characteristics and utilising elite forms of policy interaction. Hacked Off actors combined extensive personal experience of parliamentary policymaking—including one former MP, Evan Harris, and a journalist advisor to the Commons CMS Select Committee, Brian Cathcart—with professional lawyers, academics and high-profile celebrity spokespeople.

There was nothing democratic about it. We decided, well, what do we need? We need some experts in the area, we had ex-journalists and practitioners. We needed lawyers so we brought in a QC around media law and privacy. *It was very much a gathering of elites, in many ways.* (Interview 3)

VLV likewise boasts a committed membership of former producers, presenters and senior executives from the BBC, including former media grandees in the House of Lords and other politicians sympathetic to VLV’s aims. The IIG epitomised the nexus of intimate relationships



between senior politicians and the press which, as the Leveson Report concluded, had aided in keeping failures of press regulation off the public agenda. Lord Hunt and Lord Black, negotiating on behalf of the PCC and its funding body PressBoF, had served as ministers in the Thatcher, Major and Cameron governments, while Peter Wright of Associated Newspapers and Paul Vickers of Trinity Mirror each held more than 20 years' editorial and board-level experience at some of the UK's biggest newspapers.

This 'revolving door' phenomenon, whereby figures seamlessly transition between public and private positions in political and media life (Davis, 2002; Freedman, 2006), was also apparent amongst insider actors involved in BBC Charter review. The BBC's executive, management and editorial staff are enmeshed in a sprawling organisational structure which, together with the Corporation's seemingly unbreakable ties to state and bureaucratic power (see Born, 2005; Curran and Seaton, 2018; Mills, 2016), produces its own unique establishment elite. The increasing marketisation within the BBC has seen this intermingling elite paired with an equally pervasive circulation of commercial and political players moving in and out of senior policy roles. James Purnell, the BBC's director of strategy during Charter review, was formerly a Labour MP and Culture Secretary under Tony Blair, while James Heath had worked as an advisor at both ITV and the Labour Party before becoming the BBC's director of policy. This circulation flows in multiple directions, with media and political elites transferring their first-hand experience and connections from one domain to the next. ITV's director of policy, for example, had previously worked in the Director-General's team during the 2006 Charter review, following a career as a solicitor specialising in media mergers and competition regulation.

These figures are not singled out to suggest that some insidious cabal controls media policymaking from behind the curtain. Rather, these career paths are highlighted to show the *elite insularity* of insider media policy circles, and the similar professional (and indeed even

personal) backgrounds of people who acquire close and consistent interaction with core policymaking processes. Whether from established media industry groups or special interest campaign organisations, the composition of the two debates' insiders circles supports Grant's assertion that a pre-condition of insider status is a close and pre-existing connection with elite policymaking power (1995:15-16). This has its own implications for what forms of engagement are open to competing media policy actors, and how acquiring an insider role in decision-making depends on holding a strong familiarity with the practices and interactions that take place beneath the surface of public policy processes.

Although insider actors come from similarly elite backgrounds that afford them unique connections with core policymakers, their position and influence within these processes still differ depending on the interests or aims they represent, and the extent to which these 'issue identities' (Maloney et al., 1994:20) are recognised as valid, necessary or useful. Media industry insiders' own descriptions of their roles in policymaking echo the same dominant sets of values and narrative assumptions that ran throughout the two media policy debates:

We represent competition, creativity, entrepreneurship and cultural diversity, and I think we are also very good at bringing evidence and arguments to convince policymakers that the markets may not be functioning as efficiently, as fairly or as optimally as they could be. (10)

The insider status of commercial and sectoral media policy groups is thus principally a product of the naturalisation of commercial policy goals and the empirical, technocratic and expert-led methods of deliberation associated with them. Compare this to campaign and public pressure groups such as Hacked Off, who were no less equipped with expertise or evidence but relied much more heavily on the political weight of their constituent members in order to effect an insider status:

I always considered us as a victims-and-experts organisation. That marriage was crucial and shaped Hacked Off quite significantly. It's more complex than simply being a lobby group for victims, but there has never been a stage when victims didn't enhance our ability to get to people. (Interview 4)

As is discussed in the following sections, the changing definitions and discursive boundaries of a policy debate also mean that the insider status afforded to non-commercial interests is often in constant flux. Whereas industry actors appear to be formally embedded in the central sites of media policymaking, the insider status of non-industry groups is built around far more informal or fragile connections with executive power.

What is perhaps most important here is recognising that insider status is not a single fixed category of identically influential policy actors. Competing insider actors' connections with official decision-making arise in markedly different ways. Insiders' positions in a network are not allotted or naturally acquired, but are reflections of their relationships with the political institutions and processes in that specific policy debate. Insider influence over media policymaking is thus exercised through many different paths and channels, the dynamics of which both produce and are produced by unique patterns of power.

We can see this clearly in the interpersonal structures of the two case study debates: Hacked Off holding sway over the cross-party negotiations through their extensive support from pro-Leveson backbenchers; editors, executives and newspaper trade associations leveraging their unique access to government and political elites to represent the press industry's shared policy interests; commercial broadcasting groups lobbying across regulatory, Civil Service and government actors involved in the formative granular decisions on Charter review; and established campaign groups like VLV mobilising a small but eminent supporter base to embed themselves in both the government's and the BBC's private industry consultations.

Although official policymaking power is centralised in a handful of executive actors, the multifaceted nature of policy networks means that this core decision-making is heavily influenced by numerous intersecting formal, informal, direct or even indirect arrangements of insider groups across a policy network. The issue however is that the institutional ‘nodes’ which connect insider routes to power are still grounded in ideological biases and behavioural cultures, which preclude certain types of actors, interests or influence while privileging others. Bodies like Ofcom, the Press Complaints Commission and parliamentary Select Committees are not active stakeholders but nonetheless perform a normatively authoritative role in policy formulation by providing evidence, analysis and commentary to inform decision-making. Instead of serving as autonomous and objective instruments for broader public deliberation, these supposedly independent groups demonstrated a much less clear-cut separation from powerful political and media interests. The controls and powers granted to media regulators reflect “the ideological frameworks on which they are based” (Freedman, 2008:14), such that their contributions to policy debates either promote market-based policy objectives (as with Ofcom) or they become wholly captured by the private interests they exist to regulate (as with the PCC). Select Committees are similarly prone to capture, wherein MPs’ personal views or political allegiances overlap with the Committee’s investigative work and tilt its deliberations in favour of dominant media policy interests – as was notably the case with John Whittingdale’s chairing of the 2013-15 inquiry into the BBC.

Insider actors clearly occupy an exclusive and influential role in media policymaking; one that is not only dependent on demonstrating elite characteristics and representing normatively legitimate interests, but which also connects these groups to a wider range of private, obscured or otherwise impenetrable functions of core decision-making. The two case study debates even show instances where the insinuation of commercial media interests over successive policy debates has seen some inside actors supplant the decision-making authority

of government officials: the devolved negotiations between Pact and the BBC on commissioning and production quotas, for example, or the enduring model of press self-regulation in which the newspaper industry is free to ‘mark its own homework’.

Thus the most immediate power dynamic specific to insider policy actors is that their status derives from the pre-existing institutional structures and discursive frames that define a particular area of policy. The influence this status affords these actors within the policymaking process then further entrenches these biases in new policy changes. The general culture of ‘insiderism’ shaping these two policy networks has deeper and more concerning implications for the democratic foundations of media policymaking, too. The informal connections and unofficial interactions typical of insiders’ involvement in decision-making are partly so influential because they skirt around more rigid practices that are often the only means of political engagement for non-elite interests. Ostensibly public media policymaking processes are increasingly determined by deliberations and interactions that are largely hidden from democratic scrutiny and involve only a select few powerful, unaccountable groups.

*Outsider actors: influence and irrelevance in the periphery*

Where a minority of insiders attain elevated influence and status, it follows that a large number of ‘outsider’ actors hold a far less influential, peripheral role in the policy process. In some ways this insider-outsider distinction is a natural consequence of the competition between interests that takes place as a policy debate is evolving. The central structures and relationships of a policy network organise around those who rise to the top of these political and discursive battles, while the remainder either “do not wish to become enmeshed in a consultative relationship with officials, or are unable to gain recognition” from policymakers (Grant, 1995:15).

Both case studies saw numerous stakeholders who, despite their active interests in relevant aspects of media policy, were marginalised from core sites of decision-making. Groups excluded from the post-Leveson negotiations included: campaign groups such as the Campaign for Press and Broadcasting Freedom (CPBF) and the Media Reform Coalition; free speech and civil liberties advocacy organisations like Index on Censorship, EnglishPEN and Liberty; representatives of the National Union of Journalists and the Chartered Institute of Journalists; and individual journalists, freelancers and editors from the many smaller newspapers subsumed within the large publishing companies' retinue of outlets. An even wider range of broadcasting stakeholders were similarly shut out from the government's core deliberations on BBC Charter review: the Campaign for Broadcasting Equality, Save Our BBC and other small public campaigns; broadcasting unions like Bectu, Equity and the Musicians' Union; academic experts and industry analysts; trade and professional associations such as the Children's Media Foundation and the Radio Independents Group; and, not least of all, the thousands of members of the public who submitted their views in consultations and online petitions.

Given the variety of these groups and the myriad interests they represented, the only common characteristic identifying them as outsiders is that they were not insiders. None held established connections with political or media elites, and for many of these actors influencing media policy was only an incidental part of the industrial or professional purpose of their respective organisations. Even for explicit policy advocacy groups, their smaller resource bases and loose membership structures were a world apart from the vast lobbying arsenals of dominant media corporations embedded at the heart of the two debates. Describing their attempts to appeal for 'Core Participant' status at the Leveson Inquiry, one civil society campaigner recalled how his group's established knowledge of media law and issues of press

freedom was overshadowed by the legal and financial clout of the powerful interests at the centre of the phone hacking scandal:

It was quite a funny process, we had to go along to an oral hearing and make a bid. There were top barristers there for the Metropolitan Police and News International and others, and we popped up at the back of the room not really knowing what we were doing, but we'd got it into our heads that we should be there. Leveson was completely puzzled at what we were doing there, he said more or less "I'm sure it will be interesting to hear from you, you'll have your opportunity so go away." (Interview 8)

Perhaps the biggest contributing factor to outsider status is that the interests and political constituencies these groups represented were not considered to be as legitimate or as beneficial to policymakers' needs. Far from being an instrumental function of the expertise or evidence a group can contribute to official deliberation, this recognition primarily derives from the political values and discursive accounts that delineate a policy issue's meanings, objectives and key players. While large corporate media institutions—themselves central in constructing these foundational narratives—and salient political or economic groups were afforded a normative insider role, a vast collection of sectoral, professional and civil society stakeholders (not to mention the public) were either subsumed into loosely defined 'communities of interest' or isolated from the decision-making process altogether.

Positivist accounts of the policy process present government actors and other official policy institutions as passive facilitators of decision, or as interdependent agents at the centre of increasingly fragmented systems of governance. However, both case study debates suggest that notionally authoritative bodies that typically perform prescribed policy functions can also become outsider actors in certain contexts, and thus exercise far less influence within a policy network. Despite its historic and constitutional place as the locus of British political power, parliament itself was relegated from having any substantive role in the major decisions on press or BBC policy. The only direct involvement MPs and peers had in the two policymaking

processes was to provide cursory consent to the cross-party agreement on press regulation and to ‘note’ the government’s publication of the BBC White Paper. This is in part a reflection of Royal Charters as a unique form of policy implementation, but it also highlights how contemporary modes of media policymaking—increasingly characterised by fragmented systems of governance, arms-length regulation and co-dependence between state and industry actors—have separated formative acts of official policy change from traditional mechanisms of public and democratic accountability.

This is not to say that outsider policy actors are all idle observers, completely unable to exercise any influence or agency in the substantive processes of policy formation. Rather, the complex and intersecting relationships that structure a policy network allow for outsider groups to engage with policymaking in subtle though typically more tenuous ways. ‘Outsider’ is not necessarily a fixed category, as different actors or interests can gain or lose new types of influence as a policy debate progresses and its political or discursive boundaries shift. Groups will organise with other outsider actors or organisations that share a common objective or interest, and seek to leverage this collective influence through other political conflicts or policy processes running concurrently with official deliberations.

EnglishPEN and Index of Censorship, for example, spear-headed the campaign for reform of England’s libel laws and mobilised many of the same links with parliamentary actors to pressure against the pro-Leveson House of Lords amendments that threatened the passage of the reformers’ prized Defamation Bill. Parliament itself, though excluded from the cross-party negotiations, was similarly able to affect these talks by pushing through non-government amendments with majority support from all parties. The BBC Trust, demoted to a diminished and effectively irrelevant role once its abolition had become all but certain, still served as an authoritative and influential mechanism for debate and scrutiny even from the periphery of the government’s core decision-making process:



The Trust knew it was doomed, but the consultation was a clever exercise in saying “we have a role here, if you’re going to abolish us you’ve got to find out who else is going to do this job.” So they were pushing back on the government’s agenda, but it was also a genuine attempt to canvas public opinion. They wanted to know, who is going to speak for licence fee payers now? (Interview 9)

Although outsider groups may not play a direct role in significant policy decision, these actors can nonetheless shift the conditions of decision-making, either by pressuring conjoining policy processes or by forming coalitions with other outsiders, in turn amassing additional discursive or political capital in support of their policy goals.

Ultimately, however, there are significant differences between insider and outsider actors and their influence on media policymaking. It is not merely the case that insider actors are more easily recognised as legitimate players in core decision-making processes while outsiders are not. Rather, the essential connections and functions that define how these processes work, their ideal outputs and who should be involved in them produce pervasive patterns of inequality across the actors, institutions and relationships that structure a policy network. Within the market-liberal ideological discourses dominating the two policy debates, outsiders’ resources have a lesser currency with decision-makers, their public or sectoral interests are seen as subordinate to the needs of commercial organisations, and their engagement with deliberation is parsed not as an essential factor in policymakers’ choices but rather as a supplement to them. Many of the peripheral processes ostensibly designed to allow the diverse range of public and private media policy interests to inform executive policymakers are more often perfunctory or cursory, rather than substantive attempts at organising pluralistic modes of bargaining and deliberation. As the following sections discuss, the different methods and interactions that outsider groups use to engage in these unequal structures can have varying degrees of influence on how decisions are made, but the role and status of these actors are

nonetheless subsumed within the prevailing political, interpersonal and discursive boundaries of debate.

## **DOES CAMPAIGNING MATTER? TACTICS AND STRATEGIES FOR INFLUENCING PUBLIC DEBATE**

These media policy networks show the deeply entrenched interpersonal power dynamics that structured how different actors engage in and influence media policymaking—the normative definitions of important stakeholders, formalised patterns elite of deliberation and the naturalised commercial policy objectives. However, the composition of these media policy networks also reveals that interest group activity takes place across numerous intersecting public and private spaces of debate. Pressure groups, industry lobbyists and other policy actors employed a range of campaigning tactics and engagement strategies in their efforts to influence policymakers and advance their policy interests at crucial junctures in the two policymaking processes. These methods had many distinct purposes, from ‘high-profile’ practices for publicising a group’s demands and demonstrating to policymakers “a solid basis of popular support” (Grant, 2000:19), to the ‘low profile’ activities aimed at intervening directly in political or bureaucratic decisions on the substance and implementation of policy change.

It is therefore pertinent to explore the various tactics used during the two case study debates, and to assess whether there are recurring trends in campaigning that are especially familiar to and effective in media policy processes. This section examines the perennial issues surrounding *access* and *balance* as democratic criteria in policymaking through an analysis of the different forms of campaign activity that both ‘insider’ and ‘outsider’ groups mobilised within the two case study debates. It considers how the structures and characteristics of policy networks affect the choice of campaigning strategies available to different media policy actors,

and what these choices reveal about the degrees of access available to different groups across the places and spaces of media policymaking. It explores how outsider actors utilise alternative forms of public engagement to challenge established decision-making practices, and questions whether these forms can still have a meaningful influence on policy deliberation in the context of entrenched systems of elite political, institutional and media power. In assessing whether certain tactics are more or less influential than others, these discussions engage with *Research Questions (2) and (4)* with a particular emphasis on the *public* or ‘high-profile’ domain of media policy campaigning.

### *Building and mobilising a campaign*

Material resources like finance, staff and facilities are clearly essential components for organising a public campaign, and the two case studies demonstrate the challenges or obstacles that arise when groups lack funding, tools or proficiencies for sustained campaigning. Large broadcasting companies and newspaper publishers possess extensive financial and organisational resources for supporting their policy objectives, particularly employing dedicated staff to meet and persuade policymakers, gathering technical evidence or funding PR activities. The Free Speech Network, for example, was founded and funded by newspaper trade associations as a public campaign opposed to the Leveson recommendations, and organised events, reports and opinion polls that reinforced the political arguments of major publishing groups engaged in the private negotiations. Other industry bodies like Pact, COBA and the Society of Editors also receive funding and membership dues from media groups in order to represent their collective sectoral interests across the breadth of policy and regulatory debates.

