

***SOCIETY AND BROADCASTING***

***RE-THINKING ROLES***

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***"BROADCASTING, SOCIETY AND THE LAW"***

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In his address, Minister McDowell:

- Examines the rapid transformation in the "media market" in Ireland
- Predicts a changed but strong position for public service broadcasting
- Argues for the democratic, constitutional importance of public service broadcast journalism based on objectivity and impartiality
- Asserts the legal and constitutional distinctions between journalism in public service broadcasting and journalism in the private, commercial press
- Calls for a re-affirmation of a civic journalism that educates public opinion in our broadcasting media
- Warns against a "medio-cracy" replacing representative democracy

# **Society and Broadcasting Rethinking Roles**

## **HARD TIMES FOR THE PRINT MEDIA**

There was a time, not so long ago, when to articulate the proposition that our media are competitive businesses and that their outputs are economic commodities would have seemed somewhat like the thoughts of a latter day Thomas Gradgrind who featured in Charles Dickens' *Hard Times*.

But the times are a changing; perceptions are changing with them. And Ireland's media are at the heart of a technological and social revolution.

In the Irish newspaper world, we have intensive, cut-throat competition for market share. The shelves of convenience stores and newsagents groan with the weight of competing print-media titles which, in turn, are bursting with features, supplements and, often-times, "gifts" of CDs and DVDs.

We now have "free" daily newspapers handed out at traffic lights, street corners and commuter stations. Complimentary copies of the "unfree" papers (if I may call them that) are increasingly available in foyers and conference centres.

Whether or not the "free" daily newspaper is an economically sustainable "product" in the Irish market is still open to question. They may turn out to have been expendable pawns in a very sophisticated game of economic chess between press barons.

In a prosperous Ireland with a growing population, Irish editions of British newspapers are engaged in a proxy circulation war. Their editors are engaged in "hand to hand" fighting for Irish readers as never before.

In terms of choice of paper, the Irish newspaper reader has never had it so good. Whether that can be said about choice of quality newspaper content is highly questionable.

Indeed recent developments have evoked distinctly audible murmurings about circulation wars leading to "a race to the bottom" in terms of standards.

As far as the print media are concerned, Baroness Onora O' Neill in her address to the Royal Irish Academy in Dublin last year raised some profound questions about the legal and social accountability and freedom of the modern press. Tonight, however, I want to focus mainly on broadcasting.

## **CHALLENGING TIMES FOR THE BROADCAST MEDIA**

Broadcast media are in a different but equally revolutionary transformation.

I cannot claim to have lived in the days of crystal radio or 2RN. I am reminded of the great public service broadcaster, Scan Mac Reamoinn who, reflecting on his advancing age, likened himself to census data. He said that he too "was broken down by age, sex and religion".

But in my lifetime, the transformation in broadcasting has been almost total. It is almost cliched to recall broadcasting in 1960 when radio was confined to a part-time Radio Eireann, the BBC's Home Service, the Light Programme, the Third Service, and, for the young, Radio Luxembourg. The transistor was the new liberating radio technology. The car radio was also key - people listening to Michael O'Hehir on a beach or on scenic lay-bys on summer Sundays.

Television in Ireland at that time meant the "grainy" reception of BBC and ITV, perpetual battles with "interference", and frequent recourse to the horizontal hold and vertical hold knobs.

In television, we now have intense free-to-air competition between three RTE Channels, TVS, a number of BBC Channels, UTV and other ITN channels, not to mention the massive choice available through satellite and cable networks. The battle for TAM ratings is intense - not merely among the majority of channels which are partly or wholly financed by advertising, but also among the public service broadcasters which are wholly or partly financed by advertising and licence fees.

In radio, the proliferation of domestic channels is even more pronounced. Ireland has 54 licensed broadcast channels in this State and 15 in Northern Ireland. It is on national and local radio that much of our democratic political discourse is conducted.

Irish radio is not locked in competition with foreign radio broadcasters in the same way that TV broadcasters are. State owned and state licensed radio accounts for nearly all of the Irish radio market - with a little look-in for BBC public service radio. However the battle for market share and advertising revenue is no less intense.

On top of all this change for the broadcast media, we have the colossal IT revolution. The internet has profound implications for broadcasting as well as for the print media. Everyone is now a potential private broadcaster. The web promises everyone the capacity to produce and disseminate worldwide "programmes" on virtually any topic.

