

**THE FAIRNESS DOCTRINE
IN THE 21ST CENTURY**

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Introduction

The Constitution requires that Congress not delegate power to any agency without providing “meaningful guidance” in making decisions (Tillinghast 53). This standard is designed both to ensure that agencies may be certain of what is expected of them and that courts may determine if the agencies have acted appropriately when reviewing their actions. So it was in 1927 when Congress passed the Radio Act, creating the Federal Radio Commission and charging it with regulating radio “as public interest, convenience, or necessity requires” (44 Stat. 1162, sec. 4 (1927)). The Radio Act was amended often in the next seven years before being repealed and replaced with the Communications Act of 1934. In 1996, the Telecommunications Act served as a massive rewrite of the 1934 Act. In spite of the legal and technological changes since then, the FRC (and its successor, the FCC) have struggled to interpret precisely what protecting the “public interest, convenience, and necessity” entails.

What is the Fairness Doctrine?

Perhaps the biggest debate over broadcast regulation involves the balance of First Amendment rights. Specifically, a broadcast licensee has a constitutional right to remain free of government regulation of its “speech”: that which the licensee broadcasts. Simultaneously, due to the pervasive nature of broadcasting and the technical limitations that create a scarcity of broadcast channels, the First Amendment rights of listeners (in the case of radio) and viewers (in the case of television) must also be considered.

The FCC’s answer to the conflict of interests between broadcasters and the public at large has historically been a policy called the Fairness Doctrine, which mandated broadcasters to address controversial issues from all relevant viewpoints. In 1987, however, after years of influence from the ultra-libertarian commissioner Mark Fowler, the FCC stopped enforcing the Doctrine, and it has not

enforced it since. In this paper, I will explore the history of the Fairness Doctrine, its various applications throughout its active years, and the circumstances leading to the FCC's decision to cease its enforcement. Finally, I will examine the current media landscape, the impact of the Fairness Doctrine's absence on its state, and whether the Fairness Doctrine might or should be reinstated.

A Brief History of Broadcast Regulation

Order from chaos

During what Susan Douglas calls broadcasting's "prehistory," the airwaves were a chaotic soup of disparate senders and receivers, each operating on at his or her whim (Solomon 223). When the *Titanic* struck an iceberg in 1912, and was unable to penetrate the haze of transmissions in time to beckon another ship whose timely arrival might have averted some of the deaths, a great call went up for some governmental regulation of the airwaves. A law was passed that fall that partitioned the spectrum: the government retained control of most frequencies, while the general public was relegated to those less than 200 meters (Tillinghast 17).

The idea that the Federal government could regulate speech in this manner—prohibiting the public from using certain portions of the spectrum by requiring licenses—was challenged in *US v. Zenith Radio Corporation* (1926), and the power of the Commerce Secretary to license broadcasters was stripped by the courts (Simmons 17). In response, Congress passed the Radio Act of 1927, creating the Federal Radio Commission to regulate "all interstate and foreign communication by radio" and assigning it the power to license broadcasters in ways that benefited the "public interest, convenience and necessity."

The rationale for content regulation

Though the FRC was superseded in 1934 by the FCC, the actions of the FRC during the seven years of its existence set the tone for nearly eighty years of debate over the power of the government to

regulate broadcast content. “Almost immediately” after its creation, the FRC began to realize that “inherent in the public interest standard was a requirement that the successful applicant provide fairness in the treatment of matters selected for broadcast” (Simmons 31). At odds were the rights of broadcasters to speak without government interference as mandated by the First Amendment and the rights of the listeners to be exposed to a wide spectrum of ideas. This dichotomy was defined as early as 1925 by Commerce Secretary Herbert Hoover, when he stated that the essential “consideration in the radio field is, and always will be, the great body of the listening public” (Simmons 21). The realization that the airwaves are a limited resource (due to the insurmountable technical fact of interference), which led to the general agreement that the government would need to license broadcasters, placed a great importance on the prevention of control falling to “the arbitrary power of any person or group of persons” (Simmons 20).

