BOOK REVIEW

The Continuing Role of State Policy

New Television, Old Politics: The Transition to Digital TV in the United States and Britain, Hernan Galperin, New York, N.Y., Cambridge University Press, 2004, 311 pages.

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    Hernan Galperin uses comparative case studies of the transition to digital television in the United States and Britain to address a variety of theoretical questions regarding the relative impact of political factors versus markets and technological change on regulatory regimes. The book is organized into four parts. The first part introduces the topic and provides background on digital TV. The second and third parts focus on the digital transitions in the United States and Britain, respectively. The fourth part contains summaries and conclusions.

    In Chapter One, Galperin argues that three factors were the impetus for the transition to digital TV in both countries: the steady decline of the domestic consumer electronics industry, "the international diffusion of the information revolution agenda, and the spectrum shortage created by the rapid growth of mobile telephony and other wireless telecommunications services."[1] Nevertheless, the strategies chosen to make the transition and the outcomes of these strategies differed markedly.

    According to Galperin, three nation-specific factors produced variance in strategies and outcomes across the two countries: the organization of the state (cabinet-led parliamentary v. presidential

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1. HERNAN GALPERIN, NEW TELEVISION, OLD POLITICS: THE TRANSITION TO DIGITAL TV IN THE UNITED STATES AND BRITAIN 15 (2004) [hereinafter NEW TELEVISION].

government), the normative orientation of media policy, and the legacy of the analog TV regime.[2]

The British transition included greater efforts to foster competition in broadcasting than the U.S., partly because Britain started its transition with a lower level of competition. The dominance of the national public broadcaster, the British Broadcasting Corporation ("BBC"), was an important differentiating factor, but Galperin argues also that a major impetus for British strategy was the threat posed by the rapid success of pay TV services delivered via satellites controlled by Rupert Murdoch and his allies.

Despite its dominance, however, the BBC did not always get its way. Galperin attributes this to the British government's ability to resist capture by either public or private interests, in sharp contrast to the American system, which was the result of the centralization of power made possible by cabinet government. Overall, the "American strategy . . . privileged continuity over reform."[3] The U.S. efforts at broadcasting reform were stymied by private local broadcasters who successfully used the idea of preserving "free TV" as their watchword throughout the long struggle.

Chapter Three does a good job of providing background about the regulatory regime for analog TV in the United States. Galperin describes the public interest standard for the licensing of stations by the Federal Communications Commission ("FCC") and the impact of new technologies like VCRs and cable TV. There is nothing particularly new here, but it is a good summary nonetheless.

Chapter Four summarizes the U.S. debate over high definition television ("HDTV") in the 1980s and shows how it led to the idea to pursue digital television ("DTV") in the mid 1990s. DTV included the possibility of HDTV digital broadcasts among other ways of using the spectrum allocated for DTV. The implicit deal with local broadcasters was that they would be loaned an additional television channel to experiment with digital services during the transition. They would have to return the analog channels once the transition was completed.

In Chapter Four, Galperin also discusses the changing views of the broadcasters as represented primarily by the National Association of Broadcasters ("NAB") and their ongoing battles with the cable operators as represented by the National Cable Television Association ("NCTA"). The basic conflict between the two was over "must carry" rules.[4] Earlier FCC decisions and Supreme Court rulings had determined that cable operators

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2. *Id.* at 23.
3. *Id.* at 18.
4. *Id.* at 66.

could be required to carry the signals of local broadcasters.[5] This would have to be renegotiated for digital TV, especially if local broadcasters chose to use their digital channel for "multicasting"—broadcasting a number of standard-resolution signals (somewhat like a mini-cable system).

The Author briefly discusses the rise and decline of the linkage between the debates over HDTV and DTV and concerns over the decline in U.S. economic competitiveness *vis à vis* Japan and Western Europe. He also briefly discusses the arguments between the U.S. television and computer industries over DTV standards and the ungainly compromise on picture formats embedded in the FCC decisions of the mid 1990s.[6] Both of these topics are covered in greater detail in other works.[7]

Chapters Five and Six deal with the changes in the DTV bargain that occurred after 1996 when the White House and key leaders in Congress demanded a quick return of the analog channels so that a spectrum auction could be used to reduce the budget deficit. The debate over the 1996 Telecommunications Act included a discussion of the DTV transition. The local broadcasters successfully lobbied for new rules that would delay the return of the analog channels. These rules required that 85 percent of households be able to receive digital signals before the broadcasters would be obliged to return their analog channels.[8] That threshold has yet to be reached.

Chapter Seven provides a description of the European context for the British transition. The British case differs from that of the U.S. in that Britain is embedded in a larger system of governance thanks to its membership in the European Union, making this chapter absolutely necessary. After quickly reviewing the reasons for the European rejection of the Japanese proposal for HDTV standards in the mid 1980s, Galperin turns to a discussion of the politics behind the Multiplexed Analog Components ("MAC") systems that were supposed to replace the analog color TV standards in Europe. He provides a summary of the European debate over Open Network Provision ("ONP") standards that were designed to apply not just to telecommunications networks but to all high-bit-rate digital infrastructures, including digital broadcasting. The ONP debate played a key role in the British transition strategy because key political actors strongly embraced the ONP approach.

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5. *Id.* at 67.

6. *Id.* at 87.

7. *See, e.g.*, JOEL BRINKLEY, DEFINING VISION: HOW BROADCASTERS LURED THE GOVERNMENT INTO INCITING A REVOLUTION IN TELEVISION (1997); JEFFREY A. HART, TECHNOLOGY, TELEVISION, AND COMPETITION: THE POLITICS OF DIGITAL TV (2004).