Web-sites will soon be miniature broadcasting channels. With the advent of digital TV, satellite and wireless broadband and rapid IT innovation, the boundaries between radio and TV broadcasting and the internet are dissolving very rapidly.

Is it fanciful, for instance, to imagine a TV advertisement or an advertisement in a TV listings guide asking viewers to press the equivalent of a "My Favourites" button on their remote to have instant access, via the web, to a TV programme prepared by an NGO, a political party or a pressure group? And if that is not fanciful, what are the implications for the role of public service broadcasting in the area of current affairs?

## **WHERE IS IRISH BROADCASTING HEADING?**

I well remember during the 1980s dining out in a restaurant in the old kitchen of Castletown House in the delightful company of Muiris Mac Conghail. He was waxing passionate and vehement that the legalisation of any of the illegal pop stations in Ireland would be the first and irreversible step in the process of making Irish society "fascist"! I was, I have to say, unconvinced. The sky has not yet fallen despite his dire predictions.

Mindful of how such apocalyptic visions can be very wide of the mark, I do not predict the print media or the traditional broadcast media being swept aside by the internet or digital IT in the short or medium term.

But we all see a rapid accommodation among all the media to the new digital world of the internet. Books and papers will survive and prosper. And so will public service and commercial broadcasting channels. The paperless society has turned out to be a chimera - just like the millennium bug. Those channels are already mutating to accommodate new realities. The process of mutation, in my opinion, will accelerate.

It is not, therefore, that the media - including the broadcast media - are in decline or facing extinction. It is, I would argue, a case of the relationship between society and the media changing very rapidly.

## **GLOBALISED BROADCASTING**

In the early years of the 21<sup>st</sup> century, no democratic government can even secretly aspire to controlling the broadcast media in the way to which many such governments not merely aspired but in which they succeeded in the 20<sup>th</sup> century. Now, even "light" control in the form of state-ordained objectivity on domestic current affairs is potentially endangered by the advent of satellite broadcasting.

There is simply no redress mechanism available to the viewer of foreign based news and current affairs in respect of bias or untruth. Nor is there any real expectation that NBC and Al Jazeera will cover topics of mutual interest from an objective perspective - even though both of them might aspire in good faith to do so. We need more than ever to bring our personal critical, sceptical faculties to bear on what is beamed into our homes

The "broadcasting market" has become globalised to some extent. And the signs are that the process of globalisation will continue. This has reduced the possibility for direct state or social control. Sky News and CNN are accepted parts of daily life for a growing section of the population of many advanced societies. Al Jazeera now gives a news service to the Arab peoples which is largely outside the control of individual governments in that part of the world which had, up to very recently, one of the most heavily state-controlled media regions.

All of the world's major economic powers now aspire to owning or controlling a current affairs international satellite channel in the hope of influencing world opinion to their advantage.

## **ALL IS NOT LOST FOR PUBLIC SERVICE BROADCASTERS**

However, there are still two factors working in favour of national public service broadcasting networks - their local appeal and content, on the one hand, and their established quality brand image, on the other. The first issue of local appeal is relevant in a number of ways, not least advertising. The second is the old fashioned notion of brand loyalty to a quality product.

Coupled with local-appeal programme content, local broadcasters have the same advantage as local newspapers have over national rivals, and, indeed, the same advantage as national newspapers have over international rivals.

But just as British newspapers are producing Irish editions with Irish advertising, TV competitors are already doing the same thing. It will become more and more feasible for relatively small commercial operations to marry some local content to "international" news and entertainment content and to produce "Irish editions" of standard entertainment channels available by satellite. This issue is already being addressed at EU level.

By the way, massive growth in choice also provides a limiting factor on governments' capacity to subsidise national public service broadcasting channels. There must be a limit politically on the extent to which voters will pay for such subsidies. When the subsidy takes the form of hypothecated licence fees, those limits can be easily reached.

Need I point out that in Ireland, a 42% taxpayer paying PRSI would need gross earnings of €596 every year just to pay the TV licence fees for his or her principal home and for a holiday home to which he or she brings a portable TV or in which he or she keeps a TV. Even for second home owners, a group in respect of which I have been comprehensively "outed" by the media, that is a considerable amount of money.