Public pressure groups and civil society organisations, in contrast, face much more uncertainty when it comes to acquiring campaign resources. Most rely on income from dwindling member donations or rare grants from charitable trusts. Established groups like VLV

or the Campaign for Press and Broadcasting Freedom,<sup>160</sup> which organise their activities around a range of political and regulatory issues relating to ‘traditional’ media, often devote as much time and energy to their own survival as to engaging directly in policy debates. The costs of office space, bulk printing and other everyday facilities are often prohibitively, and where staff work voluntarily or part-time alongside existing commitments this lack of organisational capacity or secure funding drastically constrains the choice of campaigning activities.

We do look at the detail of government proposals, read every page, scrutinise it, but we just haven’t got the resources for other campaigning ... We only have one part-time administrator who’s two days a week, and myself I’m two to three days a week which normally turns into seven! Other than that we have no paid staff. (Interview 11)

For some pressure groups, the unique circumstances of a policy debate can provide resources and funding that would otherwise be far beyond the reach of ordinary civil society campaigns. The Hacked Off campaign offers an especially unique example of a small group of media policy activists evolving into a professional lobbying outfit:

We started with some pocket money operating out of the Media Standards Trust’s offices, which was problematic for them as a charity. By the time the Leveson Report happened we were a registered company with a head of lobbying, a researcher, a full time press officer. It was an enormous undertaking but we did it, we had all the politicians’ phone numbers and shit like that. And we raised a lot of money, almost all of it from anonymous donors because they didn’t want to be monstered by the press. (Interview 4)

This solid resource base enabled Hacked Off to engage in a range of campaigning and lobbying activities that amplified the group’s access to and influence with policymakers throughout the phone hacking scandal and post-Leveson debates.

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<sup>160</sup> Somewhat tellingly the CPBF was wound up in 2018 after almost 40 years of campaigning on media worker rights and ownership reform, citing “insufficient income and resources”.

Groups can support their campaigning efforts with other, less tangible or non-material resources, such as specialist expertise, organisational renown or a cohesive and active membership base (Mahoney et al., 1994:24). Established trade bodies like Pact and the NUJ, draw on the collective industrial clout of the companies and journalists they represent, while VLV and Hacked Off organise their campaigning around broadcasting experts or the demands of high-profile victims of phone hacking. These unique bases of support typically reflect the broader objectives and founding purposes of a particular group, although their impact on media policy is highly dependent on how such interests are conceived within the terms of policy debate. Independent production companies formed a central part of the Conservative government's marketisation of BBC commissioning in 2016, whereas the views of individual journalists barely featured at all in the high-level discussions on press regulation in 2013.<sup>161</sup> Similarly, the intense political backlash around phone hacking ensured the victims and Hacked Off a decisive place at the negotiating table, yet the views of broadcasting audiences featured only marginally in the debates on 'distinctiveness' that dominated BBC Charter review.

The deeper issue for democratic policymaking, however, is that where media policy debates are rightly touted as dealing with crucial social and cultural questions, the possibilities for genuine public engagement in these essentially public matters are restricted first and foremost on economic grounds. Established media interests can easily out-spend and out-lobby civil society groups, while only in rare occasions can public campaign groups representing non- or even anti-commercial interests accumulate enough funding to engage on equal footing. Before we can even evaluate the impact of different groups and interests on media policymaking in addressing *Research Question (2)*, it is apparent that engaging in public policy

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<sup>161</sup> The NUJ's position in the post-Leveson negotiations was diminished even further by several prominent members publicly resigning their membership (and many more demanding an all-member ballot) in protest at the Union leadership's support for the Leveson recommendations.

campaigning is a practice already skewed in favour of larger, established corporate and political entities with the resources and financing to employ a variety of tools and methods.

### *Campaigning in the public sphere*

Groups in both case studies used a range of high-profile campaigning methods to establish their interests on the political agenda, counter or rebut rival claims and generally attract support from the public at large. This campaigning formed a vibrant space of civil society activity alongside the formal decision-making processes, with a variety of meetings, speeches, reports, conferences and rallies all contributing to the wider public sphere of media policy deliberation. For many policy actors and organisations, especially those confined to outsider roles, such tactics were the main means of raising their political profile and persuading policymakers to heed their arguments. Yet questions remain about the genuine impact of this public campaigning on the substantive content of policy change and, crucially, whether competing demands and demonstrations of public support are properly reflected in ostensibly democratic (though predominantly private and elite-dominated) official policy processes.

Chapters 5 and 6 have shown that the locus of decision-making power shifts as the media policy process advances, yet interest groups' public campaigning strategies also evolve as the sites of political contestation change. Hacked Off's formative role in pressuring for a phone hacking inquiry, for example, came from a combination of politicians' anxieties and the group's campaigning activities capitalising on the simmering public mood. In the days and weeks around the 'Milly Dowler moment', Hacked Off held a full-house launch event in parliament, organised protests and stunts around Westminster and attracted over 200,000 signatures for its inquiry petition. This moment was, by all accounts, pivotal in British politics as well as a decisive instance of successful campaigning by a nascent public pressure group. Hacked Off mobilised the substantial public clamour for change and, with the crucial and vocal

support of victims of press abuse, directed it towards the fulcra of political power, forcing policymakers to act on the concerted demands for an inquiry which under other circumstances would have been subdued or ignored altogether.

Once this opening phase had passed, however, the scope of campaigning changed markedly. Hacked Off began targeting MPs and Lords directly to build pressure around private negotiations on reform, initially with events at the 2012 party conferences ahead of the Leveson Report's publication and then physically around the parliamentary estate during the cross-party talks:

We were knocking on MPs' offices, pushing paper under people's doors. It felt at times like we were camping out in Westminster, almost like a canvassing operation. But we knew we only had a small window of opportunity to make headway with this.  
(Interview 3)

What little overtly public campaigning that took place in the hectic opening months of 2013 was mostly conducted by civil society groups excluded from the talks between politicians, the press and Hacked Off. Index on Censorship and the NUJ, among many others, held public events and published press releases, reports and blog posts on the negotiations, though these were typically aimed more at informing and encouraging like-minded campaigners, politicians or the spectating public rather than swaying the content of the talks themselves. The FSN similarly built a presence as a single issue anti-Leveson group, and collected numerous endorsements from trade bodies and free speech advocacy campaigns, though its activity was confined to repackaging publishers' existing policy objectives as 'independent' claims quoted in anti-Leveson press reports.

Ironically, the political development of the post-Leveson process—in particular the persistent opposition of both the Conservative leadership and publishers to any form of statutory implementation—progressively moved the debate out of the public domain and into

the traditional, private settings of government decision-making. In the midst of a volatile and frenetic public scandal, the rationalising effects of formal policy processes contained the issues of the phone hacking scandal within more politically manageable (and decidedly less public) modes of policymaking. As we shall see below, elite tactics of parliamentary bargaining and insider lobbying became the only viable practices for influencing substantive decisions on press regulation.

Whereas the evolving structure of the post-Leveson process negated the effects of public campaigning almost entirely, the BBC Charter review comprised several distinct, formalised spaces for public engagement. The DCMS and BBC Trust consultations amounted to the largest formal exercises of public engagement in the history of British media policymaking, due in no small part to the mass online responses of the 38 Degrees website. Alongside these official processes, numerous interest groups fed into the broader conversations about the future of the BBC with their own campaign activities. Broadcasting unions launched a ‘Love it or Lose it’ campaign opposing the 2015 licence fee settlement, held meetings in parliament with opposition MPs and published an alternative White Paper which drew support from politicians and prominent broadcasting celebrities. The Future for Public Service Television inquiry, chaired by film producer and Labour peer Lord Puttnam, hosted public discussions with media industry experts and stakeholders, and its June 2016 report encapsulated many of on-going critiques of the government’s Charter review agenda.

This lengthy public debate also saw a great deal of campaigning and consultation *within* specialist broadcasting sectors. Steemers offers a telling account of the meetings, joint statements and inter-group dialogue within the ‘advocacy coalition’ of campaigners, production trade groups and other industry stakeholders that lobbied the government for protection of funding for children’s television (2017:9-10; see also Sabatier and Weible, 2007). This process-adjacent campaigning hints at the meaningful influence of collaborating with



other important policy actors, being in the same room as policymakers and even physically confronting them—whether at public events or in the anterooms of legislative power. As one interviewee recounted, public encounters with policymakers can have as much effect on the politics of decision-making as on the content and outcome of policy decisions themselves:

We held an hour-long ‘in conversation’ event in parliament with John Whittingdale, I think it may have been the only public-facing event he did during all of Charter review. Someone asked if DCMS were going to publish a consultation summary, and John Whittingdale wasn’t very clear on that. I think they were hoping to get away with not doing it, just drafting the Charter and saying “it reflects the public’s views”, but we put a lot of pressure on them to release their final analysis. (Interview 11)

However, looking at the consultations themselves as explicitly *public* exercises in policy formulation, the potential they offer as open, plural spaces for campaigning appears limited. Even contributors who successfully swayed government policy expressed their doubts about the distinct impact of consultation exercises compared to other, more direct forms of engagement.

Everyone and anyone can put in a submission. I’ve not seen all of them, obviously, but I’m conscious of submissions from other media and stakeholders. Most of them I could have written myself in terms of their position and proposals. (Interview 10)

Another notable aspect of these consultations is the propensity of both major media stakeholders and the government to use external agencies, auditing companies and private consultancies to buttress their own arguments and evidence with extensive quantitative research. Reports and studies from KPMG and PWC (two of the ‘Big Four’ global auditing powerhouses) were core offerings in the BBC Trust’s assessments on efficiency and market impact, while DCMS commissioned market research firm GfK and media policy consultancy Oliver & Ohlbaum to supplement its Charter review fact-finding. For both parties these reports reinforced their existing arguments about the perceived advantages or disadvantages of the

BBC's public services, suggesting the actual benefit of such private research is more political than empirical:

Everyone knows it's a bit of a game. Oliver and Ohlbaum will give you the message depending on who's paying for it. They know what they're supposed to come up with. I'm not saying it's a corrupt practice but as with economists, the model you put in decides what you get out. You're just trying to out-muscle your opponent's facts and figures. (Interview 9)

These tat-for-tat exchanges suggest the use of empirical research in media policymaking has become an industrialised feature of media policymaking. The sheer volume of data, statistics and econometrics takes precedence over a genuine assessment of whatever facts or issues this data may reveal, such that evidence-led policymaking appears more and more like policy-led evidence-making. Furthermore, this sort of authoritative 'independent' research comes at a far higher cost than many public campaign groups can typically afford. It demonstrates yet another imbalance in the nature of media policy campaigning, between on the one hand the organising strategies available to campaign groups (for whom these public consultations are ostensibly designed) and on the other hand the forms of professional engagement that policymakers actually take into account.

Compared to these costly private research reports, opinion polling offers a relatively cheap means for interest groups to bolster their proposals with simple measures of wider public feeling. Pressure groups and national newspapers commissioned 21 polls on press regulation over the main period of post-Leveson negotiations, while extensive surveys on public attitudes to the BBC were an enormous part of the Charter review consultations (alongside recurring newspaper polls on matters such as the future of the licence fee). The sheer volume of polling shows its appeal as a campaigning device and the significance that interest groups attach to demonstrating public support. Yet its impact on either debate is unclear, especially with the

frequent instances of diametrically opposing views on central media policy issues between multiple polls. One poll by Hacked Off, asking “how do you think newspapers in Britain should be regulated”, found 78 per cent supported “an independent body, established in law”. Weeks later, *The Sun* reported only 24 per cent favoured a body “set up through law by Parliament, with rules agreed by MPs”.<sup>162</sup> In November 2013 a *Daily Telegraph* poll reported “seventy per cent of voters believe the BBC licence fee should be abolished”, yet just two years later a BBC Trust poll found “nearly 60% favoured a universal style fee” over any other funding source.<sup>163</sup>

These contradictory results do not mean that the British public is fickle-minded or prone to erratic reversals of opinion. Rather, it shows the close correspondence between the semantic framing of polling questions, along with the potential responses given to respondents, and the political goals of groups who commission and publicise poll results for their campaigning. Interest groups and policymakers alike selectively quoted polling figures that reinforced their existing arguments, making claim to the weight of democratic consensus based on rhetorically punchy (if clearly partial) statistics. Anti-Leveson newspapers almost exclusively referenced polls commissioned by themselves or the Free Speech Network, despite these views running against wider data on the views of their own readers. Analysis by Ramsay (2014:92), breaking down polling data by newspaper readership, found that

readers of newspapers which had spent the intervening months publishing many articles containing strong and frequent criticism of the Cross-Party Charter and strong and frequent praise of PressBoF were *more* supportive of their chosen newspaper joining the former.

Given the patterns of elite insularity that govern access to official spaces of decision-making, the popular use of opinion polling highlights the limited role of ‘the public’ as the essential

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<sup>162</sup> YouGov/Hacked Off, published 6 October 2012; YouGov/*The Sun*, published 15 November 2012.

<sup>163</sup> *Daily Telegraph*, ‘Three-quarters want BBC licence fee abolished, poll finds’, 2 November 2013; for BBC Trust polling see *Technical Annex C: Funding of ‘Tomorrow’s BBC’* consultation (2015e).

stakeholder in media policy debates. The diversity of readers', viewers' and listeners' views *as citizens* is reduced to snapshot samples projected onto the public at large, while a meaningful interrogation of the purposes and organisation of media institutions—political questions from which the public has consistently been excluded in previous policy debates—has been replaced with simplistic 'yes or no' verdicts on interest groups' subjective claims. 'Public opinion' was often wielded by opposing groups, yet the public was rarely directly involved in policymaking as the collective body on which the legitimacy and impact of media policy decisions ultimately rests.

High-profile campaigning is often the only means for many media policy interest groups to engage in policy debates and present their objectives in the public arena. Public polling and consultation submissions have made it easier for outsider actors to complement traditional forms of campaigning and advocacy with professional evidence and argument. These methods require comparatively little expenditure or effort, and can also produce direct interactions with the official processes through which policymakers build their decisions. However, it is rare that these can on their own amount to singularly significant changes in policy. High-profile campaigning may tweak certain elements of the policy process, but such tactics are more often successful in amplifying the influence or status of groups that are already established within the normative boundaries of a debate, rather than radically re-aligning those boundaries to include new or previously excluded constituencies. Public campaigning on media policy issues manifests in various ways, but its impact is ultimately contingent on the discourses and political frames embedded in official practices and interpersonal structures of decision-making. To understand their broader impact, we have to look the other means through which competing interest groups can promote their aims and values both in the public domain and in the insular private domains of political bargaining.

*Media as a campaign tool? Tabloid tactics, news optics and 'clicktivism'*

Throughout the case study debates, news media coverage decisively shifted the political and narrative boundaries of policy deliberation, attributing salience and meaning to media issues and interpreting them as justification for action (or indeed inaction). The focus and tone of news media coverage is fiercely contested between policymakers, pressure groups, trade bodies and other high-profile media figures. Competing policy actors use media-facing tactics to attract favourable coverage from press or broadcast outlets, and position their political aims at the centre of the powerful mediated accounts of media policymaking. Thus we can conceive of news production processes and reporting agendas as a significant campaigning space within and around the media policymaking process, and an important facet of media power for considering *Research Question (4)*.

Just as insider access to decision-making depends on connections with political power, campaigners similarly establish access to and influence over news reporting by contributing to the interests and practices of news organisations (Billard, 2020; Freedman, 2008:87). Ministers, MPs and corporate media representatives featured prominently as sources in news reports on the two debates, often framed as neutral observers or leading authorities on the policy process (Ogbebor, 2018:198-200). But for other interest groups—especially those arguing against the free market policy objectives of the Fleet Street press and commercial broadcasters—access to and representation in news media accounts was anything but open. Even in rare cases where campaigns utilised their connections with journalists or editors to publicise their work, news coverage of groups outside the recognised elite political and media domains was typified at best by silence and at worst by outright vilification.

You knew the tabloid press were out to get you, not just to misrepresent your views but firmly out to get you. This made it incredibly difficult to get coverage in the other broadsheets, which then made it even harder to get the broadcasters onside. In the early days we could because of that key link with Nick Davies and his investigations at *The Guardian*, but once he left there was nobody at that paper saying “we’ve got to buy into this” or “we’ve got to get this right”. (Interview 3)

Obviously the vested interests in the media worked against our campaign. The majority of us didn’t bother with a media strategy because the newspapers basically wouldn’t play. There were times when we were approached or put across our arguments, I certainly got involved in the occasional broadcast event. But I think it’s fair to say that the competitors of the BBC were not giving the issue very balanced coverage. (Interview 12)

News media hold a normative role as platforms for deliberation between competing policy interests, political institutions and the wider public, but both the post-Leveson and BBC debates suggest that editorial selection and media organisation ‘news values’ frequently filter out voices that speak against the prevailing corporate-libertarian media policy paradigm these organisations seek to uphold.

Having a nuanced understanding of how media organisations make and construct news is also a boon to campaigning through the media, but adapting to the logics of news production requires expertise in the journalistic demands of elite media institutions and knowing how to appear as a ‘newsworthy’ source (Davis, 2007b:55). Larger or more resourced groups employ former journalists or media professionals to write press releases, build relationships with reporters and maintain a media presence. For Hacked Off, adopting the presentational details and performative arrangements of news production decisively bolstered the group’s media presence after the phone hacking revelations.