In its *Second Annual Report*, the FRC determined that in deciding who would be allocated a license, “the emphasis must be first and foremost on the interest, the convenience, and the necessity of the listening public and not...of the individual broadcaster or the advertiser” (Simmons 31). Additionally, this standard was applied when licenses came up for renewal, as the FRC mandated that licensees permit the “free and fair competition of opposing views...[and] that the principle applies not only to addresses by political candidates but to all discussion of issues of importance to the public” (Simmons 32). What should be understood from this declaration by the FRC is that content regulation was considered not only a legitimate function of the government, but an essential task to be sure that the public interest was served.

The dismantling of the FCC

In time, the requirement of “free and fair competition of opposing views” would come to be an integral portion of the Fairness Doctrine. Its enforcement by the FRC and, subsequently, the FCC, however, was inconsistent at best during the time that it was in effect. With the election of Ronald

Regan in 1980, the goal of complete deregulation was adopted by most federal regulatory agencies. Some of the consequences of this attitude shift were decisions by the FCC to dramatically reduce the paperwork necessary for license renewal (down to a 3×5 index card), eliminate restrictions on identical AM/FM programming, and eliminate the prime-time access rules that gave networks considerable power over the programming of affiliate stations (Tillinghast 87). The decision to formally cease enforcement of the Fairness Doctrine was by far the most dramatic, however, and that policy remains in effect to this date despite occasional congressional movements to reinstate the Doctrine.

The Fairness Doctrine: Gestational Policy

The Fairness Doctrine did not spring forth fully grown, Athena-like, from the head of either the FRC or the FCC. No written statement explicitly requiring fairness from broadcasters was issued until 1949. Even so, “glimmerings of fairness” were evident at least as early as 1929 in *Chicago Federation of Labor v. FRC* (Simmons 31). The Chicago union had applied to the FRC for a license that would permit it to increase its station’s power and hours on the air to serve “the exclusive benefit of organized labor” (Simmons 34). The FRC denied the request, stating that “all stations should cater to the general public and serve public interest as against group or class interest,” and the ruling was upheld by the Court of Appeals (Simmons 34). Were the airwaves not a limited resource, the FRC reasoned, then every interested party could broadcast at will and the public interest would be served. The inescapable technical limitations of interference, however, necessarily results in a privileged few that have the ability to broadcast. In exchange for this privilege, the few must actively serve the public interest.

Another situation illustrates the actions that the FRC was willing to take to ensure fairness. A Los Angeles station, KGEF, regularly broadcast attacks against judges and promoted anti-

Semitism and anti-Catholicism. When the time came for KGEF's owner, Reverend Dr. Shuler, to apply for a license renewal, his application was denied by the FRC. On appeal, he charged that his First Amendment rights had been violated, but the Court of Appeals disagreed, stating that, "although prior restraint [is] prohibited under First Amendment guarantees, subsequent punishment, such as radio license denial," was within the rights of the FRC (Simmons 33).

The FCC went so far to enforce fairness in 1941 as to prohibit licensees from editorializing on any issues, period. In the *Mayflower* case, the FCC stated that "[a] truly free radio cannot be used to advocate the causes of the licensee. It cannot be used to support the candidacies of his friends. It cannot be devoted to the support of principles he happens to regard most favorably. In brief, *the broadcaster cannot be an advocate*" (Friendly 21) [emphasis added]. This so-called "*Mayflower doctrine*" remained in effect until 1949, when the FCC issued its *Report on Editorializing* (Creech 72). The *Report* repealed the *Mayflower doctrine* and served as the definitive statement of the Fairness Doctrine.