## **BROADCAST OUTPUT IS NOT JUST AN ECONOMIC COMMODITY**

If broadcasting output were simply viewed as a "commodity", market analysis would suggest a buoyant but highly competitive market situation. Globalisation, subsidy, brand loyalty, technological change, lateral entry, and competition from allied but non-identical markets are all factors at play in this market.

Our media most certainly *are* purveyors of commodities and services. And they *are* commercial entities. And they *are* in a market place. And, in many cases, they *are* corporately profit-driven. Even where they are not profit driven, they are in competition with those who are.

But broadcasting output is *not* simply an economic commodity or service. Media outlets are not simply producing or marketing cabbages, or widgets or window-cleaning services. In social, cultural and political terms, as distinct from economic terms, the media are also performing other vital functions. The "media market" is one aspect of broadcasting; culture, community and identity is another; and the "ideas market" or the democratic "*agora*" (the market place and forum of the Greek city state) is a third.

## THE DEMOCRATIC ARENA

It may well suit us from an economic point of view to regard media activity as the doings of a number of competitive enterprises. But between them, the mass media have an effective oligopoly on news, commentary, ideas, social innovation and publicly expressed opinion.

Apart from door to door canvassing, leaflet distribution mailshots and the long extinct "public rally", the media provides the central modern arena of democratic politics. Whoever controls media content, in large measure controls our democratic debate and, in effect, the main workings of our democracy. There has been a paradigm shift from parliament to radio and TV as the focus or centre of political debate. In the print media, by contrast, parliamentary coverage is under pressure.

From a democratic point of view, therefore, it matters crucially who owns and controls the media and how the media owners exercise that ownership and control. And if the owners delegate that power to editors, commentators and presenters, it also matters how that delegated power is exercised as well. That applies to the state as owner/shareholder just as much as it does to the private entrepreneur/investor.

There are many aspects of public service broadcasting which have nothing to do with democratic debate. But tonight I want to deal with the particular issue of public service broadcasting and democracy.

## CONSTITUTIONAL DIMENSION

Our Constitution guarantees, in Article 40, the "right of the citizens to freely express their convictions and opinions". The State "guarantees liberty for the exercise" of that right "subject to public order and morality".

Dealing with the media, the Constitution qualifies this right in the following terms:

*"The education of public opinion being, however, a matter of such grave import to the common good, the State shall endeavour to ensure that organs of public opinion, such as the radio, the press, the cinema, while preserving their rightful liberty of expression, including criticism of Government policy, shall not be used to undermine public order or morality or the authority of the State".*

That paragraph deserves some close analysis.

Here is an express constitutional acknowledgment (i) that the media were "*organs of public opinion*", (ii) that "*the education of public opinion*" is the legitimate function of the media, and (iii) that the process of educating public opinion is "*a matter of grave import to the common good*". Here also is an express acknowledgment (iv) that "*to undermine... the authority of the State*" is essentially different from free "*criticism of Government policy*" and (v) that freedom of expression is a "*rightful liberty*" of the media.

Given that the constitution on which the Irish state is founded acknowledges that the media are of grave importance to the very essence and existence of "*Ireland [as] a*

*sovereign, independent democratic state* ", we cannot simply relegate the output of the media to the status of economic commodity or service.

By the same token, we cannot allow the media or their owners to relegate themselves to that status either. If, as assuredly is the case, the media have constitutional rights in Ireland, they also have constitutional duties.

One such duty is to educate public opinion. Another duty is to uphold the constitutional rights of the citizens, including the constitutionally protected rights to a good name and to privacy. Another is to uphold public order and morality, at least to the extent of not undermining them. Yet another is to uphold the authority of the Irish state and, necessarily, the constitution on which that state is based.

And, of course, there is a duty to preserve their rightful liberty of freedom of expression.

The State, I think, has a correlative right to prevent the "commodification" of the media to the point where they lose out on their role as educators of public opinion or in their capacity to function as organs of public opinion. Opinions, ideas and free speech are not mere commodities. Media owners who enter the Irish media market from within or without must do so in a way that accepts the constitutional duties that I have mentioned. In political and social terms, they are not buying into, or establishing a chain, of hamburger restaurants.