The breakthrough for us was going with the Dowlers to see the party leaders. *That was theatre apart from anything else ...* The TV people would say “you can’t come out of that door because we can’t record that, so you have to come out of the other door,” and our press liaison would fix it so we came out of the right door for statements to the media. (Interview 4)

These appearances produced iconic imagery of campaign leaders, celebrities and victims outside 10 Downing Street or in front of the Houses of Parliament, identifying them with—or perhaps, more appropriately, as standing against—the symbolic sites and institutions of British political power. Recreating the archetypal ‘optics’ of how news media cover crises and scandals provided Hacked Off with premium airtime in front of the assembled Westminster press pack. Amidst the chaotic swirl of political disarray and corporate fallout, attention to ‘what makes news’ was arguably the major factor in Hacked Off becoming a prominent group.

Media celebrities played a similar role in attracting media attention. Victims of press abuse such as author J.K. Rowling and comedian John Cleese publicly supported Hacked Off, along with actors Hugh Grant and Steve Coogan who frequently represented the group on broadcast news and current affairs programmes. In March 2014 the group funded a full-page advert in a number of national newspapers, listing over 200 celebrities, academics and public victims of press abuse calling on publishers to establish a Royal Charter-compliant regulator. Celebrity figures similarly grabbed headlines throughout BBC Charter review. In a July 2015 joint letter to the Prime Minister, a host of British film and TV stars including Judi Dench, David Attenborough and Stephen Fry demanded that “nothing should be done to diminish the BBC or turn it into a narrowly focused market-failure broadcaster”.<sup>164</sup> Comedian Lenny Henry, together with BAME industry groups, also successfully campaigned to reform the BBC’s initiatives on staff diversity both on screen and ‘behind the camera’.

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<sup>164</sup> *Daily Telegraph*, ‘Leave the BBC alone, Hollywood stars and TV presenters tell David Cameron’, 14 July 2015.

As a campaigning tactic, having popular figures as spokespeople is a simple way of getting the public and media outlets to take notice of a policy issue and communicate support for political action. However, the same media culture that metabolises celebrities as important or noteworthy voices can also trivialise these contributions if they conflict with a media organisation's own political aims. Anti-BBC newspapers reported that the seemingly spontaneous 'luvvies letter' had been organised by BBC executives, branding it a "clumsy and arrogant attempt by its bosses to win over public opinion, which has now spectacularly backfired".<sup>165</sup> The case entered the growing canon of press attacks on overpaid BBC talent and a self-indulgent corporate culture. Pact's chief executive similarly recalled other attempts by the BBC to dazzle policymakers with celebrity and exclusive promotions:

The BBC's a brilliant machine prior to Charter review, they schmooze everyone, they invite everyone to the Proms, they spend millions of pounds being everyone's friends. Once they get what they want, that all tends to fall away. (Interview 10)

The corporate media backlash against these publicity tactics was especially apparent in the post-Leveson debates. Ahead of the Leveson Report the Free Speech Network funded a full-page advert in several broadsheets featuring a rogue's gallery of world dictators alongside the question "these people believe in state control of the press. Do you?" An NMA ad published in April 2013 urged party leaders to implement PressBoF's alternative Royal Charter on press regulation, and the following October the FSN publicised the newly-launched IPSO as "the toughest regulator in the Western world". Hacked Off's close work with celebrities attracted scorn from all corners of the press, especially right-wing papers whose parent companies led the anti-Leveson efforts in negotiations. The "red-top tricks" of "celebrity stardust and the emotive deployment of victims", as one Telegraph article described them,<sup>166</sup> were essential to

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<sup>165</sup> *Daily Mail*, 'Ex-Labour minister behind the plot: £300,000-a-year executive James Purnell linked to celebrities' warning letter over BBC funding shake-up', 16 July 2015.

<sup>166</sup> *Daily Telegraph*, 'The truth about Hacked Off's media coup', 30 March 2013.



the group's 'media coup' over the public and political reaction to phone hacking. As a journalism professor and former editor remarked in interviews, Hacked Off's leveraging of victims' experiences was "a superbly finessed media strategy" which used "the most basic trick of good populist tabloid journalism: that you should always make a story about people."

Taking Bourdieu's (1992; 1998) and Couldry's (2000) theories of the symbolic power of media, the case studies show that groups who appeal to the journalistic 'media frame' can alter how policy debates are represented as political and public issues. Groups that successfully captured the news cycle at crucial moments in the policy process shaped the core definitions and arguments that endured throughout the post-Leveson and BBC debates. This may in some ways reflect a pluralist ideal in which outsider actors, typically excluded from elite sites of decision making, communicate alternative policy values and influence policymakers through the mass media. Yet while some non-media interest groups can co-opt the symbolic role of news media with deft interventions in the production process, the media 'meta-capital' (Couldry, 2003:12) for determining how this power is distributed amongst competing social agents is concentrated almost wholly in the hands of established political elites and media institutions themselves.

This strikes a fundamental challenge to the democratic auspices of news media as a forum or conduit for debating and engaging in media policy. Media organisations dictate how a policy dilemma is framed in accordance with their own institutional and corporate ideals, but they can also marginalise groups that challenge the political and policy foundations that enable this concentration of power. As the director of Impress recounted, there is a chronic imbalance in the opportunities for advocating media policy change through the public sphere of news media:

In terms of your own comms you are put on the back foot by having to deal with these tropes that get rolled out over and over again. If the industry that you're setting out to reform is one which can reach ten to twenty million people every day, and can recycle the same very limited easily-grasped set of messages, getting your own message out is very, very difficult. (Interview 8)

Though broadcast news is legally obliged to report issues fairly and impartially, there is a substantial degree of *inter-media* agenda-setting (Cushion et al., 2018; Golan, 2006) where television and radio news narratives of media policy debates reflect and align with how these issues are reported in the overtly political national press. Both as a discursive space and as a campaigning tool, print and broadcast news appears monopolised by commercial industry interests and elite political objectives. Media coverage of the two debates regularly defined the crux of media policy issues within a prevailing Westminster 'media logic' (Davis, 2010:76-81), interpreting the policymaking process as conflicts between political personalities and parliamentary factions, as hyperbolic existential crises of moral and historic proportions, or as technical questions of industrial and economic priorities in which the public are merely passive observers.

Institutional biases in the news production process also mean that opportunities for oppositional interests to promote their aims and values through news media, either as sources or as 'leading players' within news narratives, are slim. Recent developments in the use of online and 'new' media, however, have introduced novel campaigning methods that offer the potential for circumventing traditional and elite-dominated channels of mediation. Social media posts, e-petitions and mass email correspondence to policymakers—what may be loosely labelled 'clicktivism'—represent unique forms of spontaneous individual engagement in political processes using replicable, extremely cheap or even free digital content. Both Hacked Off and the broadcasting unions' 'Love It or Lose It' campaign hosted hugely popular online petitions, with the petition for a phone hacking inquiry attracting over 200,000

signatures in just a few days. For Hacked Off this served as their strongest resource for gaining recognition, from both political and traditional media actors, in the immediate aftermath of the hacking scandal:

This was ancient history from an internet perspective but in those days it felt pretty remarkable how many people were signing our petition within the first few hours of going online ... then all of a sudden the media calls were coming in asking about the campaign, talking about it on radio. It snowballed. (Interview 5)

Hacked Off also used mass emailing platforms to “get letters to MPs in their tens of thousands in twenty-four hours ... Proving that we had huge public support was really key as a counter to the press” (Interview 3). From this we might rebut the perception of clicktivism as "a lazy or overly convenient alternative to the effort and legitimacy of traditional engagement" (Halupka, 2014:116), and instead note how impulsive and noncommittal forms of engagement can reconnect the ‘clicktivist’ to political processes that have become increasingly detached from the public.

However, as Karpf notes, these low-quality high-volume tactics form only “an individual element of a broader campaign to convert organizational resources into political power” (2010:15). Thousands of signatures and piles of emails in policymakers’ inboxes may enhance the presence of public campaign groups and demonstrate a strong base of public support, but the tangible influence of these alternative media interventions is still bound up in the wider institutional and ideological constraints of the media policymaking process. Several interviewees from insider groups questioned the value of thousands of mass responses, like those organised by the e-campaign group 38 Degrees, and even hinted that they may have had a detrimental effect on the political balance of the government’s Charter review consultations.

There was a whole barracks of civil servants wading through 10,000 submissions with everything from “close down the BBC” to “why isn’t it making more shows I like”. It is one of those democratic requirements but it’s expensive and I’m not sure how much you actually get out of it. (Interview 10)

The government could dismiss the findings or the results of the public consultation because they said “oh it’s just a lobbying group”. 38 Degrees had a certain amount of self-interest in just making noise about their own size, they don’t have policy expertise so in a way them hi-jacking the consultation didn’t help. (Interview 11)

It is naturally difficult for campaign groups to mobilise large numbers of public supporters to engage actively in policy debates, but there is a greater structural barrier, alluded to in these remarks, that distinguishes between the kinds of public participation considered useful to policymaking. Professionalised campaigning and media engagement tactics have an accepted, even expected meaningful impact on policy change while trivial, inexpert or lazy contributions by social media users and digital mass movements saturate debate and give policymakers licence to shun public participation. Whereas these new media tools are popularly envisioned as exciting and disruptive forms of distinctly *public* participation in policymaking, official attitudes interpret these such that “when the public responds in unprecedented numbers, they are deemed to be ‘unhelpful’” (Freedman, 2008:103).

There is, moreover, a fundamental imbalance in the availability and impact of ‘traditional’ versus ‘new’ media forms of campaigning. Mass clicktivist expressions may have been prominent across both case study debates, but were treated as secondary to the private elite spaces where concrete media policy decisions were made. As well as highlighting the systemic absence of a public voice in supposedly pluralist policymaking, the diminished representation of a collective public will signifies the obstacles facing many outsider policy actors in their attempts to intervene in the policy process through media. Compare this to the enduring influence of corporate news media narratives on the substance, structure and direction

of media policy decision-making. Access to the news production process is contingent on both practiced demonstrations of ‘newsworthiness’ and the selection biases of news media organisations, who themselves seek to steer debate in their favour as a basic commercial imperative. Looking at the dimensions of media power and its effects on policymaking, as per *Research Question (4)*, it is clear that the ‘gatekeeping’ power of media organisations is not limited just to filtering which issues or ideas are represented in public debate. More significantly, this gatekeeping determines which actors and groups are let in to (or shut out of) these vital discursive spaces, and how the flow of information that fuels political decision-making is mediated to both the public at large and to executive policymakers.

## **THE MANY FACES OF LOBBYING**

Despite the diversity of campaign techniques in media policy debates, there remains a prominent disconnect between the busy public arena of high-profile activity and the decidedly private practices and interactions of low-profile lobbying. ‘Lobbying’ as a blanket term denotes the ultimate exercise of political power; actors ingratiating themselves in elite policy circles, cultivating relationships with political gatekeepers, and advancing their interests through informal channels of deliberation. Most public campaigning is aimed at enhancing a group’s status and legitimacy as a means of penetrating these private processes, and accounts of lobbying as a general phenomenon call to mind a pervasive elite influence over democratic institutions (Davis, 2002; Miller and Dinan, 2008; Wedel, 2017). Policymaking is increasingly comprised of unrecorded meetings, off-the-record phone calls and face-to-face conversations between political officials and corporate lobbyists, and, as the two case study policy processes have shown, the details of policy change are frequently decided in secluded elite spaces that supplant or circumvent democratically accountability.

Corporate lobbying permeates major sectors of public policy—across banking and finance, defence, energy, agri-business and (particularly in the US) healthcare—and has resulted in insider cultures becoming institutionalised across many integral structures of public policymaking. The aims and values of corporate interests are closely reflected in policy outcomes, and even the methods of decision-making are more and more sculpted around private lobbying as the only meaningful form of policy engagement. While not as vast and formalised as the quasi-regulated Washington DC lobbying system, the UK media policy lobby is similarly defined by the intertwining of commercial media interests and the official levers of government policymaking. The ever-spinning revolving door of lobbyists and other media actors has also contributed to the formalisation of informal elite interaction as the premium mode of policy influence: media executives become Special Advisors, Special Advisors and former ministers are hired as lobbyists, and governments appoint rank-and-file party representatives or commercial media supremoes to the boards of regulators, public agencies and the BBC.

There is an argument, of course, that lobbying is only one type of political activity amongst many within the multi-faceted processes and procedures of policymaking. Lobbying can be informative and dialogic, connecting niche interests in a particular sector of public policy with the political actors who exercise official control over how these sectors are governed. Crucially, however, lobbying involves more than a general circulation of elite stakeholder influence over political processes: it manifests in specific activities used by all kinds of policy actors to press their interests at the heart of policymaking power. The tangible influence these different interactions have on policymaking depends on the actors involved, the existing structures of formal and informal deliberation, and the broader ideological battles surrounding the policy issue at stake. Understanding the effect of lobbying on the media policymaking process, and its underlying dynamics of power, thus requires a reimagining of

what ‘lobbying’ entails, as well as an analysis of the various paths that policy groups take through the figurative (and, of course, literal) corridors and anterooms of executive policymaking.

The following discussions offer an account of lobbying as the dramatic crystallisation of everyday politics and the deeper dynamics of policymaking power, where structure and agency collide and the myriad forces that swirl around media policy culminate in actual human decisions. In this sense this section applies an understanding of lobbying that addresses the substantive questions of power explicit in *Research Questions (1)* and *(2)*, through which we can investigate how different forms of lobbying operate both as a *structural* form of power, changing the conditions in which policy decisions are made, and as a *behavioural* form of power that produces policy change in and of itself. This section also analyses how certain trends of lobbying have become ritualised within the institutional dynamics of British press or broadcast policymaking, as well as instances where spontaneous or ad hoc forms of lobbying run counter to normative patterns of elite or private policy interaction.

In differentiating forms of lobbying across its intersecting physical, interpersonal, institutional and ideological interactions, this section seeks to provide a novel means of answering the enduring but often intractable questions about the nature of lobbying in public policymaking. Is it an exclusively elite practice, available only to dominant corporate media interests and established insiders, or can counter-elite groups exercise comparable influence through their own engagement with private channels? How do different policy actors organise their lobbying of processes defined by political uncertainty, implicit ‘rules of the game’ and constantly shifting, often hidden centres of power? Can ‘being in the room’ at crucial moments of decision trump the entrenched political and ideological biases that structure contemporary media policymaking?

### *Lobbying as professional campaigning?*

Parliamentary bodies, party blocs and civil society coalitions present a valuable means for policy groups to accrue recognition, trust and status amongst political elites, thus enhancing their ability to intervene in policy deliberation. This is of course a normatively pluralist image of lobbying as a natural (though highly professionalised) political process that ensures decisions reflect the median interests of all groups engaged in debate. Yet conceiving of lobbying in this way still requires unpicking the actual practices that different actors employ to ingratiate with political power, and the impact of this kind of everyday lobbying on media policy decision-making.

Draft bills, amendments and other policy proposals raise a number of interesting points about lobbying through formal political processes. Examples from the case studies suggest that the main purpose of draft proposals is not primarily to change government legislation, but rather to publicise the feasibility of alternative measures. This is as much due to the technicalities of parliamentary law-making as it is a reflection of policy actors' lobbying strategies. One interviewee described Hacked Off's draft 'Leveson Bill' as a direct challenge to the government's insistence against any press statute:

In practice non-governmental members of parliament can't introduce Bills on controversial topics, so obviously we weren't promoting a Bill in the legislative sense. But we were producing a document to show to people this isn't a vicious beast that's going to eat up the world. Here it is and this is what the government could do, it's all very straightforward. So yes we used our Bill as a campaigning tool, but it's also showing people what things would like look. (Interview 7)

VLV's policy officer described their 'BBC Funding Bill' as an overt attempt to stand out from the noise of submissions and political arguments over the BBC's future:



We tried to be imaginative and come up with solutions, because it's all very well responding to consultations saying "we don't like this, we don't like that", but actually you need to come up with solutions. We tried, in that instance, to come up with a practical solution. (Interview 11)

Media policy pressure groups produced draft proposals as genuine contributions to public deliberation, offering ready-made solutions to emerging media policy problems, but these fulfilled the arguably more important effect of cementing their status as experts offering tangible, implementable ideas. These draft proposals also have the potential to attract active support from legislators who may confer these drafts with quasi-legal force through votes in parliament. With a cross-party pro-Leveson majority in both Houses, small groups of MPs and peers amended otherwise uncontested government bills with measures implementing some of the Leveson recommendations. The prospect of losing these Commons votes eventually forced government negotiators to hold the last minute 'pizza meeting' that resulted in the cross-party Charter agreement.

There are, however, two issues surrounding the actual effect of draft proposals as a means of lobbying core decision-making. Firstly, producing comprehensive legislative drafts requires more than just extensive legal expertise in parliamentary law-making. A group must also be able to express their broader interests and objectives in the dense and overly legalistic language of official policy texts. VLV contracted a QC to prepare and draft their BBC Bill, and although Hacked Off staff and directors comprised lawyers and legal experts, planning and sense-checking their Bill and Charter proposals still proved a major task.