Requirements of the Fairness Doctrine

The Fairness Doctrine is a two-part requirement on the part of broadcasters. First, all broadcasters had an "affirmative responsibility...to provide a reasonable amount of time for the presentation over their facilities of programs devoted to the discussion and consideration of public issues" (Simmons 43). Simply ignoring public issues was explicitly stated as unacceptable; broadcasters were required to play a "conscious and positive role" in the presentation of both sides of controversial topics (Simmons 43). Second, the FCC mandated that each broadcaster must "operate on a basis of overall fairness" and make "his facilities available for the expression of the contrasting views of all responsible elements in the community on the various issues which arise" (Simmons 43).

Naturally, there was concern over the government's ability to mandate any speech by a licensee: it seems *prima facie* to be a violation of the First Amendment. The FCC justified this requirement (and its justification was later upheld by the Supreme Court in *Red Lion*) by finding that the "para-

mount right” of speech did not lay with broadcasters, but with members of the general public who were unable to hold broadcast licenses.

The last section of the FCC’s 1949 *Report* included instructions to broadcasters to foster compliance with the newly-stated Doctrine. Included among the recommendations was a statement that there existed no “all embracing formula” that would ensure compliance, but rather that each licensee would be judged on a case-by-case basis (Simmons 44). One of the recommendations required that “an attack on a specific individual or group may require response time for the attacked party” (Simmons 44). The requirement seemed to be a violation of Section 326 of the Communications Act of 1934, which stated that “the Commission [may not] interfere with the right of free speech by means of radio communication,” and the issue would not be settled until a decade later (Creech 68).

The “right of reply,” as it came to be known, was the subject of intense congressional debate in 1959, but the result was an explicit statement of the Fairness Doctrine in Section 315(a) of the Communications Act:

Nothing in the foregoing sentence shall be construed as relieving broadcasters in connection with the presentation of newscasts, news interviews, news documentaries and on-the-spot coverage of news events from the obligation imposed upon them under this act to operate in the public interest and *to afford reasonable opportunity for the discussion of conflicting views on issues of public importance* (Friendly 27).

This congressional codification of the Fairness Doctrine served as the basis for several court cases upholding the Doctrine, though it would later be discarded in *Arkansas AFL-CIO v. FCC* (1994) (Tillinghast 88).

The FCC would add two more relatively minor provisions to the Fairness in the ensuing years. One was the requirement that broadcasters cover “ballot initiatives in a thorough and balanced fashion” (Simmons 157 and Tillinghast 88). The other was the so-called “Zapple component,” first

enunciated in 1970, which mandated reply time following political addresses (Simmons 205).

Technically, the Zapple requirement is still in place, as it has not formally been repealed by the FCC or challenged in court, and the custom of providing time to a member of the opposing party following a network's broadcast of a political speech continues (Creech 77).

Applications of the Fairness Doctrine

Questions about the constitutionality of the Fairness Doctrine persisted following its complete adoption by the FCC and codification by Congress in 1959. The crux of the argument against enforcement of the Fairness Doctrine was that it was a blatant violation of the First Amendment rights of broadcasters. Time and again, the FCC defended the Doctrine by placing the rights of the general public above those of the broadcasters. The Fairness Doctrine might not have complied with the letter of the First Amendment, but by promoting varied discussion of controversial issues, the FCC insisted that it served its spirit. It was not until 1964 that the Supreme Court ruled on the constitutionality of the Doctrine.

Red Lion

The *Red Lion* case stemmed from the enforcement of the personal attack rule against WGCB, located in Red Lion, Pennsylvania. Owned by the right-wing Reverend John Norris, WGCB served as an outlet for propaganda against communism, atheists, Democrats, and any other institution deemed “un-American” by Norris. On November 25, 1964, WGCB broadcast an attack on Fred Cook by Billy James Hargis. Cook had written a book about Republican presidential candidate Barry Goldwater titled *Goldwater: Extremist on the Right* (Friendly 5). Hargis’ attack on Cook was not uncommon at the time; then, as now, the radical right made great use of radio to attack its enemies. What was uncommon was that Cook wrote letters to each of the two hundred stations requesting that each “grant [him] equal time, at [their] expense, as provided in FCC regulations, to answer in

appropriate fashion this scandalous and libelous attack” (Friendly 10). Several stations failed to reply, and most did not offer complimentary airtime to respond, but Norris’ reply was a solicitation for business: “Our rate card is enclosed. Your prompt reply will enable us to arrange for the time you may wish to purchase” (Friendly 44). This response set off a series of communiqués between Norris and Cook that resulted in Cook’s filing with the FCC for a resolution of the dispute.

