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Reining in Free Media

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"The most important factor enhancing the consolidation of media freedom in post-communist societies is a timely and well-designed reform of the institutional system," writes Hungarian media critic Peter Bajomi-Lazar in "Freedom of the Media in Hungary, 1990-2002," an article published on the website for Budapest's Central European University.

This new term coined by Lazar – the "consolidation of media freedom" – refers to media freedom as both "the abolition of formal censorship and the creation of a plural media landscape" and "the degree to which that freedom can actually be used by citizens."

The crux of Lazar's argument, then, is that an institutional framework for the media is vital because it can both liberate media from constraint, and can substantiate that freedom through regulations that make media more accessible and more meaningful to the public.

The "consolidation of media freedom" is a useful skeletal concept for any media in transition from centralized, state-controlled media to a democratically free press. Examining the institutional demands of this process in the Czech Republic, Hungary, and Poland – countries that underwent relatively smooth and fast liberalization – yields important insights into the requirements of other media in transition. In countries that are experiencing more difficult transitions, like Iraq, lessons learned from post-communist media in East Central Europe can be used as a "best-case" scenario, one which highlights the needs of the media even when political and social circumstances are less dramatic.

I.

According to Lazar, the Hungarian media's institutional structure was neither timely nor well designed.

"The institutions guaranteeing the political and financial independence of the broadcast media and the print press were either established too late, or were badly designed, or were not established at all in post-communist Hungary," he argues.

Following the 1988 dissolution of the Information Office and the Agitation and Propaganda Department, post-communist Hungary was guaranteed a free press, freedom of expression, and access rights to public information in a 1989 revision of its constitution. A 1990 reworking of a communist-era press law confirmed the freedom of the media and established a requirement for the registration (instead of licensing) of new print titles. But these measures went no further than removing existing restrictions on free speech. What they did not attempt to do was regulate the operation or ownership structure of a media that was now free from legislative constraint.

As a result, says Lazar, Hungary's three broadcasting outlets – *Hungarian Television*, *Danube Television*, and *Hungarian Radio* – functioned as a *de facto* broadcasting monopoly, still under state control and supported through government funding, well into the 1990s. Although a handful of stations broadcast illegally, no national broadcasting licenses were granted until after the passage of the Radio and Television Act in 1996. Private national channels were not established until 1997.

In contrast, the Czech Republic and Poland passed broadcast legislation earlier in the decade: then-Czechoslovakia passed a Broadcasting Act in 1991 that was amended in the Czech Republic in 2001; Poland passed legislation in 1992, which was amended in 1995, even before the Hungarian media law went into effect. Although there were striking differences in Czech and Polish media laws (for example, Poland set a limit of 33% on foreign investment, while the Czech Republic set no limit), the upshot of regulation in both cases was early privatization.

Privatized media was important, said Patrick Egan, Director of Freedom House Budapest, in a telephone interview, precisely because it was not (ostensibly, at least) controlled by the state. "Privatization was shorthand for supporting free and independent media," he said.

As Lazar shows in his article, the "consolidation of media freedom" in Hungary and other countries that passed media legislation relatively late in the 1990s compares negatively to those countries, such as Poland and the Czech Republic, which passed such legislation earlier in the decade. (He bases his analysis on a numerical rating system of "free media" used by Freedom House International. While some critics argue that these ratings are overly simplistic, Lazar makes a compelling point by using a good-sized sample.) In other words, the earlier a country passed legislation, the "freer" its media.

Hungary's legislative sluggishness should not be construed as political apathy. In fact, debate about broadcast laws was fierce and widespread, nearing fruition at least once, in 1992.

Political wrangling over a broadcast law – a central battle in what has come to be known as Hungary's "media war" – paralleled the political conflict between the newly-divorced factions of the former Communist party and communist-era opposition groups. "Much of the debate," writes journalism professor and Hungarian media scholar, Ray Hiebert, in *Eastern European Journalism Before, During and After Communism*, "was simply politics at work, the argument of liberals who wanted little restriction on the media and conservatives who wanted a lot."

As a 1994 report by the Vienna-based Interdisciplinary Centre for Comparative Research in the Social Sciences (IFS) explains, the "media war" itself set the stage for government taking the leading role in broadcast operations.

"The failure to reach an agreement regarding a legislative framework regulating the print and audio-visual sectors … tended to exacerbate the debate on the issue of control of the media," the report states. "The government has taken the absence of a legislative framework to mean that the supervision (and control) of the media rests on (sic) its hands."

Similar political conflict characterized the passage of broadcast laws in the Czech Republic and Poland, but legislative disagreement in these countries did not approach the intensity of Hungary's debate.