Here we had the things that a Lord Justice had said we needed to do in order to bring about change. We then went about drafting them into a bill, making the skeleton of a legislative framework. But to think back to those days, we spent hours and hours and hours, just drafting! There was a lot of heavy lifting behind the scenes, both in actual strategic work and the research. (Interview 3)

Even where most campaigners have a strong sense of what they believe media policy should do, few have the resources or nuanced understanding to demonstrate *how* policy can achieve this in practical terms. This leaves a stark divide between public deliberative formats like consultations and inquiries, to which most actors contribute in one form or another, and the exclusivity of the bureaucratic work done by policymakers and civil servants, who operate in the technical domains of legislation and regulation. This is the kind of work that lobbyists are most eager to influence, but not all actors possess the institutional know-how to do so effectively.

A second limit on the influence of draft proposals is the institutionalisation of non-parliamentary activities as the primary mode of media policymaking. Even when MPs and peers formally consider pressure group proposals, parliament is only one node in the complex network of government and industry deliberations. In both debates, the locus of decision-making power centred on notably obscure, arcane and non-democratic practices, in particular Royal Charters, ministerial fiat and corporatist-style bargaining between government, regulators and major media institutions. The Commons and Lords were often secondary to these informal, private interactions of insider media policymaking. Efforts to change policy through Select Committee reports were ignored by government, while legislative amendments were dismissed as unnecessary disruptions to the delicate work of private negotiations.

The main beneficiaries of this culture are actors from entrenched media interest groups, yet even ‘insurgent’ insiders, such as Hacked Off, also opposed the ‘wrecking amendments’ on the basis that they threatened to damage the group’s already precarious status as principal figures in the private negotiations with government:

Well the Puttnam amendments didn't really introduce Leveson, they were a bit of a mess and didn't work. I can't remember whether we actively intervened to try and get them withdrawn or whether we let it fall away, but they were nothing to do with us. They were just a distraction. (Interview 7)

Along with the functional distinctions of insider-outsider actors and private-public spaces, there is also a hierarchy of status between different forms of lobbying and their perceived legitimacy in the media policy process. While policy drafts and legislative amendments may be an effective lobbying measure for attracting support or calling attention to peripheral policy issues, these efforts rarely in themselves produce direct and substantive change to the content of official policy.

The question remains whether outsider pressure groups can materially influence decision-making through *informal* or less structured lobbying practices, even when they are excluded from the exclusive domains where actual policy decisions are made. This is a matter of analysing the taken-for-granted behaviours and unwritten rules that govern everyday lobbying (DiMaggio and Powell, 1991a:14-5), and how they affect policy actors' interactions with political elites. For most actors in the two case study debates, standard lobbying techniques consisted of contacting central figures by telephone, email or letter and arranging events and meetings with important groups.

We built up a database of contacts amongst key influencers, opinion formers and other people involved in the debate. We were also closely involved in the formation of the All Party BBC group in parliament. The combination of our intelligence and their political connections worked together very well. (Interview 12)

I would speak to the Labour or Liberal Democrat frontbench spokespeople on media. We were also talking to vociferous peers like Norman Fowler, who was very influential at the time as an ex-journalist and key Conservative figure ... We eventually had our launch meeting in parliament in the Lords, hosted by Lord Cunningham. Somebody made that connection with him but *you've got to have a peer for events like that.* (Interview 4)

Informal conversations with select policymakers lead to more contacts and connections, and this snowballing effect was pivotal in these groups expanding their influence through an active coalition of politicians, professional organisations and campaign groups with shared policy objectives.

This sort of interpersonal lobbying is a core feature of Westminster's political culture, and it calls attention to the gatekeeping done by Special Advisors, MP's office staff and other background actors in controlling interest groups' access to decision-makers. Yet these informal interactions still occur within an institutional policy context predominantly structured around commercial media interests. Lobbyists and executives from large media organisations pervade the corridors and meeting rooms of parliament and the Whitehall departments, and are engaged in routine conversations with civil servants, regulators and policymakers. With contemporary UK media policy objectives centred on commercial competition and light-touch regulation, non-commercial pressure groups find it even harder to establish their own lobbying influence with policymakers. Amongst the wide range of other subjects that occupy the political agenda, policymakers regard media policy as a peripheral or unimportant subject, and even during BBC Charter review and the phone hacking scandal politicians treated these major public debates as niche exercises best left to industry experts:

You're ringing people asking them to come to your meetings and it's surreal, I'm trying to speak to them about the future of children's broadcasting or something and there's this big Brexit vote or a HS2 debate. It's hard to tell MPs that broadcasting is an important public policy priority when the economy is falling apart or whatever the big story is. They see it as a soft additional extra, it's not a fundamental policy issue for them. (Interview 11)

Look, for fuck's sake, who wants to know about press regulation? There may not be more important things in life, but there are certainly more interesting things. You can't expect a victim, ordinary MPs or even the public to master the technicalities of it. (Interview 4)

The perceived importance of a policy issue also hinders how pressure groups lobby and interact with one another. The conflict between reform of self-regulation and press freedom became a matter of deep antipathy between the major newspaper publishers and the numerous groups and campaigns assembled around the post-Leveson debates. Actors categorised each other in terms of 'goodies' and 'baddies', and the few attempts at reaching common ground between seemingly irreconcilable positions typically resulted in a dialogue of the deaf. As the founder of the Leveson-compliant regulator IMPRESS recalled, this sense of recalcitrance and tribalism cut through professional or social relationships:

Once the idea for IMPRESS had crystallised, conversations with my old journalism colleagues became much more fraught. I think whilst they might have accepted in the abstract that there might be a new regulator, they found it very difficult that I, who they knew as a campaigner for press freedom, might want to set that up. Someone did say to me, "*we thought you were one of us.*" (Interview 8)

BBC Charter review lacked a comparably emotive or hostile atmosphere, and lobbying between broadcasting policy groups was instead structured by the complex and multifaceted scope of issues swept up by Charter review. Interests were 'siloed' into smaller topical subsets, such as radio, online services, content regulation or governance, meaning that although a group's individual influence within these areas was relatively strong—see, for example, the

lobby in support of greater public funding for children's TV (Steemers, 2017)—their status within the bigger picture of Charter review was marginal. Control of the overall strategy, direction and core political ideals of BBC reform remained firmly within the narrow sets of private negotiations between the government, the BBC and select industry insiders.

The formal and informal practices discussed here each entail distinct interpersonal cultures that shape how interest groups try to enhance their status and position in policy deliberation. These cultures are partly reflections of the historical and political precedents of UK press and broadcasting policy debates, but such interactions nonetheless reveal deep structural biases that constrain the influence of non-industry interests in particular over the institutional conditions and political boundaries of official decision-making. Lobbying through parliament or coalition-building may persuade some policymakers of the weight and veracity of an interest group's objectives, but these processes still operate according to many of the same ideological and political preferences about who should or shouldn't be involved in media policymaking.

Corporate media actors pervade both the public and private spaces of policy deliberation, on account of both representing the media industries under debate and their extensive connections with elite political power. Non-industry groups, on the other hand, only attain the privileged insider status following seismic shifts in public and political opinion (such as phone hacking), or after years or even decades of persistent involvement in media policy debates (as with Pact and VLV). Even then this status is fleeting and contingent on a constant demonstration to policymakers of their validity and usefulness for official decision-making.

There's a need for on-going influence. The lobby in favour of the BBC has largely fallen away since Charter review but it's needed permanently ... The big thing we need is more resource, because there is a need for things to continue. We can't just keep wheeling everything out when we get to Charter review time. We're up against multi-billion pound international conglomerates, and we were very much a minnow. (Interview 12)

The intention was that it would be over very quickly, we do our campaign, commit as much as we could for that period of time. But actually you can never stop campaigning around media reform because they [the press] are just so powerful and so big. It's astonishing that we've managed to be heard as much as we have given the kind of megaphone they dominate (Interview 3)

For these groups lobbying is a long-term strategic necessity for keeping their interests and campaigning within the political frame of media policy, rather than a short-term tactical preference for intervening in decisive moments. Yet even this lobbying as a form of professional campaigning is easier said than done, given that major media policy debates are so few and far between.

### *Getting in the room: patterns of access and exclusion*

From looking only at its official structures, institutional constraints and entrenched ideological biases, many aspects of media policymaking appear mechanistic or impassive, as if it is fixed on rails to an inevitable outcome. Elite lobbying of core processes is a ubiquitous feature of much British policymaking (Davis, 2002:174-6), and the overall balance of power across media policy formation is certainly tilted in favour of dominant commercial media interests (Freedman, 2008:95-7). Yet the 2013 Charter on press regulation and the renewed 2016 BBC Charter were nonetheless the products of cumulative decisions by human actors, who were themselves influenced by a range of political pressures, acted according to certain 'ways of doing things', and interacted with myriad other actors across formal and informal

settings. No two policy decisions are ever made in the same way, and the pivotal moments of decision-making in the two case study debates each emerged from distinct lobbying cultures.

The unminuted meetings, late night phone calls and behind-closed-doors negotiations that typify insiders' privileged involvement in core decision-making are some of the clearest examples of intimate access to policymakers enjoyed by certain policy interests. But these private interactions do not occur in isolation from the concurrent events and forces of the wider policy process. Likewise, the influence of insiders' hardball demands and tactical compromises within these private deliberations is ultimately contingent on the established ideals, objectives and modes of media policymaking, which are fundamentally products of political context, discursive conflicts, interpersonal structures and interest group campaigning. The relationship between a group's *access* to elite spaces and their real *influence* on policy within these spaces is not clear-cut. By distinguishing generalised forms of lobbying from how political influence actually operates at the centre of official decision-making, we can begin to unravel how these practices expose democratic processes to decidedly undemocratic behaviours.

One of the most striking signs of intimate lobbying in the two debates is the sheer scale of contact between core media policymakers and a small number of insider interest groups. Even without complete accounts of all the off-the-record lunches, impromptu phone calls and unrecorded conversations, official government files still reveal the regularity of lobbyists' access to decision-makers and the disproportionate prevalence of government meetings with corporate media organisations. At the conclusion of post-Leveson negotiations, ministers involved in the cross-party talks had met privately with national newspaper editors at least 21 times, with publisher executives and IIG representatives at least 28 times, and with the Hacked



Off campaign just 11 times.<sup>167</sup> Likewise of the 89 recorded meetings relating to BBC Charter review, DCMS ministers held 26 meetings with representatives of the BBC, 23 meetings with commercial TV and radio companies, and 10 meetings with newspaper publishers and editors.<sup>168</sup> Both debates demonstrate the significant weight core policymakers give to (and their reliance on) dominant media organisations. Even in debates involving a large range of different policy groups, only a select few achieve this degree of recurring direct contact with executive figures, leaving the vast majority of interests with a vastly diminished role in the substantive processes of decision-making.

However, the relationships and interactions between lobbyists and private government changes drastically as the political and ideological emphasis of the policymaking process evolve. This is especially apparent for Hacked Off, whose access to core decision-making fluctuated considerably during the press regulation debates. In July 2011 the group secured meetings with party leaders to speak with the Dowler family and discuss their demands for a public inquiry. Against the frenetic political backdrop of the BSkyB deal, the Prime Minister's dubious connections with News International executives and the raw public outrage against phone hacking, politicians effectively gave the Dowlers and Hacked Off a free hand to dictate the formation and terms of what became the Leveson Inquiry.

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<sup>167</sup> Figures taken from records of ministerial meetings between October 2012 and March 2013, published online by the offices of the Prime Minister, the Cabinet Office Minister and the Secretary of State for Culture, Media and Sport.

<sup>168</sup> Figures taken from records of ministerial meetings between May 2015 and October 2016, published online by the Department for Culture, Media and Sport.

Two minutes before the Downing Street meeting I was told it would be my turn to say that the Inquiry has to look into the role of politicians as well. So now I've got to tell the Prime Minister to put himself under scrutiny. But as I left the room at the end of the meeting, Cameron asked me "who do you think we should put on the panel as advisors? Do you think that would work?" I was thinking "put me on the panel!" I know I said a name and it probably didn't make any difference, but *what stuck with me was how wide open the door was.* (Interview 4)

However, once the private cross-party talks had begun, Hacked Off's access to leading Conservative policymakers became much more restricted and the group instead depended on connections with Labour and Liberal Democrat figures to continue influencing the negotiations. The group retained a type of insider role but was removed from the central negotiations, instead resorting to 'feeding' evidence and proposals through MPs and Special Advisors—exchanges which one campaign figure described as "wobbly" (Interview 7)—rather than engaging directly with government.

Press industry access to government policymakers during the post-Leveson negotiations was far more stable. Ministers frequently invited editors and publisher representatives to discuss reforms, in several instances even contributing directly to the content of formative proposals. Lord Hunt of the IIG negotiating group recalled "a whole series of meetings at Number 9 and 10 Downing Street" in which the industry played a crucial role in steering the government's draft Royal Charter. The naturalness of this inter-elite collaboration is not unique to the post-Leveson debates, but can be seen as an extension of the broader media-political culture in which editors and newspaper executives are regularly courted by political leaders. The 'press lobby', by this account, was not so much a separate constituency seeking to pressure decision-makers by finding niche or incisive routes to power. Rather, the press

industry was (and indeed still is) an embedded part of the media policy process,<sup>169</sup> and its access to core decision-making came from the government's insistence that industry approval was the foremost criteria in reforming self-regulation.

During BBC Charter review, major media organisations achieved similarly extensive access to government policymakers and were closely involved in core discussions on Charter reform. It would seem obvious that the BBC itself plays a principal role in official debates on its future, and representatives of the Corporation negotiated with the government throughout the Charter renewal process. Yet the BBC's access to government is intrinsic to its status as a public organisation, and this symbiotic relationship is founded on the expectation that it acts as the junior partner in a wide-ranging administrative review of government policy (Born, 2005:231), rather than as an independent interest actively lobbying for its own (and licence fee payers') benefit.

You may find one or two coded speeches from BBC executives saying they don't like this or that aspect of the government's proposals, but by and large there's a kind of frantic paddling under the water while both parties try to swim along serenely, and try not to bite each other's heads off because of whatever's going on beneath the surface. (Interview 9)

This bureaucratic mind-set manifested throughout the regular meetings, phone calls, written correspondence and negotiations, with BBC representatives seeking to manage and mitigate the impact of funding changes or Charter revisions rather than risking a politically dangerous standoff against the government's agenda.

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<sup>169</sup> It is worth noting that press and other media actors also have frequent access to government figures across almost all sectors of government policy. Analysis by Dommett et al. found that media organisations accounted for 14.3 per cent of over 6,000 meetings held between the major ministries and all varieties of 'outside interests' during the 2010-2015 coalition government (2017:10).

Commercial media organisations enjoyed far more traditional patterns of contact with media policymaking officials. As one ITV executive hinted, there is a taken-for-granted lobbying relationship between media policymakers and media organisations, and this relationship continued during Charter negotiations:

We have lots of interaction with DCMS and ministers, we're asked for our views and we give them. Charter review is important but it's not the most important thing in our strategy. We weren't conducting a 'campaign' or anything like that, we have to take a position on these things and people asked us for it! (Interview 13)

Commercial lobbyists' access to policymakers is built into the organisation of broadcast policymaking, and in the context of the Conservative government's 'distinctiveness' agenda this access was even more naturalised as a mechanism for ensuring the BBC's public services didn't conflict with open market competition. Across numerous meetings, roundtable discussions and private lunches with DCMS officials, the government regularly consulted media lobbyists on the substantive proposals in its BBC policy. This collaboration extended as far as the government delegating some decision-making to commercial groups, as was the case with the independent producers association Pact endorsing the abolition of the BBC's in-house commissioning guarantee:

We were asked to go in and meet the Secretary of State and his officials, who basically asked us a simple question: "if you could compete for this much more, could you compete for all of it?" Our answer was absolutely. They said "thank you very much, that's all we needed to know", and the next thing we knew was that contestability had been increased to 100 per cent. (Interview 10)

Even though established non-media interest groups like VLV also achieved close access to core Charter review policymakers, it is clear that merely securing these meetings is by no means a guarantee of equitable influence on the policymaking process.

I don't like to admit it, but I think we failed. Whether that's a reflection on VLV or it's a reflection on the system I don't know. We engaged with everybody and they all appear to listen, but ultimately have we had any impact on the process? (Interview 11)

### *Lobbying at the heart of power*

These disparities in access, even within the tightly controlled spaces of elite lobbying, show the greater legitimacy afforded to the contributions and involvement of commercial interests in media policymaking. But 'being in the room' is only ever as effective as what an interest group can achieve when they are there. Corporate lobbyists and non-media actors alike employed various means of bargaining and negotiation within the private, exclusive channels of core decision-making, and these tactics symbolise lobbying in its rawest, most incisive and most dynamic form. They demonstrate how the fundamental acts of official policy formation—when policymakers put pen to paper and transform ideas or objectives into concrete regulations and legal powers—are anything but dry or rudimentary.