Norris took the letters from Cook and the FCC personally, stating that he had “never before been subjected to such religious and political persecution” (Friendly 45). In response, Norris filed with a District Court in Washington DC to have the Fairness Doctrine declared unconstitutional. When this attempt to circumvent the FCC failed, Norris’ options became severely limited: no licensee had fought the Doctrine so fiercely to date, and Norris saw himself as a martyr to his cause (Friendly 47). Norris appealed the FCC decision.

At about this time, the National Association of Broadcasters began to catch wind of what Norris was doing. Though they had wanted to challenge the Doctrine in court for some time, their attorneys indicated that challenging the Doctrine with a case as weak as *Red Lion* might lead to an affirming precedent (Friendly 48). The attorneys would prove to have been prophetic.

On June 9, 1969, the Supreme Court released their decision. In addition to declaring that the FCC had the right to order Norris to broadcast a reply, it unanimously affirmed the constitutionality of the personal attack rule in particular and the Fairness Doctrine in general. Justice Byron White, the author of the opinion, stated that “we do hold that Congress and the Commission do not violate the First Amendment when they require a radio or television station to give reply time to answer personal attacks and political editorials” (Friendly 72). Furthermore, the rights of the general public were held to be superior to those of licensees: “When there are substantially more individuals who want to broadcast than there are frequencies to allocate, it is idle to posit an unbridgeable First Amendment right to broadcast comparable to the right of every individual to speak, write or pub-

lish” (Friendly 73). Finally, White wrote the precise phrase that would be used to defend the Doctrine time and time again in the coming years: “it is the right of the viewers and listeners, not the right of the broadcasters, which is paramount” (Friendly 74). Thereafter, the Fairness Doctrine was, essentially, unassailable.

WLBT

Several years before the *Red Lion* decision came a case that served as a prime example of the FCC’s revoking a broadcast license for the licensee’s failure to operate in the public interest. WLBT was an NBC affiliate in Jackson, Mississippi, during the 1950s and 1960s (Friendly 88). At that time, it was the policy of the station manager to preempt broadcasts from the network that dealt even-handedly with race issues, and the station made no effort to cover such issues locally (Friendly 89). When it came time for WLBT to file for license renewal in 1964, a group led by the United Church of Christ petitioned the FCC to deny WLBT’s request (Friendly 95).

While the FCC found that “serious questions” existed over WLBT’s service to the public interest, they denied the right of the public to raise such questions (Friendly 96). The FCC renewed the WLBT license for a trial one-year period. The petitioners appealed the decision to the DC Circuit Court, and the Court overturned the ruling and granted standing to the public in the license renewal process of broadcasters. Writing the unanimous decision, Justice Warren Burger stated that the petitioners (and, therefore, all listeners and viewers) had a “genuine and legitimate interest” in the license renewal process (Friendly 97).

The effects of the *WLBT* decision were wide-reaching, as it recognized the right of all consumers of media to challenge their media providers to serve the public interest. In 1972, the DC Circuit court again upheld the power of the FCC to deny a license renewal after listeners of another station demonstrated that the licensee was not operating in the public interest (Creech 75). Officially, the public still has the right today to raise questions over the public interest commitments of a

broadcast licensee. Since the fall of the Fairness Doctrine in the 1980s, however, it has been a toothless threat.