While the Irish state is obliged under Article 45 to "favour and where necessary supplement private initiative in industry and commerce", it is also mandated "to secure that private enterprise" is conducted so as to protect the public, and to ensure that free competition does not result in the concentration of essential goods in the control of a few individuals to the common detriment.

In short, there is I think a constitutional mandate for the State to remain a significant guarantor through public service broadcasting of the media role as organs of public opinion, if not, in Sean Lemass's memorable if unfortunate phrase, "organs of government".

Likewise, I see a constitutional mandate for a policy of diverse media ownership and for a policy designed to ensure that the independent Irish democracy has a set of independent media which adequately serve its particular needs.

But the need to compete in an inevitably globalised media market also suggests that Irish media be robust enough to fend off competition from abroad in terms of quality and value for money.

### **THE SERVANTS, NOT THE MASTERS, OF DEMOCRACY**

When the State is in the role of broadcast media owner or of decider as to who can and cannot be a broadcast media owner through a restrictive licensing system, there are some consequences - legal and social.

Constitutional jurisprudence now clearly states that public resources cannot be used to attempt to affect the outcome of referenda or elections. Within the parameters of the Constitution, the State must be neutral as to the outcome of elections and referenda. The State as owner, or as licensor, of media must be effectively neutral as to how the sovereign people exercise their democratic right "to designate the rulers of the State."

The legal duty of impartiality and objectivity in relation to matters of current affairs cast by law on state owned broadcasters and on state licensed broadcasters is, I think, best understood as a statutory outworking of the same constitutional principles and values.

That is why legal press accountability is treated differently in the case of broadcast media. The print media will be the subject of forthcoming proposals for a separate Press Council.

Decided case-law of the Supreme Court in relation to the non-use of state resources to attempt to influence the outcome of elections and referenda would be rendered meaningless if the Government of the day were to be permitted to use partisan state controlled media to influence public opinion between elections so as to render meaningless a policy of neutrality at election time.

But the "rightful liberty" of the broadcast media to broadcast criticism of government policy does not imply a right to ignore or qualify a statutory duty mandated by constitutional principles and imposed on state owned and state licensed broadcasters of substantive political neutrality and objectivity.

Where that rightful liberty is exercised by State owned media outlets, it must be done in a neutral way as regards party political interests.

### **AGENDA SETTERS ?**

Which brings me to the issues of "agenda setting", "campaigning journalism" and "investigative reporting" by state media and state licensed media.

As a matter of law, and for the purposes of the Broadcasting Acts, is the choice of subject matter for "campaigns" and "agenda setting" on issues of current affairs a matter on which there must also be impartiality and objectivity?

This is a fraught issue. And I have no simple answer - legal or political.

At one end of the spectrum, we could have an absurd doctrine that paralysed and stultified public service current affairs broadcasting by insisting that investigative reporting be randomly deployed on issues in a manner that considered one issue as important or unimportant as another.

At the other end of the spectrum is the equally unacceptable doctrine that state broadcasters might be completely free to campaign on issues chosen personally and subjectively by those in the employ of the broadcaster as representing their own ideological or political priorities.

Watch-able and educational, but fair and objective, television requires a position taken somewhere on the spectrum in between those polar extremes. And not too close to either of them.

### **MEDIA INCEST**

I would also like to deal with the term "media incest". I hope the charge of incestuous-ness is not unduly provocative.

Firstly, there is no problem with the media being scrutinised or indeed interviewed by each other, though it can at least be tedious for the viewer or the listener. Primary sources are usually best. It might, of course, on occasion be refreshing to hear media contributors interviewed as to *why* or *how* they acted in relation to a story.

And again, if media owners and editors and opinion-formers claim to be carrying out important functions in our democratic societies, why should they be any less scrutinised in the way in which they function as individuals or carry out their important functions than, say, a politician of the middle rank?

True - democratic politicians are chosen by the public and the public should know a good deal about them.

But many of our opinion formers give very little credit to our elected politicians for being chosen by the public. Indeed, the very fact that they are elected seems to justify their castigation rather than merit any respect - forget about deference - from un-elected commentators.

Is the private life of a TD any more or less significant than that of a major TV current affairs presenter? Or of a newspaper editor or opinion writer? And how is the family of a politician of more interest, in terms of policy and social mores, than the family of a national newspaper editor? Middle ranking politicians have arguably less influence over public thinking and public values than an editor or a presenter. A personal divergence between public policy position and private standards seems just as significant in either case.