Even within the political and ideological constraints of the post-Leveson and BBC Charter debates, a small number of pressure groups successfully intervened at pivotal stages to produce direct changes in media policy against the apparent 'natural' order of official decision-making. The efficacy of these interventions was highly contextual, resulting from the inferred significance of interests a group represented, the inferred political cost to policymakers of rejecting their demands, or simply because someone was in the right place at the right time. These unique instances of decisive lobbying should be seen as the essential manifestations of behavioural power in policymaking, when actors directly alter the course of political action through their material interactions with the most intimate and ultimate exercises of elite political power.

There is no greater example of this lobbying at the heart of power across the two case studies than the so-called 'pizza meeting', when politicians from the three main parties agreed

the cross-party Charter for reforming press self-regulation. Representatives from Hacked Off were invited to these eleventh hour talks by the Labour leader, and one campaign figure present at the meeting described their distinct role in shaping how the deal was implemented:

It looked like they were going to ask us to clear this on behalf of the victims, and sure enough that's what this pizza meeting was. Most of that night was spent sitting around doing nothing, waiting for Clegg, waiting for Letwin, waiting for his Civil Service geeks to come back off the phone. The substantive issues we discussed were not the contents of the Charter but the timings. Who was going to speak in the House of Commons? How was that going to be arranged? What are they going to say? I did not want David Cameron standing up and welching on us at the last moment, and we got our assurances on measures to ensure it would happen. Then the next day everything was announced and it was a slam-dunk victory for us. (Interview 4)

This account shows us how the exclusive, private moments of executive decision often unfurl in informal and sporadic ways, which open such interactions to influence from new or insurgent actors. Despite being frozen out of negotiations with Conservative ministers, Hacked Off's influence over the other parties coincided with a unique reversal in the parliamentary balance of power. The group's integral role involved not only providing technical expertise on press regulation but also offering the consent of phone hacking victims, who the Labour and Liberal Democrat leaders had consistently defined as essential for conferring reform with public legitimacy. In representing this symbolic constituency and making pro-Leveson reforms a condition of their support,<sup>170</sup> an unexpected invitation gave Hacked Off lobbyists a seat at the top table and enabled them to circumvent the preceding months of negotiations and policy drafting dominated by the press industry.

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<sup>170</sup> On one occasion the campaign leaked a draft letter, signed by victims of press intrusion, which threatened to publicly condemn the parties for submitting to corporate press interests if proposals strayed from the Leveson recommendations.

Effecting this sort of intimate insider lobbying is therefore not wholly reliant on holding insider connections or demonstrating elite characteristics. Through a combination of political capital (i.e. the perceived importance of the interests or constituency they represent) and a tactical nous for identifying the decisions they are most likely to sway, emergent coalitions and groups from outside the embedded elite layer of state and corporate media actors can still (albeit rarely) exercise direct influence on key acts of executive policymaking. Lobbying actors create alternative courses of action or impose certain conditions that change how policymakers evaluate the options available to them, and these interventions are not only aimed at adding favourable measures or instruments to government proposals. As the Save Our BBC campaign's director usefully put it, "it's the things you stop that are as important as the things you get" (Interview 12), and groups were able to veto or remove aspects of BBC or post-Leveson policy that other actors had inserted into the government's formal Charter review agenda.

It would be oversimplifying to treat these changes as part of a routine back-and-forth, or conclude it shows how policymakers consider arguments and appeals from all manner of competing lobbying groups until an acceptable 'middle ground' is reached. As the following quote from Pact's chief executive suggests, sudden reversals are often the result of groups coercing policymakers to choose which set of interests or proposed changes in policy should be satisfied.

The BBC wanted to get rid of the independent production quota, which we made very clear was a red line for us. They also wanted to reduce their out-of-London spend that we had fought very hard to have fixed at 50 per cent in the last Charter, and again we made it clear that reducing that would be a disaster. The BBC thought all of those things could be traded off against one another but at the end of the day we persuaded the government against it. (Interview 10)

Clearly such interventions depend on lobbying actors being aware of and having access to unpublished revisions and incremental additions made to official proposals. But they also show how the legitimacy and recognition required to engage in elite deliberation can then be mobilised back upon the policy process as a means of political pressure. Here the influence of lobbying is not in presenting a particular policy change as empirically better or worse than its alternatives, but in redefining the choice in terms of which interests or groups policymakers value more highly when deciding on policy change.

More fundamentally, intimate lobbying of this sort epitomises the interrelationship between behavioural and structural forms of power as they manifest in the policymaking process. Media policymaking is, as the previous discussions have explored, highly circumscribed by the circulation of ideological narratives that define ideal goals and shape normative policymaking practices. Yet material policy decisions still result from interactions between human actors, who relate to and influence these structural conditions in complex ways. Categorising all the incarnations of specific lobbying methods in the two case studies is likely impossible, precisely because their formations and arrangements, as well as the behavioural cultures and political circumstances they operate in, are totally unique. Accounts from lobbying actors involved in the core of the post-Leveson and Charter debates do, however, allude to common bargaining tactics that groups employ, each indicative of the different power relations that arise across these various private and exclusive spaces.

Actors may assert their objectives as ‘red lines’ or threaten to withhold support for policies that they deem unacceptable. As with behavioural power more generally, the influence of these ultimata depends on whether decision-makers see the cost of going against one group’s demands as greater than the potential benefits. Lobbyists offer compromises or accept less desirable (or even opposing) policy changes in exchange for receiving concessions on their own demands. These concessions can of course be seen as a typical part of give-and-take



negotiations between multiple parties. But the type and degree of concession reflects the power relations between those groups, and the extent to which actors are willing to accept undesirable changes in order to retain their influence and esteem with core decision-makers. For Hacked Off lobbyists, agreeing to wording changes in the Bill amendments passing through parliament was a price worth paying to see the cross-party Charter implemented:

That was exactly the sort of compromise we were trying to find just so that didn't look like regulation. We were prepared to make cosmetic changes if that helped our allies, even if it helped the Conservatives, but as long as it didn't affect the substance. (Interview 7)

Whereas Hacked Off viewed their 'cosmetic' concessions as a net positive result for their demands, it's interesting to note that the Prime Minister considered the cross-party Charter as a victory for his party's negotiating tactics:

We had lost the battle by giving in to some of their demands. But we had won the war – we got them off the dangerous idea of state regulation. (Cameron, 2019:265)

While individual interventions can shift pivotal decisions one way or another through deft bargaining tactics, there is still a tension between the subjective aims of a group's lobbying efforts and the broader political environment in which these red lines are deployed.

The perception of who is compromising what in these scenarios is also indicative of a deeper power relationship in media policy lobbying, namely how insider groups organise their bargaining tactics in response to the institutionalised rules and codes of a specific policy process. Snoddy (2015) has detailed the various manoeuvres, back-channel exchanges and counter-proposals that BBC executives used to mitigate the worst impacts of the Treasury's 2015 licence fee renegotiations. However, as one industry interviewee remarked, the BBC's bargaining did little to prevent the long-term damage of an additional £200m demand on its budget of paying for over-75s free licences:

It's the ultimate poison chalice, but the BBC probably saw the over-75s deal as a good deal. In fact they crowed about getting a good deal, and all the while this ticking time bomb is sitting in their lap and it's only gets worse every year. I think it showed weakness on the part of BBC management to even consider it would give them any advantage. (Interview 10)

Private broadcasters' lobbying of Charter review, as we have seen above, operates as a routine pattern of mutual decision and consultation between market-minded government policymakers and embedded commercial stakeholders. For the BBC, however, with a choice between an all-out assault from a hostile government or trading away its financial security, Corporation lobbyists took the latter hoping it would give them greater sway in the forthcoming Charter negotiations. The end result incurred effectively the same result, further separating the BBC's resources and its underlying public service mission while also surrendering to another ritual attack on its independence. Against the wider marketization and liberalisation of broadcasting policy, and the enduring ideological challenges from its opponents, BBC lobbyists' interactions with the core processes of Charter review are highly constrained by the Corporation's lop-sided reliance on state power.

In the post-Leveson debates, press lobbyists had similarly routine engagements with government policymakers, but these activities played out in a radically different way from Charter review. Executives, editors and other press industry lobbyists persistently pressured the Conservatives' reform proposals, redefining how the Leveson recommendations would be reinterpreted as regulatory criteria. More importantly, however, their embedded role in core decision-making afforded industry lobbyists with the means to *undo* the reforms to which they were ostensibly contributing. Industry negotiators and other interviewees claimed that "no negotiating strategy adopted by the newspaper industry was designed to reach consensus; *it was designed to delay imposition*":

I don't think anyone was insincere, but it was largely a negotiating plot. We all knew, at every stage, that there was a majority in the House of Commons which would vote to create a statutory backstop. Anything which could delay that and could bring about a different outcome was worth playing for, right? (Interview 1)

As far as I were concerned these talks were irrelevant. We'd decided to follow the contract model and I was going to set up IPSO. I didn't need a 'supervisory body' set up by a Royal Charter as long as I had good independent people running the regulator. (Interview 6)

It is difficult to think of any private organisation, interest group or industry other than the UK press which holds an inherent role in devising its own laws and regulation, enjoys private access to both policymakers and the intimate functions of policymaking, possesses the resources and political will to engage in these processes, and yet uses this immense lobbying influence to ensure that decisions they help to negotiate have no legal basis or meaningful authority. This is not so much a power of nondecision-making, limiting the scope of political debate (Bachrach and Baratz, 1962), but a power of *decision-unmaking*; to render any political acts or policies that run counter to a group's interests ineffective to the point of obsolescence.

When deliberation is drawn between such overtly conflicting principles as those expressed in the post-Leveson and BBC Charter debates, private lobbying interactions do not unfold as dispassionate, measured or sober exchanges of ideas in the way that pluralist accounts assert. Instead, the interpersonal relationships within these lively sites of core power are often visceral, emotive and even sometimes plainly unpleasant experiences. One Hacked Off lobbyist involved in the cross-party negotiations described their meetings with government officials as "extremely uncomfortable and stilted" (Interview 5), while another suggested that some Conservative ministers had tried to mislead the campaign about their discussions with industry executives:

We didn't trust the government, sometimes they flat out lied to us. On one occasion we were told in terms that they had not met with editors to discuss their Charter plans, and then the following day it was disclosed that they indeed had. There was a certain amount of what an old friend of mine described as 'public school deviousness' about their approach. (Interview 7)

The enduring close relationships between political and media elites manifest not only as a shared system of policy values and ideals, but also as a pervasive culture of inter-elite familiarity and routinised behaviours. One revealing anecdote, again from a Hacked Off lobbyist, details how the intimate day-to-day role of press lobbying in government policymaking also has a direct bearing on how other groups can influence the core sites and spaces of power:

As we waited in a side room of 10 Downing Street, I saw Paul Dacre [editor of the Daily Mail] emerge from the main room and go out the front door. Then we go into the meeting, and Letwin and the Prime Minister were pitching this Charter to me as if it's great. They were just letting the press off the hook. They described this plan to us as 'the toughest regulator in the Western world',<sup>171</sup> but as I said to Cameron "this isn't your Charter, this is their Charter". It was a very, very forthright meeting, and I was as rude to the Prime Minister as I suspect he's used to. When we left Craig Oliver [the Prime Minister's Communications Director] was still bending my ear, trying to sell me. I was thinking, fucking Dacre's just left the room, what do you expect me to say? (Interview 4)

Quite apart from what this tells us about the crises of transparency and accountability in media policymaking, such experiences also highlight how lobbying behaviours involve more than just individuals' personalities, emotions or attitudes (though these clearly have an important role). More fundamentally, reflecting on *Research Questions (1), (2) and (3)*, the distinct lobbying cultures of the two policy processes epitomise the structuring effects of

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<sup>171</sup> This exact phrase was also used by PressBoF, the PCC's funding body, to promote its preferred regulatory model proposed in the industry's rival Royal Charter.

ideology, elite power and narrative values on how decision-making is organised. In the post-Leveson debates, the absolutist philosophy of press freedom promulgated by major publishing groups and their newspapers eclipsed the original concerns with press malpractice. This in turn reconstituted the ‘political-media nexus’, which bore the brunt of Leveson’s criticisms, in the form of a necessary exclusive back-channel for industry lobbyists to steer regulatory reform in their favour.

The BBC’s approach to Charter review has often rested on its innate connections with state power. However, as Pact’s chief executive remarked, this traditional bureaucratic mode of Whitehall lobbying has fallen out of kilter with the market orthodoxy in broadcast policymaking:

My experience of having negotiated alongside or against the BBC for two Charters is that the BBC is not as smart as it thinks it is. It is inherently, with all due respect, an Oxbridge-type institution with a very insular culture. They come from an approach to the market, and to broadcast policy, which is more akin to civil servants rather than like commercial approaches to a creative economy. (Interview 10)

The emphasis on commercial market success as a normative policy goal—epitomised in the distinctiveness agenda—has led to more and more aspects of Charter review being conducted through private lobbying between competing commercial industry interests. Bargaining and persuasion within this new culture revolves around demonstrations of economic value and fair competition instead of arguments about the deeper cultural and democratic roles of public service broadcasting.

## **PUBLIC PRESSURE OR PRIVATE POWER?**

Understanding the power dynamics of media policymaking evidently cannot rest on a singular analysis of formal processes, political conflicts or ideological currents as if one of these phenomena is more influential than the others. Policy decisions result from the actions of

individuals, and such activity is both structured by and creates the interpersonal relationships, institutional cultures and essential values that shape policymaking as a vital function of democratic societies. However the two case study debates still leave us with the enduring question of *causality*, and of where the true locus of power lies when specific moments of policy change are paradoxically defined by entrenched structural constraints and lively unpredictable behaviours.

The policy network paradigm offers one means for understanding these myriad intersecting factors in terms of organised relationships between actors, processes and institutions. Policymakers and executive actors are the ultimate agents of policy change, and as such we can infer the dynamics of policymaking power from how competing interests and groups organise around and engage with formal decision-making. Yet media policymaking, both as a unique realm of public policy and in its constituent forms of press and broadcast policy, is epitomised by uncertain and constantly evolving definitions of who is responsible for policy decisions—government ministers, parliament, regulators, self-regulating media industries, or sometimes all of these together—and in what ways they are publicly accountable. The ‘insider’ and ‘outsider’ categories may offer useful conceptual boundaries for identifying actors and their influence, but these arrangements can also shift and change depending on the wider contextual and political development of a policy process.

As the policy networks in the two case studies make clear, insider actors comprise the typical set of embedded media industry elites and other formally routinised stakeholders. But insurgent groups and marginalised interests that are notionally excluded from top-level media policymaking can, under the right conditions, also usurp this influential status and access. Likewise, groups commonly recognised as outsiders—disorganised public campaigns, niche industrial or civic interests, political fringe actors etc.—can still decisively influence policy through deft campaigning or seizing on opportune moments, while traditionally ‘powerful’

bodies like parliaments and ministries can be suddenly shut out of deliberation because of a debate's evolving structure or political dynamics. The networked relationships of media policymaking are fluid and complex, with competing actors and groups connected or distanced as much by entrenched precedent as by unexpected new arrangements.

The foundations of media policy networks are nonetheless organised around elite decision-making practices, access to which is tightly controlled and governed by elite cultures. The ability to influence these processes requires not just organisational resources and political perseverance, but a deeper recognition of and adaptation to the predominant market-centric logic that pervades media policymaking. In analysing the dynamics of 'structure versus agency', and pressing the distinct emphases of *Research Questions (1)* and *(2)*, this chapter has sought to dissect the tactics and forms of influence that constituted the tangible interactions and relationships between actors in the post-Leveson and BBC Charter review debates.

What, then, is the meaningful difference between 'campaigning' and 'lobbying' as distinct modes of political engagement and influence? It may be that campaigning is what typically happens 'outside' the substantive mechanisms and procedures of official policymaking, while lobbying denotes the more intimate and exclusive practices that take place 'inside' the arenas of executive power. This dichotomy would, I think, be an overly reductive view of the importance of campaigning for mobilising competing policy interests in the public sphere and constructing the overarching terms of debate that guide policymakers' actions. Campaigning is as much a part of elite political and media actors' policy engagement strategies as it is for civil society organisations or public pressure groups, and the particular tactics these groups employ are in themselves indicative of the differing perceptions concerning what kinds of activities draw public and political attention. A more useful distinction therefore may be that 'campaigning' is directed at influencing the *public* policymaking process—media coverage,

high politics, democratic institutions—whereas lobbying operates in the decidedly *private* world of executive decision, negotiation and bargaining between interests.

Lobbying attracts a great deal of cynicism in much commentary on the political process, and this research presents little reason to dispute the popular image of a contemporary culture of corporate lobbying that is antithetical to democratic principles. It would seem uncontroversial to claim, on the basis of the two case studies, that small but organised elite interests have far greater influence through private lobbying than other groups engaged in public mechanisms of policymaking. Yet in considering how the range of different lobbying methods work in practice, identifying the precise crux of power—between the political, institutional and discursive constraints that shape a policy decision, and the actual human interactions which produce that decision—remains complex. By leveraging their acquired influence at the focal moments of core deliberation, lobbying actors can sway substantive policy decisions and directly change how media industries are regulated and organised. Even within seemingly fixed patterns of elite bias and exclusive policymaking practices, challenge and change are still possible, depending on how competing interests interact with and utilise the unique and changing institutional contexts, interpersonal arrangements and political conflicts in which core actors make decisions.