Cigarettes and “counteradvertisements”

Of all the free speech issues to arise in the history of broadcasting, one of the strangest is surely that of cigarette advertising. In 1946, the FCC notified licensees that paid commercial advertising was not exempt from fairness considerations; the FCC reaffirmed that declaration in 1963 (Simmons 104). From the early days of radio, tobacco companies had been major advertisers on all broadcast outlets, spending over US\$300 million annually by the early 1960s (Friendly 104). With the release of the Surgeon General’s report of 1964, it became evident that there were serious questions about the medical effects of smoking, and that “normal use... [could] be a hazard to the health of millions of persons” (Friendly 104).

In 1966, John Banzhaff demanded that WCBS, the New York flagship station of CBS, “make its... facilities available [free] for the expression of contrasting viewpoints” to the continuing advertisements of tobacco companies (Friendly 105). When the station manager of WCBS refused Banzhaff’s request, Banzhaff petitioned the FCC, and six months later the FCC reaffirmed that the Fairness Doctrine applied to commercial advertisements (Friendly 105). What followed were years of legal maneuverings by broadcasters, tobacco companies, the FCC, and Banzhaff to fight or confirm the decision. In 1969, however, under pressure from the tobacco companies (who by that time had recognized the futility of their cause) and broadcasters (who no longer wished to associate themselves with tobacco companies), Congress passed a bill requiring that all broadcast advertisements of cigarette advertisements (both television and radio) cease by December 31, 1970 (Friendly 108).

In the time between the official ban on cigarette advertising and the fall of the Fairness Doctrine, the FCC’s enforcement of the Doctrine on advertising was spotty at best. FCC determinations

of the “controversial” content of commercials on topics ranging from alcohol and gasoline to oil drilling and military recruitment varied from case to case, and a prediction of the outcome of such a case beforehand was nearly impossible (Simmons 108-110).

The Fall of the Fairness Doctrine

Deregulation

With the election of Jimmy Carter to the White House in 1976, the FCC began a long road toward a markedly decreased role in the regulation of American broadcasting. Carter, a Democrat, had no particular allegiance to the “free market” that would be cited as a reason for dismantling the government in the next decade. Rather, he believed that the government was too great a bureaucracy, and he set the FCC on a deregulatory bent with his appointment of Charles Ferris to the Chair of the Commission (Tillinghast 84). Ferris’ resolve to dismantle the FCC, however, was tempered by his belief that amendments to the Communications Act since 1934 took much of the power out of his hands, and that congressional action would be necessary to dramatically reduce its role. His successor would not have the same compunctions.

Fowler and the Free-Marketers

The wave that swept Reagan into the White House in 1980 brought with it an even stronger desire for deregulation than existed during Carter’s term. Reagan’s choice for the Chair of the FCC, Mark Fowler, chose to call the movement “unregulation,” and during his watch he undertook to bring to an absolute minimum the influence that the Commission could have on broadcasters. As previously noted, the license renewal process under Fowler’s watch was reduced from a serious examination of the licensee’s service to the public to a *pro forma* approval requiring only the submission of a 3×5 postcard on the part of the licensee (Tillinghast 87).

Mark Fowler's personal motto, "Let the market decide," led to his crowning achievement as head of the FCC, the 1985 *Fairness Report* (Bolton). The *Report* found that "chilling effects" of the Fairness Doctrine were reducing speech, and that it should be repealed. This entered the FCC into a battle with the Democrat-controlled Congress, where the *Report* was called "factually flawed...based on erroneous legal analysis, and entitled to no deference" (Bolton). Members of Congress believed, like former Chairman Ferris, that the Fairness Doctrine had been codified in Section 315 by the 1959 amendment to the Communications Act, and passed legislation affirming their belief. President Reagan, however, promptly vetoed the bill, paving the way for Fowler's successor, Dennis Patrick, to formally cease enforcement of the Fairness Doctrine in 1987 (Bolton).

Is the Fairness Doctrine statutorily mandated?