In fairness, some politicians have engaged in spectacular efforts in family coat-tailing. But others haven't. Are the rights - legal and moral - of family members of such politicians somehow less than the rights of the family members of editors and commentators who choose to publish articles and stories about them?

In fairness, too, it must be said that the broadcast media are noticeably more mindful of these considerations than are the print media. Perhaps that is because a broadcaster is necessarily more publicly exposed than a person doing the same job in the print media. Writing, as opposed to broadcasting, is so much more private. And safe.

We have in Ireland a fair share of media gossip and bitching. It's a small country. But effective scrutiny of the media is not just a matter of keeping individual people under scrutiny or holding them to account.

Then there is the whole issue of corporate accountability and corporate media agendas.

With a few honourable exceptions, there is little or no analysis of corporate accountability or corporate agendas in the media world. "Dog doesn't eat dog". TV

stations simply don't analyse the political prejudices or perspectives of newspapers. Instead, the media choose to take each other at face value. This "non-aggression pact" suits all parties concerned - except perhaps the public.

My problem with "media incest" is the tendency of many of the media people to turn to each other for authoritative comment and opinion. As if the fact that one writes in a newspaper or broadcasts in some sense amounts to a qualification to serve as a duly qualified expert member of the Irish commentariat - a group which claims the same pre-eminence and deference in opinion-forming here as the *nomenklatura* had in the social and political life of the former Soviet Union.

The prevalence of intellectual incest results in in-bred thinking in many parts of the Irish media. There are honourable exceptions, of course. The broadcast media seem, on occasion, to feel much safer when they stick to the same ground, the same commentary and the same commentators as the print media. Why?

And we have the matter of the media deciding that their own output is itself controversial or newsworthy. Do we really have to have the presenters of last night's programme interviewed the morning before and indeed the morning after as well in order to give the programme a fair wind?

Public service broadcasting journalism does not have to adopt a close, seamless relationship with the journalism of the print media. It can and should be different and original. There is a world outside the commentariat. Print media journalists and their editors have their opportunity to do their thing on paper. Public service broadcasting need not be so dependent on the print media for its ideas and personalities. It so often seems that the people involved are "taking in each others washing" much of the time. It's boring in its effect and the audience is the loser.

This is particularly important in the context of a tendency for the media to want to act as political players.

## THE MEDIA AS POLITICAL PLAYERS

Just as serious is the emerging power of the media collectively as "players" in the democratic process. This is not a uniquely Irish phenomenon, by any means.

John Lloyd, himself an FT editor and columnist, has written extensively on this issue in the British context. His book *What The Media Are Doing To Our Politics* is a brilliant and challenging analysis of the creeping invasion by the British media of the role of democratically elected politicians in a functioning democracy.

Lloyd has come to some fairly far-reaching and thought provoking conclusions on the British press. Among his conclusions are:

- The British media have embarked on a sustained process of collectively wresting political power from the elected representative institutions
- The notion that the media depend on democratic institutions which work well has been damaged severely if not abandoned.
- The media have glorified themselves falsely as a group of independent, fearless seekers of the truth pitted against a self-serving, venal and corrupt political class

- The media present the public with a myth that as between the press and the politicians there is a zero-sum gain in which the power of the free press is advanced by the abasement of politicians and politics
- Politics has been transformed for the benefit of and to the requirements, of the media
- Access to the media for elected representatives is on increasingly harsh and unreasonable terms dictated by the media
- The common drive of the media is to expose, shame and embarrass the political class
- While decrying Presidential-type government, the media have nurtured it.
- The media constantly seek to disguise and conceal their own political power; they pose as the mere "messenger" that cannot be shot.
- The media pose as having no agenda other than the truth
- The media constantly paint the complex as simple; they are utterly impatient with inconvenient facts, the danger of unintended consequences or the need to be circumspect in the exercise of the powers of government
- Despite claiming the opposite, the media are enthusiastic degraders of the difference between comment and fact - "faction" to borrow a word from the United States.

All of this Lloyd relies upon to support his thesis that the relative power of the media in British society has been hugely and dangerously increased at the expense of functioning representative democracy.

I refer to John Lloyd this evening to make a point about the media in Ireland. Where is the searching, introspective analysis by the Irish media of the role of the Irish media?