However, these rare moments of counter-elite success should not be taken as proof of a natural balance across how actors organise, campaign or lobby media policy, or of the equitable impact of elite and non-elite groups engaged in official policy deliberation. Large commercial media groups are consistently engaged in lobbying government officials and political leaders, particularly outside of arranged policy processes. Looking to *Research Question (4)*, the normative importance of the contributions of commercial media helps to define the purposes of media policy lobbying in terms of private over public goals, market competition over civic, cultural or social functions of media, and consultative over



participatory models of deliberation. Though decisive moments of the post-Leveson and BBC Charter debates were swayed by campaigning and lobbying from groups beyond the standard set of embedded media interests, the intimate interactions and behaviours that constitute core decision-making principally serve to reproduce, normalise and expand the power that elite media interests hold over democratic processes.

## 9. CONCLUSION

As two of the most significant events in the recent history of the British media, it is abundantly clear that the 2012-13 post-Leveson debates and 2015-16 BBC Charter review were anything but rudimentary moments of dry, apolitical policy change. These debates vitalised issues and scandals at the collision of media and politics, and the regulatory shifts these policies implemented continue to have a direct impact on the day-by-day political and social functions of British media. More alarmingly, analysis of these case studies reinforces the sense of democratic crisis ailing the UK's core political and media institutions. Media policies increasingly prioritise and protect dominant commercial media interests while relaxing or repealing rules that conceive of media as public goods. Genuine public participation in official policymaking is effectively non-existent, as substantive choices about the goals of media policy are decided almost exclusively through private interactions amongst a handful of elite figures. Far from enriching the policy process with lively debate between multiple competing voices, media organisations predominantly use their unique communicative and political resources to cement their own policy objectives on the political agenda. At the heights of political and governmental power, prevailing neo-liberal attitudes to the sanctity of market forces and deregulation—paired with an insidious culture of intimate connections between media elites and policymakers—have resulted in media policy being decided predominantly through private negotiations and corporate lobbying that operate without any democratic accountability.

These observations are, of course, not especially new. Plenty of recent research has catalogued media policy drifting further from public democratic control and perilously close to near-total capture by a corporate media power elite (Pickard, 2019a; Freedman, 2008; Flew et al., 2019). Understanding this trend requires untangling the realities of media policymaking and critiquing the precise and particular manifestations of power that shape which people,

which interests and which ideas actually influence media policy change. Both the post-Leveson and BBC Charter review case studies demonstrated the endemic inequalities of influence that separate a diverse majority of media policy interest groups from the minority of established powerful media organisations and political elites. Yet these two debates were still characterised by complicated and often unusual political interactions, contradictory arguments and unpredictable interventions that moulded the policymaking process in unique ways. Inspecting these dynamics of power at their most intimate points, as the previous chapters have sought to do, is essential for developing a greater understanding of media policymaking as a critical juncture of the fundamental institutions of democratic society.

This final chapter returns to the four Research Questions posed at the beginning of this thesis, summarising the main findings of the two case studies and exploring what they can tell us about the dynamics of power in media policymaking across its formal mechanisms, political interactions, discursive formations and intersections with media institutions. These discussions form the groundwork for my own prospective ‘media policy power cascade’ model, which hypothesises a feedback loop of routinised media power which constricts the opportunities for countervailing political action both within and between successive media policymaking processes. Lastly this chapter looks at future concerns of media policy raised by these two case studies, and reviews the opportunities and challenges facing both media policy researchers and media reform movements.

## **THE MECHANISMS OF MEDIA POLICYMAKING**

***Research Question (1) – How did the organisation of the post-Leveson and BBC Charter policy processes affect the ability of interest groups to influence decision-making?***

At its most basic level policymaking is the exercise of *the power to decide*, the relatively concrete power invested in governments and legislators to act on behalf of the public. Looking

at the media policymaking process it may be tempting to take a pessimistic attitude which, like the elitist and Marxist critiques (Miliband, 1969; C.W. Mills, 1970), sees policymaking institutions as wholly captured elements within much broader systems of elite corporate or class domination. However, this research shows that media policymaking involves a diverse array of official decision-making methods and mechanisms that each have unique effects on who is involved in making decisions and what kinds of decisions are actually made. The structure and organisation of media policymaking, and the specific modes and patterns of deliberation that policymakers employed, had a definitive effect on the arrangements of power between competing interests and the influence these groups had on media policy.

The post-Leveson and Charter renewal policy processes featured lengthy public consultations, forensic official inquiries, and extensive negotiations between political leaders, policy institutions and interest groups across the media industries and civil society. To some extent these processes reflect the normative Westminster model of cabinet government and parliamentary accountability (Beer, 1965; Hay and Richards, 2000; Rhodes, 2003; Russell & Gover, 2017), which emphasises multi-stakeholderism, evidence gathering and competitive bargaining as the most effective means for governing increasingly fragmented realms of public life. This is apparent not just in the regimented sequence of Committee inquiries and government Papers on BBC Charter renewal, but even in the press regulation debates which (despite their hectic, disorganised format) still reverted to formal modes of policy formulation: the Leveson Inquiry itself, the CMS Committee's scrutiny of cross-party negotiations, and the later Section 40 consultation.

Policymakers lauded these official processes as the embodiment of responsive, transparent and pluralist executive decision-making. Yet the post-Leveson and BBC Charter processes both show how arranging various formats of deliberation between multiple competing groups is by no means a guarantee that these groups enjoy equal say in decision-

making, or that these practices result in decisions that meaningfully balance their interests and demands. Most policy actors, particularly those representing smaller or less well-resourced groups, are rarely able to engage in all the different procedures of official deliberation. The formal methods most open to the majority of public and private participants were substantially less influential on post-Leveson and BBC policy decisions than the non-formalised decision-making functions, such as industry stakeholder bargaining and policy text drafting with regulators and civil servants, which involved far fewer and typically highly specialised elite policy actors. It is difficult to find in these two processes much evidence of the pluralists' idealised notion of 'dispersed inequalities', in which resources and influence may be distributed unequally, but decisions still reflect the cumulative balance of all interests (Blokland, 2011:169-71; Dahl, 2005:85). On the contrary, the structure of media policymaking processes resulted in most mechanisms of public deliberation having little to no impact on policymakers' choices.

Much of the official organisation of media policymaking is deeply contingent on political context. Earlier chapters explored the unique histories and events that defined the press regulation debates and BBC Charter renewal, but the format and structuring of specific policymaking practices also has a significant effect on how subsequent decisions and conflicts play out. For example, the monarchical peculiarities of Royal Charters meant that the most substantive decisions in both case studies were deliberated exclusively in terms of private negotiation and ministerial fiat, with the public and even parliament totally excluded. Similarly the purposes and aims of the more established or official media policymaking practices were predetermined by formative choices made by Conservative ministers in the insipient phases of both debates, particularly the decisions to seek a non-statutory means of implementing Leveson's recommendations and to renegotiate the BBC's funding settlement ahead of Charter renewal. The point here is that the balance of power within formally organised media

policymaking is not simply a function of how many groups or interests are engaged in the process or how policymakers evaluate their competing demands. Rather, the choice by policymakers and political institutions of which methods and practices to use—what Hogwood and Gunn (1984) have called ‘deciding how to decide’—determines which groups are even able to engage in the process, the contributions expected of them and the future actions policymakers are likely to take.

This poses a number of challenges to the democratic credentials of media policy. Policymaking in the two case studies was characterised by routinised processes and institutional practices of decision-making that privileged corporate media interests and elite political deliberation, at the expense of open and pluralistic bargaining between all other media policy interests. Media policymaking is increasingly organised around private negotiations with industry stakeholders and other forms of unaccountable statecraft. That these practices are common to both press and broadcasting policy debates speaks to the normative relationship between media and the public, the proper objectives of media policy, and the policy tools regarded as best suited to fulfilling those objectives. Deregulation of existing controls and their replacement with systems of governance or arms-length regulation typify the thinning (or in the case of the press, virtually non-existent) role of state or legislative institutions in contemporary British media policy.

These implementation tools are justified as the most appropriate means of organising media systems that support market competition, enjoy autonomy from cumbersome political constraints and can adapt to changing technological contexts. But these frameworks also normalise and entrench the role of established (and typically commercial) industry producer groups at the heart of decision-making. The elite technocratic methods of deliberation that dominated the post-Leveson and BBC Charter policymaking processes were unlikely to produce decisions that didn’t reinforce the current elite technocratic paradigm of media policy.

Not only do these institutionalised models diminish the influence of public or non-elite groups over policy decisions, but such embedded cultures even marginalise or capture other ostensibly elite and authoritative institutions. This is evident in the limited role of parliament during the post-Leveson negotiations and especially in the subordination of the BBC, wherein its traditional, almost corporatist, role as a primary stakeholder in Charter renewal has been increasingly usurped by its commercial rivals and the market regulator Ofcom. From these case studies we can see how the ‘power to decide’, in its representative-democratic ideal, is highly differentiated by the specific methods and practices of decision-making that make up the policymaking process. In both press and broadcasting policy, the common mechanisms of official deliberations overwhelmingly privileged elite policy interests while pushing the majority of other groups (not to mention the public at large) out of meaningful decisions on media policy change.

## **MEDIA POLICY ACTORS AND INEQUALITIES OF INFLUENCE**

***Research Question (2) – Which people, interests and political tactics had the greatest impact on press and broadcasting policy decisions?***

This is not to say that all non-elite or non-insider actors are merely passive players, or that their interactions with media policy processes are futile. Rather the two case studies demonstrate the different ways that policy actors, bound to varying interests and resources, can successfully (though not always reliably) influence media policymaking. Furthermore these activities were not confined to just the formal processes of government and parliamentary deliberation. Some of the most significant interventions by pressure groups, public campaigns or industry stakeholders in post-Leveson and BBC policy were achieved in the insipient stages of debate, before the substantive policy ‘issue’ had been officially established or defined.

From mass petitions to back-room deals and from noisy protests to discrete revisions in official documents, the core decisions on press regulation and BBC Charter renewal were the products of two intensely public policy debates that mobilised numerous people and organisations to pressure for policy change. Yet the types of actors and interactions that had the greatest influence on decisions were by no means a full, balanced reflection of either the plurality of interests engaged in media policymaking or the myriad tactics and strategies they used. Through their persistent lobbying of and meetings with Conservative ministers, the newspaper industry's top executives changed key details of the emerging Royal Charter and stymied any efforts by pro-Leveson groups to introduce statutory reform. Against this, Hacked Off campaigners and phone hacking victims used their close contacts with political leaders to pressure for full implementation of Leveson's recommendations and force dramatic moments of political challenge in the Commons and Lords. During Charter renewal, the BBC and the UK's largest commercial broadcasting companies similarly shaped the structures and regulations of the Corporation's future policy framework through intense negotiations and private correspondence with government officials.

The prominence of these private interactions as sites of pivotal decision is partly an effect of the official structures and mechanisms discussed above: policymakers organise their deliberations around private consultations with established stakeholders and other notionally useful actors, and these groups correspondingly enjoy far greater involvement in core decision-making. Yet this utilitarian ideal of lobbying as a routine form of political mediation glosses over the vast inequalities in resources, access and status afforded to different types of policy actors. Preparing policy proposals and compiling authoritative evidence requires a developed expertise in the intricacies of media policy, as well as a nous for presenting these appeals in the language and style of elite Westminster institutions. Gaining access to executive policymakers like ministers, their advisors and civil servants depends on demonstrating certain



characteristics, but is also contingent on building personal, professional, political or cultural relationships within elite policy networks. The power of media policy actors to directly influence policymakers' decisions, whatever interests they represent, is founded on the tactics available to them within the precise political contexts of debate. Perhaps most importantly, this influence is constituted by actors' normative status within the entrenched political, economic and ideological power dynamics that define the press and broadcasting as subjects of public policy.

The two case studies thus expose the normative modes of political behaviour that empower certain types of actors over others and afford greater influence to specific forms of political engagement in policymaking. Corporate media executives, professional lobbyists and other political insiders have developed close relationships with and extensive access to core policymaking institutions. Whereas even meeting with a government minister or civil servant is a rarity for the vast majority of people involved in media industries, these embedded policy actors enjoy regular conversations, frequent exchanges of information, and ultimately a shared culture of mutually beneficial collaboration. Within these increasingly hermetic and exclusive elite media policy networks, lobbying of government officials and private negotiations (conducted in some of the most publicly inaccessible sites of state and political power) have been rationalised as the standard means for mediating between competing interests and producing 'consensual' policy outcomes. Any sense of genuine public influence over how these discrete policy decisions are made—whether through organised public campaigning, consultations or even open parliamentary processes—is factored as at best a supplement to the decisions and debates already taking place between a select body of insiders, or at worst as misguided politicised disruption to the real business of 'evidence-based' expert deliberation.

Attempts to influence or challenge these embedded elite patterns of power are by no means totally ineffectual, as was clearly the case with the enormous backlash to the phone

hacking scandal and the mass expressions of public support for the BBC following the government's foreboding Green Paper agenda. It is not the case that specific methods of policy engagement are innately more influential than others, as public pressure and outsider interventions can create substantial shifts in the direction or results of insider deliberation. The problem is in the greater collection of political and institutional obstacles that non-elite actors and public methods of policy campaigning have to surpass in order to influence policy decisions to the same degrees exercised by inter-elite private policy practices. Take for example these comments from pro- and anti-Leveson campaigners about the success of their respective political tactics, and how the prospects for genuinely reforming press regulation were always constrained by the entrenched power of national publishing groups within the post-Leveson policy network:

We thought we could make change, *system change*, by going through Westminster. Actually, we took our eyes off the fact that you need to bring a whole heap of other people along with you. There's a whole culture shift that needs to happen. (Interview 3)

We won hands down. There was never going to be a consensus, so for those leading the campaign the strategy was to go along with things until we demonstrated it could never work. As long as this government is in power, there is no threat of statutory regulation of the press. No newspaper will ever sign up to any state-recognised regulator, and the question won't be asked again. (Interview 1)

These remarks expose the drastic inequalities of influence between the various groups engaged in media policymaking. Despite the appearance of the two case study debates as open and fiercely contested arenas of numerous public and private media interests, many actors from outside the largest press and broadcasting media organisations had effectively no influence on how these pivotal policy decisions were made. Amidst the swirl of lively campaigns, nuanced political manoeuvres and behind-the-scenes bartering, the deeply undemocratic conditions that

mar media policy activism and advocacy in the UK mean that basic access to the most important executive decision-making processes is concentrated in the same few elite groups.

## **THE POWER OF MEDIA POLICY DISCOURSES**

***Research Question (3) – What impact did competing values, language and narrative accounts of press and broadcasting policy have on the content and shape of media policy debate?***

It would, however, be misleading to attribute this imbalance to a co-ordinated effort by cynical elites to diminish public and democratic modes of media policymaking. The more complicated reality is that private deliberations and elite forms of influence dominated the two debates precisely because the underlying discourses of press and broadcasting policy construed these patterns and interactions as ordinary and rational. These dominant narrative accounts and value frames were in part expressions of the pervasive free market discourse of media policymaking, in which media are commercial products and the primary goal of policy is to promote unrestrained competition between profit-making media businesses. Yet the post-Leveson and BBC Charter debates also show that such discourses are not hegemonic or unshakeable, but are modified and recirculated over the course of the policymaking process through competing actors' attempts to define the principles and meanings that guide policy decisions. Fischer writes that the struggle for power is "played out over time through arguments about the 'best story'" (2003:167). Examining the distinct stories of press regulation and public service broadcasting that were articulated and contested in the two case studies has revealed a number of important dynamics about the function and distribution of discursive power in media policymaking, and the fundamental role of language and narratives in shaping what kinds of ideas, arguments and decisions are even considered legitimate by official policymaking institutions.

In the earliest stages of both debates, the competing interpretations of press regulation and BBC Charter review as ‘issues’ to be resolved through political action had a formative effect on the official mechanisms and political vernacular used to formulate policy change. The wave of public outrage following the phone hacking scandal cemented widespread unethical practices in the national newspaper industry as a pressing matter of regulatory and institutional failure. Yet over the course of the Leveson Inquiry, the prevailing account presented in national press coverage and political commentary curtailed any arguments for reform in an unambiguous struggle between press freedom and authoritarian state control. In the years leading up to the official Charter renewal process, the agenda on the BBC’s future was firmly fixed in a narrative that asserted the commercial and political complaints of the Corporation’s fiercest rivals as innate anti-market faults of publicly funded universal broadcasting.