8. NEW TELEVSION, *supra* note 1, at 110.

Chapter Eight provides a description of the regulatory regime for analog television in Britain. It contains a short history of the idea of "public service broadcasting" that has played such an important role there. The BBC was never particularly well liked by Conservatives, including Winston Churchill, but it came under particularly heavy fire during the Thatcher administration. Thatcher wanted, in particular, to change the funding scheme for the BBC so that the BBC would lose its dominant position. The Major administration did not agree with this idea, however, so despite the addition of competitors to the BBC in the form of the independent television companies and Murdoch's satellite-delivered pay TV services, the BBC managed to remain the dominant force in British broadcasting. Galperin argues that the Major administration, by separating the transmission services of the BBC from its programming and encouraging it to expand its commercial activities, made it both necessary and possible for the BBC to engage in a successful form of public entrepreurialism during the digital transition.

Chapters Nine and Ten detail the rather baroque maneuvers that occurred once the British government decided to get serious about the digital transition. These all concerned Digital Terrestrial Television ("DTT") since all earlier attempts in Britain other than Murdoch's to enter the digital satellite television market had failed spectacularly and cable television had been unable to compete successfully with analog terrestrial TV or satellite pay TV.

The key players on the government side, besides the BBC, were the Independent Television Commission ("ITC"), the Department of Trade and Industry ("DTI"), and the Office of Telecommunications ("OFTEL"). The ITC was primarily responsible for decisions about licensing and a few other regulatory duties mandated by Parliament under a series of telecommunications acts. The DTI was concerned primarily with encouraging the building of high-speed digital networks and creating a more favorable environment for digital technology more generally, while the OFTEL attempted to "nurture . . . competition and prevent dominant firms from leveraging market power across the supply chain."[9] Competition among these agencies played an important role in the British digital transition.

Chapter Ten, which is entitled "Murdoch Phobia," explains the outcomes of the various bids for DTT licenses on the part of various consortia, but more importantly why the competition for licenses was structured as it was. Murdoch's attempts to compete in the DTT sphere were mostly frustrated by government elites intent on fostering a British

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9. *Id.* at 192.

competitor to his satellite-delivered pay TV services.

Chapter Eleven takes up the story of DTT licenses after the election of a Labour government under the leadership of Tony Blair. There was considerable continuity in policy from Major to Blair because of the two administrations' shared belief in the need for greater competition in broadcasting while preserving the public service tradition. The BBC was disappointed that the new administration did not go along with its request for major user fee increases. When the independent television companies' digital TV service failed in 2002, there was no government bailout, and a new consortium was permitted to take its place that combined the resources of the BBC and Murdoch's BSkyB. (So, no need to feel sorry for Rupert Murdoch.) Britain emerged in the end with two major digital broadcasters: the BBC and Murdoch. Was this "industrial policy through other means"?[10]

Galperin's comparative case studies show the enormous pressures exerted on both governments to revise their regulatory regimes. He argues that the British digital transition went more smoothly, despite its various glitches, than the American one. In Chapters Twelve and Thirteen, he suggests that cabinet-led parliamentary government in Britain, as compared with presidential government in the United States, made it possible for the British government to act against the organized interests of the broadcasting industry to establish a regulatory regime that recognized the regulatory impact of "digital convergence"—that is, the need for greater consistency of regulation of telephone networks, computer networks, and broadcasting, as high-bit-rate digital transmission technologies permitted high-quality audio and video to be carried over a variety of transmission media.

The Author argues that inter-industry coordination problems were important in both countries and that the transition was strongly influenced by state policy as a result. In Britain, "[inter-industry] coordination problems were minimized by past policy changes favoring industry consolidation, national . . . stations, and vertical integration in the pay-TV market."[11] In the United States, in contrast, the "organization of the state … stands in sharp contrast to that of Britain. In a few words, it militates against regime change and policy innovations . . . . Fragmentation of policy authority favors fragmentation of interest representation."[12] In the United States, inter-industry coordination problems and a fragmented government resulted in a more difficult transition.

In somewhat of an after note, the Author summarizes his case against

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10. *Id.* at 226.

11. *Id.* at 266.

12. *Id.* at 255.

the arguments of globalization theorists about the declining power of the state: "The transition to digital TV reveals that policymakers have not passively accepted losses in their ability to organize the media sector."[13] The two case studies show how regulatory changes actually increased the power of the state in some areas while diminishing it in others. It is thus better to speak about a *restructuring* or *reconfiguration* of the state as a major consequence of globalization, rather than a retreat. And despite globalization and the alleged tendency of globalization to produce convergence in regulation, the governments of advanced industrialized states remained sufficiently different from one another to produce different policy responses to similar challenges.

This Book's main contribution is its careful analysis of the British transition and its careful comparison of the transitions in the two countries. I have a few quibbles with Galperin's facts and interpretations. I would not have been as comfortable about pronouncing the British transition strategy superior to the American. Neither transition has resulted yet in the switching off of analog services. The projected date for the end of analog is 2009 in the U.S. and 2012 in the U.K. The British, like the rest of Europe, were blindsided by rapidly increasing demand for high-definition TV sets and programming—the Europeans decided to invest in a type of wide-screen digital TV that did not easily upgrade to high definition.[14] Still, I believe Hernan Galperin has performed a great service in providing the readers of this Book with yet another reason to believe that states still have the desire and the power to shape markets even in this new and glorious age of globalization.

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13. *Id.* at 287.

14. Peter Feuilherade, *Europe Lines Up for TV Innovation*, BBC News World Edition, Sept. 14, 2004, http://news.bbc.co.uk/go/pr/fr/-/2/hi/technology/3652402.stm.