II.

Even after the Hungarian Radio and Television Act went into effect in early 1996, political intervention into the operation of the media persisted, albeit to a lesser extent than before the law's promulgation.

Lazar argues that the law in reality did little to prevent political meddling. First, he says, it failed to set up proper mechanisms to ensure depoliticized oversight boards. Although the law tried to decentralize the control of broadcast media by increasing the membership diversity of boards of trustees for public service channels, the task of program monitoring fell to the National Radio and Television Board (ORTT), which, he says, “consisted of political nominees only.”

Also, he argues, the law lacked effective prescriptions for sufficient non-state funding. Since it only called for a “simple parliamentary majority” in determining viewer license fees it allowed the government of the day to keep fees low. This, in turn, increased public service media’s dependence on state funding, subjecting it to further political pressure.

Freedom House’s 2003 *Nations in Transit* survey highlights the same politicization. “The Law on the Media was designed to depoliticize media oversight and control by requiring an equal balance of government and opposition members on the presidiums,” the report states. “Instead, it has achieved the opposite effect.”

The broadcast law’s impact stirred public controversy, even well after the law was passed. In March, 2000, an estimated crowd of 6,000 took to the streets of Budapest “to demand the establishment of a truly independent board to oversee public television and radio outlets,” according to a 2002 Hungarian media profile published on the International Journalists’ Network website (www.ijnet.org). The same profile quotes the International Federation of Journalists reporting in 2001 that Hungarian “public broadcasting, and public television in particular, have been weakened to the point of destruction because of the political manipulation and willful neglect by responsible authorities.”

Broadcast legislation was also problematic in the Czech Republic and Poland. In an online profile of contemporary Czech journalism[1], Czech media critic and journalism professor Jan Culik writes that Czech broadcast laws did not provide adequate insulation from the continued politicization of broadcast outlets. The public’s awareness of this problem led, in early 2001, to what the International Journalists’ Network has called “the biggest public demonstrations since the ‘Velvet Revolution’ in 1989.”

Culik also argues that the law did not set up what he considers necessary requirements for ownership transparency. In fact, he points out, the Czech Council for Radio and Television Broadcasting, in a current lawsuit with the Czech internet news source, *Britske listy*, for which Culik serves as editor-in-chief, has argued that the country’s broadcast laws specifically prohibit the Council from publicly revealing the owners of two major television stations.

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1 http://www.arts.gla.ac.uk/Slavonic/Czech_Media_now.htm

In 2001 the Czech parliament passed a bill aimed at limiting political sway over state-run Czech Television. Under the new law, the board of directors is nominated by nongovernmental groups, instead of by politicians. Czech Radio is governed by a similar system.

In Poland, as well, broadcast laws were problematic. The first comprehensive broadcast legislation, in early 1993, called for the creation of an oversight board whose members could also be political figures; critics worried that this would lead to overly politicized public service channels.

Political interference remains a problem in Polish broadcasting, according to a January, 2001 article in *Transitions Online*, a Czech internet news portal. "As recently as January 2001, Polish officials called for the (broadcast oversight) committee to be de-politicized," *Transitions* writes. "Although council members are legally obliged to suspend their membership in political parties and public associations during their service, many political parties still attempt to secure a majority of representatives on the board, continuing the politicization that has plagued the public mass media since democratic reform came in 1989."

Freedom House, in its 2003 *Freedom of the Press* survey, says that the result of this is that Polish public broadcasters "have demonstrated a marked dependence on the state, as partisan politicians retain a measurable amount of influence over content."

III.

Another major flaw in Hungary's Radio and Television Act was its exclusion of the print press, a sector of the media that today remains largely unregulated. The logic underpinning this legislative difference was institutionalized early in Hungary's transition: Hungarian radio and television were declared "national institutions," whereas the print press was deemed a "business activity" to be regulated, for the most part, by laws governing economic enterprise.

The Czech Republic shared Hungary's legislative preoccupation with broadcast media, although the then-Czechoslovak government passed print legislation early in the 1990s.

Poland guarded its print press more jealously than either Hungary or the Czech Republic. The result of Poland's legislative oversight was that, according to the 1994 IFS report, "only in Poland could the process of deregulation be controlled." But "even there to a limited extent."

The absence of new laws allowed (and, through some incentives, like tax breaks for foreign investors, encouraged) the ownership structure of the print press to privatize much more quickly than that of broadcast outlets. The reasons for this were both attitudinal and economic. As the IFS writes about Hungary, “For journalists the process of privatization … meant a way of maintaining their newly-gained independence upon mounting pressure from both the ruling party as well as the opposition(,) for them to endorse specific views on the process of reform. Hungarian public opinion initially welcomed the process as a sign of increasing liberalism.”