Where are the articles about the values and ethics and agendas of the Irish media?  
Where is the Irish John Lloyd?

Is there a tendency, especially in the presence of a politically fragmented parliament, for some in the Irish media to leap into the gap and take on the role of the formal opposition to the elected government?

Here is how Lloyd concluded his book:

*"Media cannot, as its leading figures like to claim, substitute in any way for the political struggle. It is not their job -for any presumed reason, such as the weakness of the non-governing parties, lack of attendance at political meetings, drop in interest in parliament — to take on themselves the business of being a political opposition. News media hold public figures to account, but the first line of doing so, and much the most important, is politicians of the opposition party who claim to be able to form a government themselves. Media have the right - the necessity in a democracy – to maintain diversity, openness, to investigate, to attempt balance and objectivity. They have not the responsibility for opposing.*

*Representative democracy and discursive politics are everywhere under pressure. Most media, and many new political movements, implicitly or explicitly prefer some form of plebiscite — through polls, or mass rallies, or audience figures — to the voting of representatives. It is clear from 20<sup>th</sup> century history to what dangers that leads. The strength of the British state, as of many others, has long been the ability of elected representatives to make the judgments and effect the compromises necessary to*

*relatively peaceful, relatively prosperous, relatively equable and civilized life. The media have been the beneficiaries of that: time, now, to take a more active hand in its protection.*

*Can we imagine a journalism which is civic? One which defies its own natural instincts to make celebrities of itself; which acts as an adjunct to activity and reflection; which presents to its audience first drafts of history which are absorbing and subtle, strong on narrative but attentive to the complexity and context of every story; which is not struggling with political power, but struggling together with that power's best instincts to make the contemporary world at once comprehensible and open to the participation of its citizens. If we can imagine it, we should be able to create it".*

As someone who believes passionately in the legal and political distinctions between public service broadcasting and simple commercial broadcasting, I am concerned about current trends. The privately owned and controlled media are entirely free to make and shape their own agendas and ambitions. Not so for the publicly owned and licensed broadcast media. I fear that in the area of democratic dialogue, free speech, and the education of public opinion that public service broadcast journalism is in danger of losing its way.

There are signs that a minority of journalists and programme makers have decided they want to be political players - that their legal obligations of impartiality and objectivity are boring, outdated, style-cramping counsels of perfection. There are signs that some of them want to be agenda setters. There are signs that some feel that they are better at choosing the battlefields for elected politicians than are those politicians themselves.

### **AVOIDING MEDIOCRACY**

These signs are by no means universal - perhaps not even general. And I do not want to exaggerate them for effect. I believe that in general our public service broadcasters are delivering in accordance with their vocation and the law. But it would be idle to ignore the signs to the contrary.

Happily there are many who still cleave to the vocation of civic journalism envisaged by John Lloyd. They can, do and should find their home in public service broadcasting and it should never be a cold house for them. They should never feel under pressure to compete with other media to become "players" in the democratic process.

Of course it is tempting to become part of the story. Of course it is tempting to drive the story onto centre stage. Of course it is tempting to hype up the story. Of course, it is tempting to dumb down the story or to de-complicate it for effect.

There is a human desire to make, rather than report, history. It is a desire that public sector broadcasters should recognise and resist. If you are a public sector broadcast journalist, you are a different beast; you are not as free as a print journalist to succumb to these temptations. Nor is your editor free to ask you or encourage you to do so.

But you should be *more free* in public service broadcasting to espouse the values of civic journalism, as described by Lloyd.

I have carefully refrained this evening from using the term "tabloid" to describe some

of the changes and pressures that are in issue in this debate. Experience has taught me that the format of the media is not the determinant as to whether editorial content is part of civic journalism.

I believe that public service broadcast journalism is and should remain the most effective defence against over-weaning media power transforming our democracy into a "mediocracy" with all that is entailed in such a transformation.

The ultimate question I pose for your consideration is this: "What form of public service broadcasting journalism serves the common good in the long term?"

As a liberal republican, as a democrat and as an elected politician, I am concerned about media power. To educate public opinion is not to substitute for public opinion nor to create public opinion.

As a citizen stakeholder in public service broadcasting, along with everyone else here tonight, I believe that its justification must always be found in service - never control.