In both cases these narrative mobilisations established the central problems of press and broadcasting policy in decidedly narrow, ideologically-charged discourses that not only normalised the policy interests of commercial media groups, but also moulded the ideal values and language in which these problems and their potential solutions could even be debated. Although the most significant contests between competing interest groups revolved around articulating the practical meaning of ‘distinctiveness’ and formalising the subtle technicalities of Leveson’s ‘criteria’ or ‘principles’, these precise policy definitions were nonetheless constructed under the terms of the over-arching market-liberal, empiricist discourse that pervades contemporary media policymaking. This discourse confers established media elites and other insider actors with normative status as experts and legitimate stakeholders, and idealises quantitative measurement of media markets, audience metrics and public opinion as an objective means of informing policy decisions with ‘hard’ evidence. This discourse also redefines core notions of public interest and balance in policymaking as characteristics of any process that *involves* a wide range of different policy groups, rather than as democratic

requirements that all groups (including the public at large) have the means to equally participate in and influence actual decision-making.

We have also seen rich examples of the function and circulation of discourses as a distinct form of power that operates independently of actors and orders their own social and political power in relation to other actors and institutions (Fischer, 2003; Foucault, 1980). The core subject-positions and cognitive schemes that discourses create are in this sense *productive* of social action, yet how such formations take effect in practice depends the expressions and meanings that competing actors mobilise in different contexts. This creates space for contradictions in and challenges to the core ideals and vernacular that policy discourses entail. The phone hacking scandal provoked a drastic (if only temporary) redefinition of the normative ‘non-policy’ of press regulation, empowering new policy interests in public debate and forcing a public reappraisal of the underlying philosophies of press freedom. The widespread esteem and global renown of the BBC similarly introduced a strong contrasting narrative account which refuted neo-liberal arguments currently dominating broadcast policy discourses, and even provided for a sub-genre of BBC rhetoric focussing on different appeals to the Corporation’s uniquely British cultural and political impact.

But the real power of policy discourses to affect policy decisions is ultimately tied to how these arguments, principles and stories are mediated, adopted and articulated by governing institutions and processes of media policymaking. These elements are, as the case studies make abundantly clear, controlled or captured by many of the same interests and groups that are actively seeking to influence policy in their favour. Although discursive power may be understood generally as the collective property of all people engaged in shared social experiences, the power to shape what kinds of policy issues enter the public agenda, the goals and principles of political action and how these conflicts are literally narrated to policy actors is overwhelmingly concentrated in the meta-capital of elite media organisations (Couldry,

2003). This intense imbalance in the ability to influence discursive contests contradicts the common argument (itself a feature of contemporary media policy discourses) that a multiplicity of diverse voices and media outlets naturally results in all ideas and values receiving their proper representation in public debate. Given that media policy intrinsically concerns the distribution of symbolic power amongst social and cultural institutions, it is deeply troubling for ideals democratic participation that most policy groups and the public at large are predominantly marginalised from these essential discursive processes.

### **THE COMPLEMENTARY FACES OF MEDIA POWER**

***Research Question (4) – What is the specific influence of media organisations on media policy decision-making?***

The previous sections summarise three distinct and mutually reinforcing patterns in the structures, tactics and discourses of media policymaking. On their own, any of these patterns is indicative of a severe imbalance of power and a democratic deficit in how media policy is made, the interests involved in making it, and the resulting legal or regulatory implementation of press and broadcast media systems.

Taken together, however, the two case study debates demonstrate how these intertwining power dynamics contribute to and are exacerbated by the unique and uniquely multifaceted power of media organisations in the media policymaking process. These ‘faces’ of media power, to borrow Lukes’ (2005) term, can be categorised in the following forms: the *communicative power* of media as producers of information, knowledge and texts; the *policy power* of media organisations as industry stakeholders and professional interest groups involved in official policy decisions; the *elite power* of media actors as individuals with extensive cultural, social and political ties with other elite figures across government, state and public life; and the *institutional power* of particular media entities and formats as significant

cultural and political institutions with embedded traditions, histories and normative functions. Both the post-Leveson and BBC Charter case studies show the extent to which these variously behavioural and structural forms of media power interact with and complement one another within the media policy process, and the compounding effects that media power has on how media policy issues are debated, decided and implemented.

*Communicative power* is the most obvious type of influence exercised by media organisations, not least because media policy debates are typically focussed on how this power is organised, distributed and governed. Yet the communicative power concentrated in news media and national newspapers especially, to report, publicise and comment on media policy issues, drastically shifts the scope and substance of media policy debate to encompass only those topics that support (or at least do not challenge) the subjective political and policy interests of these same media organisations. Newspaper coverage of both press regulation and BBC Charter renewal comprised frequent stories repeating the claims of commercial media or groups with similar interests, representing policy issues and political processes in terms favourable to their efforts and goals, and attacking (or simply not even acknowledging) the actions and demands of rival groups.

One argument holds that such avowedly partisan reporting is a necessary feature of a politically independent press industry, which has every reason for promoting its own interests in order to preserve the essential democratic function and freedom of expression of print journalism. What is missing from this view, however, is an account for why the central questions, objectives and justifications that defined official deliberations in the two debates were so closely aligned with (and in some cases repeated verbatim) news coverage and editorial commentary published by the UK's major newspaper titles. Whereas a 'consensus' notion of media power maintains that competition between media sources fosters a naturally balanced and pluralist representation of public opinion (Freedman, 2014), in reality media policy issues

are frequently presented to the public—and, by extension, to policymakers and political leaders—in terms of the private interests of commercial media organisations. Even for broadcast news platforms, which are bound by legal requirements for impartiality and balance, policy reporting reflects much of the same political focus originally established by print newspapers. Although a forensic study of how broadcast news organisations reported the post-Leveson and BBC debates is at least one alluring avenue of future study, research by Cushion et al. (2018) highlights an extensive ‘inter-media’ agenda setting effect whereby the news values and production processes of broadcast news correlate with reportage by right-leaning newspapers.

Communicative power is not a ‘one-dimensional’ interaction in which media organisations use their control over media texts to coerce policymakers. Editors and journalists do of course use their publications to tell politicians what they believe *should* be done, and some politicians may change their decisions because of how they value these journalistic appeals within their own work. The far more pervasive and noteworthy aspect of media’s communicative power is in creating the overall agenda for identifying, understanding and giving meaning to policy issues as substantive matters of official political decision. News media organisations play a formative role in deciding what policy issues receive public attention and political prominence and establishing the basic narrative terms in which these issues are expressed. As the years preceding the exposure of the phone hacking scandal make all too clear, this near-monopoly over agenda-setting affords news media a significant nondecision-making influence in imposing policy ‘silences’ (Bachrach and Baratz, 1962; Freedman, 2014:70). Although other actors can in the right circumstances have their interests fairly represented by news media outlets, or even bypass this gatekeeping through established and alternative news production processes, questions of media policy and reporting of the policymaking process are predominantly shaped by the interests of private media organisations.



Furthermore, the discursive trends and reporting cultures that typify the UK's national newspaper industry mean that these crucial debates are framed tonally in terms of horse race politics, personal drama, conflict and binary moral dilemmas that preclude sincere public interrogation of the media policy issues at stake, while also masking the profoundly ideological interpretations and values of media policy such discourses entail. Media's communicative power over media policymaking is emblematic not only of concentrated corporate media ownership and pallid media diversity in the UK, but also of its political processes that are led more by the imperatives and logic of news media than by efforts at genuine public participation in media policy debate (Garland et al., 2018).

The *policy power* of media may seem an obvious feature of media organisations' direct involvement in media policymaking processes, but the acquisition and effects of this power are often far more subtle. Pluralist principles hold that because many media interest groups—companies, trade associations, unions, etc.—have some direct material stake in the laws and regulations implemented by policy, they develop an innate access to decision-makers and a collective, dispersed power to barter, challenge, propose and consent to policy change. The reality, as the two case studies suggest, is that this stakeholder legitimacy does not derive from any natural balance of all concerned groups, but stems from two inter-related structural dynamics: the normative objectives and values that guide how the media policymaking process is organised; and how the control and management of these 'innate' stakeholder interests is actually distributed amongst media organisations. In the first case policy power is a product of certain media organisations' innate communicative power, as news media can create and promulgate the policy discourses that establish their own interests and contributions as necessary to official deliberation. Yet the broader effect of policy power arises from the technocratic and economic emphases of contemporary media policymaking, which afford the largest media organisations—national newspaper publishers, major commercial television and

radio companies, and the BBC—with a privileged role in and influence over official decision-making.

These organisations are by no means representative of the full range of diverse public and private interests that are impacted by policy decisions. However these few organisations, which already account for huge concentrations of corporate, economic and cultural power, are embedded within the official processes and organised practices of press and broadcast policymaking. Along with their extensive resources for engaging in professional lobbying, public affairs and campaigning activities, these groups sit at the centre of the principal policy networks that connect interest groups with political and government authority. Their status as major media organisations allots them intimate access to policymakers and regular cemented involvement in elite decision-making, such that the fundamental structures and procedures of press and broadcast policymaking are built around their economic and institutional interests rather than the deeper social, political and cultural potentials of mass media.

The post-Leveson and BBC Charter review debates demonstrate how this intrinsic policy power of select media organisations produces both a behavioural influence (leveraging the normative significance of these organisations for the success of media industries and their policy frameworks), and a structural effect (moulding the foundations of media policymaking processes to ensconce powerful media interests at the heart of decision-making). From this we can advance an understanding of policy or regulatory ‘capture’ as the result of an imbalance of policy power, wherein policy processes and regulatory frameworks are unduly geared towards promoting and protecting the interests of established media policy groups at the expense of almost all others, particularly the public (Picard, 2020:40). As the following interview quotes suggest, this capture is not only evident in the total saturation of press regulation by the commercial and political interests of the newspaper industry, but even across the broader debates and political conflicts that surround BBC policy.

It was a press conviction that appointing the Chair of the regulator was part of their patronage, part of their thing was that they were able to reward friends and seal connections with the Conservative Party through these posts. They remain to this day wedded to the idea that the industry should appoint these positions. Alan Moses's seat is being kept warm for a Tory peer, it's as simple as that.<sup>172</sup> (Interview 4)

I think the problem comes when you have self-interested commercially driven groups who can outspend, out-lobby, outmanoeuvre and out-muscle the civil society sector. The weakness of civil society in pushing a non-commercial case for the BBC and public service broadcasting is the problem, and I'm not quite sure how you get around that. (Interview 9)

These quotes also relate to the third face of media power; the *elite power* of media actors. Many of the key media players at the heart of the two case study debates epitomised elite authority and status, not just because of their respective institutional roles—as editors, executives and lobbyists at major media institutions—but more importantly due to their extensive personal connections and professional experiences across the power elite of British society. The leading policy actors from the national newspaper industry, the BBC, commercial broadcasters and media industry lobby groups enjoyed close ties to senior politicians, civil servants, party aides and other core policy figures, developed through shared social and cultural backgrounds. In several notable cases, media elites at these organisations have moved seamlessly between roles in policymaking, political parties, journalism and public affairs. The same is of course true for many politicians: former ministers and party grandees take up directorate roles at the BBC in much the same way as former newspaper editors and broadcasting executives gain appointment as special advisors and heads of 'independent' government bodies. This revolving door phenomenon has created a self-sustaining network of elite policy figures who are intimately familiar and comfortable with the unspoken rules of the

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<sup>172</sup> Alan Moses QC resigned from his post as the first appointed Chair of IPSO in December 2018, and was replaced by the former Conservative minister Lord Faulkes QC.

game that govern access to one another's worlds. As Wedel has written on elite 'flex nets', these figures form "dense, self-propelling, informal (and, often, longtime) trust networks that pursue common goals, coordinating their efforts inside and outside official structures" (2017:164).

The elite insularity of media policymaking is already a recognised and well-documented feature of British politics (see, *inter alia*, Curran and Seaton, 2018; Davies, 2014; Mills, 2016; Watson and Hickman, 2012), and echoes C.W. Mills' (1970) description central institutions of public life becoming overtaken by a corporate power elite. But the actual effects of media actors' *elite power* in media policymaking are diffuse and localised, rather than totalising and top-down. Actors from the principal press and broadcasting media organisations do not hold a single uniform set of interests, needs or political objectives, and are indeed regularly in disagreement as part of the deliberations and conflicts of decision-making. This, as we have seen, can lead to the opening of new avenues and unlikely connections between policymakers, media elites and other non-elite groups, as insider actors seek new coalitions or pressure points to bolster their influence across the different branches of a policy network.

But such conflicts, rather than producing new dynamics of truly pluralist and competitive bargaining between myriad forces, are typically *inter-elite* skirmishes that recreate and operate by elite terms (Davis, 2007:55). A handful of individual media elites—the names Murdoch, Dacre, Desmond, Rothermere and Barclay persist throughout the recent history of British media politics—have routine unfettered access to the highest echelons of state and political power, see their opinions and demands heeded by the leaderships of almost every major political party, and exercise direct command over some of the largest and most influential media institutions in the country. Their status as media elites grants them immense personal power within media policymaking, not least because the routine unminuted meetings, private phone calls and late night negotiations are founded on an institutionalised culture elevating

these figures as essential players in official media policy decisions. The pressure they exert, whether explicitly or implicitly, pervades the basic social and political structures that define how all policy actors conceive of their place and power within media policymaking:

I'm not sure that if certain personalities were removed, whether it would have played out the same. If it wasn't Murdoch-owned newspapers, if it wasn't Paul Dacre... there were certain key personalities in the press regulation story that were hell-bent on power, and made it very, very difficult to do certain things and really reach the people in charge. (Interview 3)

These media elites may differ on issues of policy and are by nature of their respective organisations in direct competition with one another. However, their intimate relationships with political elites and elite policy institutions (combined with the corresponding communicative and policy faces of media power invested in media organisations) coalesce into a model of policymaking organised around elite media power, built on shared cultural perspectives and political loyalties, conducted through exclusive personal interactions, and ultimately separated from any form of public or democratic accountability.

The fourth face of media power is less palpable than the preceding three, yet is integral to unpicking how the dynamics of power in media policymaking change according to the actual media formats and industries under debate. Throughout their historical development, the British press and the BBC have each adopted corresponding systems of taken-for-granted rules, essential principles and naturalized myths that engender recurring cultures of policymaking. And although the post-Leveson and Charter renewal debates shared significant core features of policymaking and power, the contrasting political traditions and policy rituals surrounding them have created recurring patterns of *institutional power* that shape how these major media institutions manifest as specific categories of media policymaking. This power does not necessarily belong to nor is exercised by specific media actors, organisations or formats, but

instead circulates as rationalised modes of thought and action that underpin the behavioural and structural roles of media in policymaking.

The press and the BBC are founded on principles that idealise independence from government and political interference, yet both are bound up in complex relationships with the state, party politics and policy processes that contradict or jeopardise these ideals. As was evident throughout the post-Leveson negotiations, the penetration of government decision-making by editors, executives and select journalists blurs the notional separation between the people who wield public power and those who hold them to account. With policymakers attentive to how just a few national newspapers represent their actions to the public, the politics of press regulation are fundamentally skewed such that self-regulation (controlled exclusively by the industry itself) is an inseparable condition of keeping favour with these publishing groups.

Whereas institutionalised values of press freedom obscure and normalise a distorted compact between elected representatives and corporate newspaper interests, the BBC's policy autonomy is regularly damaged due to its intimate intertwining with statecraft and high politics. BBC negotiators traded away core aspects of the Corporation's financial and regulatory independence on the basis that the government's imposed alternative would be far worse. The BBC's quasi-statutory status as a public body governed by Royal Charter creates another aspect of its institutional politics, in which governments can use the unique opportunity of Charter renewal to mould the BBC's structure, funding and purposes to suit their own political goals:

Governments quite like doing it. It gives them power and the ability to influence something which is relatively straight-forward. Parliament doesn't really have a massive role, so it's real executive power about who gets what, particularly the licence fee, and who runs things. That's quite unusual in contemporary politics. More and more of media policy is negotiated, there are lots of interest groups, certain decisions are made through secondary powers or legislation. But Charter review is different. (Interview 13)

Although these institutionalised political cultures embedded elite interests and private interactions in policymaking, policymaking tensions also emerged through certain enduring ideals about the fundamental social and cultural roles of the press and the BBC. The phone hacking scandal is the definitive example of this, as the traditional conceptualisation of the press as an engine of adversarial popular journalism—buttressed by commercial funding and market ideals of the sovereign consumer—was brought into stark contrast with the actual reporting malpractices and corporate corruption enabled by the failures of self-regulation. The post-Leveson debates were in many ways a textbook case of Baumgartner et al.'s 'punctuated-equilibrium theory' (2007), in which the internalised stability and political monopolies established by particular policy frameworks eventually culminate in collapse and expose these institutionalised systems to challenge from new groups. Although public service broadcasting is increasingly subordinated to the needs of market competition—and thus involves many of the same deregulatory practices and commercial values that characterise the wider broadcasting sector—the BBC's symbolic capital as a cherished national institution made the views of the public a far greater part of Charter renewal than the on-going technocratic paradigm of media policymaking typically allows.

We were scared it was going to be a revolution, and that the BBC would be decimated, but it wasn't. I think that was partly because of the 182,000 responses to the Green Paper. People came out in support of the BBC far more strongly than anyone would've anticipated. There was a big public response saying "we love the BBC, don't mess it up". I think that made the government think twice about some of their more radical proposals. (Interview 11)

These moments of resistance and contradiction in the settled institutions of media policymaking were, however, the exception rather than the rule. In seeking to understand the role of media institutions in policymaking, and particularly the dynamics of power that enable and structure this role, it is impossible to ignore that these particular formations and routines are in part created by the laws, regulations and political procedures of media policy itself. As policy decisions lead to direct changes in how media institutions are organised, imagined and controlled, these institutions correspondingly gain or lose power in different forms, and thus see their role and influence in the policymaking process changed too. What is needed is a model to explain this iterative relationship in a way that recognises the complementary faces of media power, and situates these dynamics as the essential objective of studying media policymaking as a crucial site of democratic politics.