Privatization, then, was a simple financial necessity in the transition to capitalism. But domestic investors had little capital to put into the print market. Foreign investors did, and they invested heavily and early. Particularly in the Czech Republic and Hungary, this meant quick and sometimes covert foreign buyouts of large chunks of the print market; in Poland, the process was somewhat slower and more transparent, given the early implementation of laws governing press ownership.

Although private ownership did provide some assurance of independence, enthusiasm about privatization waned as foreign buyouts came under scrutiny. In 1990 the Hungarian government tried to regulate the privatization of the regional press in response to controversy surrounding a German company’s purchase of four of the 19 regional titles published at the time in Hungary (the company, Axel Springer, now owns 10 of 24 regional newspapers). Springer “proceeded by taking over the editorial staff of the newspapers, giving the latter a slightly new name, and launching them anew,” according to the IFS report. Although some critics claim that Springer “hijacked” its regional titles in Hungary, the IFS report says that this practice was not uncommon.

In the Czech Republic, another big foreign buyout sparked an even bigger debate, one that resulted in the 1990 Czechoslovak government demanding the return of 11 titles to the publishers that had sold them. Although the Czechoslovak administration did not see the return of the newspapers (in fact, the company, Passauer Neue Presse, through an 80% investment in a Czech joint venture company, Vltava Labe Press, now has a controlling interest in every regional newspaper in the country), it did subsequently establish a 22% “turnover tax” on the sale of all periodicals. The tax diminished the profitability of newspaper ownership, even for domestic owners. But, says the IFS, “the government was finally in 1991 forced – largely through the journalists themselves who were eager to find new ownership structures – to reduce by half this special tax.”

Jan Culik also points to the privatization of national newspapers as a major problem in the Czech Republic’s liberalization. The “voucher privatization” plan set up by the post-communist Czechoslovak government, which gave citizens a certain monetary amount in government vouchers to invest in the newly-privatized holdings of the former communist state, excluded formerly state-run newspapers. "The leading Czech newspapers," writes Culik, "were confiscated by their respective members of staff. These people set up private companies, abolished the state-owned newspapers and created new ones – with a slightly changed name." The editors of the "new" titles then sold their shares of the newspaper to foreign investors for what Culik estimates were "considerable personal profits."

In Poland, foreign investors were at the mercy of the Ministry of Ownership Transformation, which, by most accounts, simply liked some potential investors more than they liked others, and agreed to foreign investments accordingly.

Despite the limitations on foreign investment set by Polish law, lawmakers expressed concerns about their inadequacies. A February, 1995, report by the *Polish News Bulletin* quoted the head of the Cabinet Office warning of the need for new legislation. The "only thing that guarantees that Polish interests are protected is the requirement that the editor in chief of a paper must be a Polish citizen," he said.

Despite the controversy surrounding infusions of foreign capital into the local print press, foreign ownership remained a dominant factor in the print markets in all three countries. Print titles simply had few other options for sustained economic viability. "In the course of 1993," wrote the IFS of the Czech Republic, "it became clear that foreign participation was practically the only means for survival."

Market size was partly to blame. Compared to Poland, with a population of 38 million, the print markets in the Czech Republic and Hungary were quite small – around 10 million each. But by most measures, even Poland's market is large enough to support only a handful of regular publications with the fuel of a free-market press, advertising revenue.

Waning public enthusiasm compounded this problem. The appetite for news that met the initial glut of print titles in each country began to fade as the public got used to the idea of a freer and more pluralistic media scene.

"The exhilaration of Czechoslovakia's 'velvet revolution' has faded into cold economic reality for its press," *The Guardian* reported in 1993. "The soaring sales enjoyed by newspapers and magazines with the arrival of freedom of speech in 1989 have not been sufficient to maintain their financial independence. They are now having to look for injections of foreign cash to survive."

IV.

The Czech, Hungarian, and Polish print markets each relied on foreign investment for economic survival, but the legal structure in each country has led to different degrees of foreign ownership.

Not surprisingly, in the Czech Republic and Hungary, where oversight of ownership transformation was looser than in Poland, foreign owners have a bigger, more concentrated stake in the print market.

Of the four highest-circulation national Czech dailies, only one is fully supported by Czech capital. Two of the remaining three are owned by one German company, the Rheinische Post Group. This same company, though a 20% investment in a joint venture with another German publisher, Passauer Neue Presse, has a minority interest in every regional title in the country. Passauer Neue Presse controls the balance of shares in the regional press.