The debate, naturally, continued. On one side was the FCC, captured by industry and dominated by proponents of free market deregulation. On the other side was Congress, led by Democrats and convinced that the 1959 Amendment made the decision to continue the Fairness Doctrine the exclusive province of Congress. With the continued occupancy of the White House by a Republican until 1993, however, Congress was unable to pass legislation that would rein in the FCC. It was not until 1994 that the issue would be settled by the courts.

In the early 1990s, the Arkansas AFL-CIO entered a complaint with the FCC against KARK-TV, alleging failure to meet the "equal time" test with regard to a local ballot initiative (Petregal). At the time, of course, the FCC was not enforcing the Fairness Doctrine, and rejected the argument of the AFL-CIO (though the decision was split along party lines, 3-2) (Tillinghast 88). The AFL-CIO appealed the decision to the DC Court of Appeals on the grounds that the Fairness Doctrine was, in fact, mandated by the 1959 Amendment. Among their reasons was a 1976 case heard before the same court which found that the Doctrine "received *explicit statutory enactment* in the 1959 amendment," but the Court found no such mandate (Simmons 53). Though the majority opinion of

the Court recognized that the *Red Lion* decision contained some language upholding the concept of congressional codification of the Doctrine, it also noted that there was language that found the 1959 Amendment to be simply “congressional approval” of the Doctrine (Petregal). In a dissent, Justice John Gibson acknowledged the existence of the “approval” language in the 1959 Amendment, but found substantially more language in the *Red Lion* decision that recognized codification. In addition, Gibson found an invocation of a “standard of fairness” in the House Conference Report on the 1959 Amendment (Petregal).

In deferring to the judgment of a regulatory agency by allowing the FCC to cease enforcement of the Fairness Doctrine without congressional action, Laura Petregal finds that the Eighth Circuit Court failed to apply the “arbitrary and capricious” standard established in 1983. Under that standard, the judiciary must examine the actions of a regulatory body to determine whether it has sufficiently considered the effects of a particular regulatory decision before its implementation. According to Petregal, under this standard, the Eighth Circuit Court might have required the FCC to reconsider the Fairness Doctrine even if it had not been found to have been codified by the 1959 amendment, in particular because the FCC “failed to adequately explain how the public interest standard mandated by the [1934 Communications] Act would be advanced following the repeal of the Fairness Doctrine” (Petregal). In spite of these questions, however, the precedent set by *Arkansas AFL-CIO v. FCC* stands to this day, and the Fairness Doctrine remains, for all practical purposes, dead.

The Fairness Doctrine in the 21st Century

The marketplace of ideas since 1987

Supporters of deregulation such as Mark Fowler place their complete faith in the “market” to regulate broadcasting. Using the simple economic concepts of supply and demand, they posit that

broadcasters will necessarily cater precisely to the whims of their listeners and viewers. Prior to 1981, the FCC regulated according to a “trusteeship” model, empowering and requiring licensees to act in the public interest; in the last two decades, the FCC has renounced their responsibilities and placed the utmost trust in the hands of the broadcasters (Bednarski).

What deregulators fail to recognize is that the marketplace model works only in the hypothetical world of countless sellers and countless buyers, with “spirited competition among the members of each group, and a relative parity in the bargaining positions of buyer and seller” (Le Duc 146). Broadcasting meets none of those criteria: by its very nature, there can only be a very limited number of suppliers, the suppliers are known to cooperate, and each individual buyer (i.e. viewer) has very little bargaining power with the sellers (McChesney). Looking to a marketplace model to be the savior of broadcast regulation is folly.

Despite these obvious shortcomings of the marketplace model, the benefits of a free market continue to be parroted by their supporters (Thierer). The efforts by the FCC since the 1980s to deregulate the industry—the 1996 Telecommunications Act in particular—have led not to a realization of the grand Utopian vision of a free marketplace, but to an increasingly oligopolistic broadcast landscape. The total number of media outlets in America has increased since 1960, but the advertising share of the largest station owners in each market increased from 35.6% in 1996 to 46.8% in 2002 (Bednarski).