## **THE MEDIA POLICY POWER CASCADE**

My central interest throughout this research has been unravelling and denaturalising the media policymaking process, and exposing the dynamics of power behind two seminal moments of media policy change in the UK. Clearly the two case study debates were fundamentally shaped by diverse collections of people, interests and institutions which, through their various activities and arguments, produced media policy change. But rather than treating the post-Leveson and BBC Charter case studies as proof of pluralist, competitive bartering and depoliticised decision-making, we need to understand the essential dynamics of these debates in relation to a much broader system of power. Furthermore we need to unpick



how this system is not limited just to individual moments of decision, but expands and evolves as the policy process progresses, and even threads into the organisation of future policy issues.

The principal effect of this phenomenon, which I term the ‘media policy power cascade’, is to progressively restrict the scope of policy debate and diminish the available courses of action with each successive decision, political realignment or discursive redefinition within a policy process. Any new or emerging policy conflict is first conceived within the political structures and ideological assumptions inherited from previous policy decisions. Even after the dramatic revelations of the phone hacking scandal, any sense that widespread journalistic malpractices or the corruption of the PCC warranted a new mode of press policy—founded in participatory decision-making and public accountability—was precluded from the start by the same naturalised ‘do nothing’ approach that had fostered these institutional failures. Though Charter review has never been a shining example of public participation, the residual choices and arguments of the 2006 Charter review and the creation of Ofcom in 2003 had normalised and accelerated the insulation of BBC policy as an exclusive domain of state actors, BBC executives and commercial stakeholders, working towards normative goals of ‘public value’ and deregulated market competition.

In both instances, the range of methods and policy topics that formed the official decision-making process was preconfigured by the rules and values of the existing policy settlement, which embodied the dominant forms of power that created and benefited from these previous decisions. From this preset state of affairs, the cascade effect continued throughout the critical moments of political conflict, discursive formation and official decision that made up the substantive policymaking process. Each time an actor or interest group successfully swayed the course of decision-making in their favour, subsequent stages of debate adopted the organisation and purpose of the actions and paths that came before.

The Prime Minister’s decision to reject a statutory solution—itsself a definitive principle of the ‘freedom’ narrative expressed persistently in press coverage of the post-Leveson process—provided the political basis for private negotiations in which the extensive insider influence of elite press industry actors prospered. With each new draft Royal Charter proposal, the actual provisions of press regulation drifted closer and closer to publishers’ objectives (and away from the Leveson recommendations) while further naturalising the role of these figures in core decision-making. The government’s concerns about the BBC ‘crowding out’ competition—fomented by the commercial and deregulatory preferences of the Corporation’s political and industry rivals—similarly resulted in the focal mechanisms of Charter review being built around quantitative assessments of market impact and technical discussions of necessary governance reform. The consultations, reviews and inquiries through which the government formed its distinctiveness agenda were naturally partial to the expertise and professional evidence of commercial lobbyists, who subsequently acquired a deeper role in the government’s Charter negotiations with the BBC. Over the course of both debates, the choices available to policymakers and other actors seeking to influence policy were increasingly funnelled towards a narrower and narrower set of potential outcomes, while the particular forms or mobilisations of power that created these conditions grew increasingly influential.

Arguably the cascade phenomenon set out here is no different from path dependency, or simply offers a policy-oriented retelling of ‘new institutionalism’ which describes the “historically specific and changing relationship between institutions, ideas and interests over time” (Bannerman and Haggart, 2015:2). The main contention of the media policy power cascade model, however, is not only that the contemporary dynamics of media policymaking are perilously captured by the pervasive and multi-faceted power of media in the decision-making process. These same dynamics are increasingly geared to producing policy decisions that concentrate even more power in dominant corporate media institutions. Crucially, this

cascading process is both incremental and cyclical. Media actors and organisations play a leading role in setting the agenda of policy debate, communicating the terms and meanings of an issue and articulating its core dilemmas in relation to their own interests. These same actors hold an innate role in formal and informal decision-making processes, enjoying privileged private access to policymakers and engaging in official deliberative exercises that naturalise elite lobbying techniques. These interactions contribute to media policy decisions that implement new legal powers, regulatory frameworks and political precedents, which all afford certain influential media organisations with expanding commercial opportunities, relaxed economic restrictions and greater consolidations of political, cultural and economic power. Finally these dynamics create a feedback loop: influential media groups evolve into even more powerful institutions for defining, advocating and benefitting from future media policy changes, or preventing any issues or policy failures that may challenge this entrenched system of media power from gaining political and public attention.

It is important to stress that this power cascade effect does not mean that all non-media actors or non-elite forms of policy advocacy are in any sense ineffectual or meaningless to how media policy decisions are made. Media policy is still a lively arena of significant concern to numerous collections of public and private interests. Their various contributions to and engagements in policymaking can still sway the political context of debate and the formal arrangements of decision-making in sometimes unpredictable and even radical ways, as the Hacked Off campaign and the loose coalition of pro-BBC ‘universalist’ groups made abundantly clear. The more troubling implication of the media policy power cascade is that the possibilities for genuine public intervention or democratic participation in media policymaking are likely to become thinner and less frequent with each new media policy debate. As long as the normative goals of media policy continue to be defined in a narrow neo-liberal vernacular of market competition and deregulation (or even non-regulation in the case of the press), and

as long as the practices of media policymaking continue to embed these values in elite technocratic forms of private decision-making, the self-perpetuating crisis of media power seems set to only get worse.

It is highly likely that this media policy power cascade is more useful as a critical historical account of the (re)distribution of power particular to policymaking on Britain's two major media institutions, rather than as a conclusive theoretical argument about media power. Clearly, further forensic research would be needed to see whether the Irish or Danish Press Councils, the FCC or the German ARD (to take only a few parochially Western examples) have been subjected to similar patterns of increasingly normalised elite media lobbying and self-perpetuating practices of neo-liberal decision-making. Each of these systems is a product of its own historical precedents, distinct legal and constitutional systems, overlapping political and social contexts, and unique (national) institutional cultures of decision-making. It is also apparent that the pattern described by the 'cascade' effect could easily be applicable to realms of public life and policy beyond the media: elite organisations of financial, industrial, technological and military power embed themselves so deeply in the hierarchies of official decision-making such that 'public' policymaking in these areas may be redefined entirely in their interests.

Yet as just a brief comment on the generalizability of the media policy power cascade model, it is important to restate the significance of media institutions as essential means of public communication and the significant meta-capital this confers on newspaper publishers, television networks and online media services to influence how debates across all realms of public life take shape. Some countries and some areas of policy have proved susceptible or resistant to the broader neo-liberal realignment of the past 40 years, but within the context of accelerating global media concentration and deepening socio-political inequality, elite media organisations have acquired a pervasive power over many aspects of public and political life.

As the four ‘faces’ of media power discussed above suggest, this influence is not confined to just ‘mediatisation’—realms of society, politics and culture becoming increasingly organised according to the logic and discourses of the media ‘frame’—but manifests as the real, practicable power of media elite actors, media organisations and commercial media discourses insinuated into the core of democratic, public and even private institutions. Whereas the media policy power cascade describes how these faces of power reproduce and idealise this influence within media policymaking, it is important to consider how the cascading, circuitous trend results in a spiralling concentration of media power in many other areas of public policy beyond the media domain.

### **THE FUTURE(S) OF MEDIA POLICYMAKING**

If this power cascade phenomena accurately describes the historical trend in British media policymaking, what are the future prospects for media policy in the UK?

In the time since the Royal Charter on press self-regulation and the BBC’s renewed Charter were formally adopted, the prevailing patterns of press and broadcast policy debate have exemplified the same distorted dynamics of power that forged these seminal decisions. National newspaper editors and publishing executives have reinforced their privileged and routine access to the heights of political power. It is often difficult to discern between the corporate interests of press lobbyists and the policies of the current Conservative government, as the 2019 Cairncross Review into ‘a sustainable future for journalism’ makes clear. Closely advised by a panel of top industry figures (including Associated Newspapers’ editor emeritus and IIG lead negotiator Peter Wright), the review recommended extending tax breaks for newspaper publishers and supporting local news with even more subsidies drawn from the BBC licence fee. The role publishers themselves have played in cutting local and regional journalism in favour of cheaper online formats has barely featured in these debates, and the

Johnson government has eagerly propped up the largest corporate newspaper groups (many of them slavishly supportive of his premiership) with no-strings-attached financial support. Editorials and ministerial statements instead target online media platforms like Facebook and Google as the sole source of plummeting revenues and circulation. Press policy debate is focussed on subjecting these global companies to some form of stringent regulatory regime the likes of which the press industry would never accept for itself and indeed actively spurns in its continued derision for the increasingly marginalised Press Recognition Panel.

Debates about the future of the BBC have only grown more fractious and more deeply trapped within government politicking. In July 2020, the BBC announced the end of the free television licence scheme for most over-75s. A chorus of ministers, backbench Conservative MPs and anti-BBC newspapers condemned the Corporation's heartless betrayal of pensioners, apparently unconcerned that the estimated £1bn cost of this welfare benefit had been imposed on the BBC in the government's severe funding freeze five years earlier. The government's review of licence fee decriminalisation (the second in five years) and the Commons Select Committee's 'future of PSB' inquiry (the fifth in seven years) have provided ample space for commercial lobbyists and free market pressure groups to bolster their arguments against the BBC's services and funding model in formal 'expert' policymaking settings. The new Director-General, Tim Davie, has found little difficulty in quickly showing his willingness to placate the right-wing campaign against public service broadcasting. A former Conservative councillor and CEO of BBC Studios, Davie has pledged to 'balance out' left-wing comedy and ban BBC staff from expressing personal views on social media. Whether any of these plans and proposals take shape or not, the politics of broadcasting policy since Charter renewal has intensified the BBC's susceptibility to motivated media criticism, economic regulation and government threats.

One notable effect of these evolving policy issues is that they have made media policy more visible. The press and the BBC are not just major sources of news journalism, but are at their core essential components in how the public, as individuals and as a common collective, make sense of and participate in political, cultural and social processes. This basic purpose of media dovetails with many prominent debates about the future of democratic societies: how emerging technologies are changing our interactions and relationships with one another; how the full diversity of people's thoughts, beliefs, cultures and identities can best be expressed and represented; how widening inequalities of wealth, health, education and civil liberties can be resolved and by what means; and how the growing detachment, distrust and unaccountability between central institutions of power and the public might be remedied. As it stands, our media institutions are drastically ill-equipped to account for these crises and in many ways are responsible for exacerbating them. This is a consequence of a media system which has, over many years, increasingly subordinated the communicative and information needs of audiences to the private interests of shareholders or the ideological goals of political and media elites. The structures and practices of media policymaking are correspondingly predisposed to these interests and groups, replicating the same policy conditions that empower them and failing to properly accommodate public participation in this process.

There is, however, another possible future of media policymaking. Its goal is a media system created by the public, controlled by the public and that speaks to the public in a way that empowers them as citizens.

A well-informed citizenry will only establish itself if knowledge of the world connects reliably with the power to change it. For this to happen our knowledge must have a public dimension in two senses. It must be secured in part by collective action and it must be widely shared with others. (Hind, 2012:156)

This future will obviously not be won overnight, and first requires that the current arrangements of media policymaking be dragged out from their neo-liberal rut. This means mobilising ourselves as academics, activists, lobbyists and citizens all at once, as interested, informed and impatient participants, not so that we might become embedded players in the elite theatre of media policy but so that we can change it. As academics, we “need to design blueprints for the media systems that we want to build and have a program of action to make them a reality” (Freedman, 2019:629), developing our own systems of policy expertise which recognise and defuse the biases of ideologically-charged empiricism. As activists and lobbyists, we need to build cooperative movements with groups traditionally shut out of policy debates and chase connections with those plugged into the heart of power, knowing when to be noisy in the streets and when to steal a seat at the table. Finally as citizens we need to assert that proper public participation in policymaking is the only condition that affords media policy decisions with any democratic legitimacy. Implicit in all of these is that we situate ourselves as active players in vital historical junctures, aware of the many minute decisions and broader conflicts that created the media we have now.

Once we see how the current system was contingent, that it was not foreordained, but rather there were other options, other roads not taken, we can begin to imagine that a very different media system was—and still is—possible. (Pickard, 2019b:510)

With this, we may have the means to expose the entanglements of political and media elites that have characterised how media policies are made, demonstrate the unequal distributions of power engendered by these decisions, and ultimately reform the dynamics of media policymaking towards more democratic and liberating ends.



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## **APPENDICES**

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## APPENDIX 1. KEY ACTORS CONTACTED FOR INTERVIEW, POST-LEVESON CASE STUDY

Actor description	Interviewed	Role in policymaking / relation to power
Conservative Party leader		Prime Minister, organised cross-party talks
Labour Party leader		Negotiated Royal Charter terms, organised 'pizza meeting'
Culture Secretary		Negotiated Royal Charter terms
Cabinet Office minister		Proposed Royal Charter format, liaised with industry
Shadow Culture Secretary		Negotiated Royal Charter terms, liaised with Hacked Off
Deputy leader, House of Lords		Negotiated Royal Charter terms, liaised with Hacked Off
Conservative peer		Organised pro-Leveson efforts in parliament
Backbench Labour MP		Tabled pro-Leveson Bill amendments in Commons
Chair, PCC & Conservative peer	●	IIG negotiator with government, formed IPSO
Chair, PressBoF & Conservative peer		IIG negotiator with government, formed IFG
Special advisor, Labour Party		Advised Labour negotiations, liaised with Hacked Off
Editor Emeritus, Associated Newspapers		IIG negotiator, led industry response to policy drafts
Legal director, Trinity Mirror		IIG negotiator, drafted PressBoF 'alternative' Charter
Editor, The Guardian		Published phone hacking reports, split from industry negotiations
Policy advisor, News Media Association		Coordinated publishers' anti-Leveson campaign Free Speech Network
Director, Hacked Off	●	Campaign spokesperson, attended 'pizza meeting'
Director, Hacked Off	●	Campaign legal advisor, attended 'pizza meeting'
Director, Hacked Off		Former MP, coordinated parliamentary lobbying and attended 'pizza meeting'
Director, Hacked Off	●	Lobbied Labour cross-party negotiators
CEO, Index on Censorship		Organised libel reform campaign, lobbied against pro-Leveson Bill amendments
Policy advisor, NUJ		Advised NUJ's response to Leveson recommendations and cross-party proposals
CEO, IMPRESS	●	Founded IMPRESS, lobbied journalists to support Leveson recommendations
Director, Media Standards Trust	●	Testified to Leveson Inquiry, attended 'pizza meeting'
Researcher, Media Standards Trust	●	Analysed Royal Charter drafts and PCC/IPSO/PressBoF submissions
Former editor & journalist	●	Contributed to Free Speech Network campaign publications

## APPENDIX 2. KEY ACTORS CONTACTED FOR INTERVIEW, BBC CHARTER REVIEW CASE STUDY

Actor description	Interviewed	Role in policymaking / relation to power
Culture Secretary		Led government's Charter renewal decision-making, previously CMS Select Committee Chair
Permanent Secretary, DCMS		Coordinated civil service Charter renewal work, including Green Paper submission analysis
CEO, Ofcom		Consulted on BBC market regulation, implemented first Service Licences under new Charter
Special advisor, Conservative Party		Former BSkyB director, appointed to advise DCMS Charter policy drafting
BBC Director-General		Coordinated BBC's Charter review policy and licence fee negotiations
Public affairs director, BBC Executive		Negotiated Royal Charter terms with government
Policy director, BBC Executive		Negotiated Royal Charter terms with government
Chair, BBC Trust		Organised Trust consultations and formal response to DCMS Green Paper
Policy director, ITV	●	Prepared ITV responses to government consultations and lobbied DCMS policymakers
Policy director, BSkyB		Prepared BSkyB responses to government consultations and lobbied DCMS policymakers
CEO, COBA		Prepared COBA responses to government consultations and lobbied DCMS policymakers
CEO, Pact	●	Negotiated BBC Studios proposals and consulted by government on Royal Charter
Labour peer		Chaired 'Future of TV' inquiry and challenged government policy in Lords debates
Academic & parliamentary advisor	●	Contributed to expert panel discussions in DCMS & Trust consultations
Academic & broadcasting executive		Contributed to expert panel discussions in DCMS & Trust consultations
Academic & broadcasting analyst		Contributed to expert panel discussions in DCMS & Trust consultations
Chair, Save Our BBC campaign	●	Coordinated pro-PSB public campaign and draft SOBBC's policy submissions
Campaigns director, 38 Degrees		Organised public petition response to Green Paper consultation
Policy advisor, VLV	●	Lobbied DCMS on children's content production and produced group's consultation submissions

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