In recent years, there has been little public discussion on this increased media consolidation; most discussions on the media center on whether it works with a “liberal” or a “conservative” bias. This debate, however, can be seen as a “red herring:” the real issue is the inherent *commercial* bias of broadcast media today (Leidholdt). The fact is, media in America today are necessarily controlled by the rich and powerful, and the rich and powerful are likely to be conservative. “It is virtually unthinkable for a citizen,” writes Robert McChesney, “to launch a commercially viable company that

can go toe-to-toe with the media giants.” Barring a cataclysmic shift in the models underlying American communications policy, the American public is stuck with the current, imperfect system, and no Fairness Doctrine to wield against those in control.

The continued relevance of broadcasting

One argument consistently cited against the reinstatement of the Fairness Doctrine is that of the ever-increasing media landscape. “With America on the verge of information superhighways and 500-channel televisions,” writes one conservative columnist, “there is little prospect of speech being stifled” (Thierer). What this fails to account for is that, even today, decades after the introduction of cable television, it still only reaches about 66% of American households, and even factoring in satellite only brings the total to about 80% (Mandese). Broadcasting is still the major source of information for the general public, and with the recent introduction of digital broadcasting, is likely to remain so for the foreseeable future.

In any case, even if broadcasting becomes increasingly less important, the companies that own the broadcast networks own such large stakes in cable and satellite that to suggest their irrelevance is foolish. Disney, owner of ABC, owns fourteen cable networks. Viacom, owner of two networks (CBS and UPN), owns fifteen cable networks and Infinity Broadcasting, the second largest radio corporation in America. Time Warner, owner of the Warner Bros. network, owns over twenty cable networks. News Corporation, the owner of the Fox network, owns a huge satellite distribution system and countless regional sports networks (Moore). Add to this the government’s stated interest in saving “free TV” (i.e. over-the-air broadcasts with no attached subscription fee), and the argument of broadcasting’s mounting irrelevance crumbles (Tillinghast 108).

Conclusion

In a Utopian world where anyone was permitted to be a broadcaster, it would be unnecessary for the Fairness Doctrine to exist. The “marketplace of ideas” would be filled to overflowing, and the American public would have the opportunity to evaluate all sources for themselves. Because of the technical limitations of our time, however, no such Utopia is possible. There are definite limits on who can or cannot broadcast, and it is the responsibility of the government to ensure that any broadcasting can take place by requiring licenses.

The current trend of consolidation in global mass media is the greatest threat to a legitimate marketplace of ideas today. The Fairness Doctrine served the country well in the early years of broadcasting, protecting consumers from the fraudulent activities of such con-men as Dr. J.R. Brinkley, who “diagnosed” patients based on their letters, prescribing remedies available from companies whose profits would line his pockets (Simmons 34). The Fairness Doctrine was later applied to give voice to oppressed blacks in Jackson, Mississippi, in the *WLBTV* case. Why, in today’s environment of such narrow diversity in media suppliers, is the Fairness Doctrine not appropriate?

Of course, the Fairness Doctrine is not a magic bullet. It is still supported among many legislators; even John Kerry has spoken out in favor of its reinstatement (Berlau). But even if, in our current, hyper-permissive regulatory climate, a bill mandating the Fairness Doctrine were to be passed, its effective enforcement would require a sea change in the attitudes of both the FCC and broadcasters. The probability of such a change, given recent history, is practically zero.

Just the same, I believe that the Fairness Doctrine should be reinstated, if only on a trial basis. The “chilling effects” of such a policy shift would be minor, as network news divisions already make such a minor effort to cover news of true importance to the American public. What a reinvigorated Fairness Doctrine would provide, however, is at least a hope of recourse against a continuation of the current one-sided “debate” in media today.

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