Hungary's ownership structure is slightly less concentrated, but is nonetheless characterized by heavy foreign investment. Of Hungary's four highest-circulation non-tabloid dailies, two are controlled by the same Swiss company, Ringier, which also owns the most popular national tabloid (a title that consistently outsells Hungary's most popular national non-tabloid). One of the four major non-tabloid dailies is Hungarian-owned. The regional press, which consists of 24 titles, is divided among four foreign companies.

Poland's biggest and most successful publishing house, Agora, is a Polish joint venture with the U.S.-based Cox Enterprises (publishers of the Atlanta Journal and Constitution). The second-ranking non-tabloid newspaper is controlled by the Norwegian publisher, Orkla, which has a full or majority stake in 14 regional newspapers. Germany-based Passauer Neue Presse owns 12 regional titles.

Given this highly-concentrated ownership base, anti-monopoly legislation is back on the political table in Hungary. A June 27, 2003, BBC Monitoring report quotes Karoly Herenyi, a Hungarian Democratic Forum politician, warning of the negative impact of extensive foreign media ownership on press freedom. "In view of the fact that there is no press law in Hungary limiting market share, it could easily happen here," Herenyi said, referring to the infringement of media monopolies on media freedom. "Fair competition can only be guaranteed in a regulated environment."

In 2001, the Czech government passed anti-monopoly legislation limiting companies to a 40% share of media market sectors. But critics doubt its effectiveness. "Riddled with exceptions, it fails to effectively prevent the formations of cartels," wrote Benjamin Kuras in a December 5, 2001, *Prague Post* editorial.

In Poland, the passage of a 2003 anti-monopoly law restricting media companies' investments across media sectors was also marked by discord. The controversy, however, had less to do with the law itself than with politicians' attempts to meddle in media policy: after the law passed, the editor of Poland's leading newspaper, *Gazeta Wyborcza,* accused another Polish media executive of colluding with Polish Prime Minister, Leszek Miller, to solicit a bribe of $17.5 million from Agora, *Wyborzca's* owner. The idea was that, with the money in hand, Miller would block the legislation, thus allowing Agora to purchase a large private television station.

Politics aside, there are also concerns about how owners themselves influence the quality of their newspapers. Editorial meddling seems to be less of a problem than what appears to be publishers' often singular focus on a paper's financial bottom line. Vltava Labe Press, for example, the German-owned publisher of all regional titles in the Czech Republic, "is merging the titles into one regional newspaper … (which) will largely be a standardized paper with less local news," reported the *Prague Business Journal* on September 3, 2001. This same article also warned of impending layoffs as the publisher tried to "streamline" its operations.

In large part, the effect of foreign ownership "is simply that those foreign investors want their money back; they want their interest," said Hungarian writer Miklos Vamos in a recent telephone interview. As a consequence, he said, "serious journalism is dying."

Critics also question the qualifications of some media companies to operate the newspapers they own. The Rheinische Post Group, for example, owns two of the four major national dailies in the Czech Republic, but runs only regional titles in Germany. "Think *Springfield News-Leader* vs. *Washington Post*, writ small," writes the editor of a Czech media web log. "As such, they have zero appreciation of the reputation *MfD* (*Mlada fronta Dnes*, the Czech Republic's highest-circulation non-tabloid daily) has earned for its investigative work in the Czech Republic. To them, it's just another regional paper … This is bad for journalism."

V.

The impact on journalism of laws regulating post-Communist media in Poland, the Czech Republic, and Hungary point to a conclusion that supports Bajomi-Lazar's idea that early, substantive legislation is a precondition of a democratically free media. This idea yields important insights into the requirements of other media in transition. Even in countries that are experiencing much more problematic transitions to democracy, like Iraq[2], lessons learned from post-communist media in East Central Europe can be used as a "best-case" (or, at least, "better case") scenario which highlights the basic needs of democratic media.

Iraqis and the media groups monitoring them are aware of the need for press laws. The central difficulty lies in the lack of a solid Iraqi legal system that would allow for proper codification and enforcement of any regulations put in place. Accomplishing this, of course, requires a ruling power that acknowledges the lessons of other media systems that have transitioned to democracy and have discovered – perhaps late in the game – the vital importance of the ideal of journalism as an ideal. But Iraq's Coalition Provisional Authority (CPA) does have a regulatory framework, of sorts – at least, one that is enough of a legal skeleton to set strict limits on what the press is allowed to say. (According to CPA Order Number 14, "Prohibited Media Activity," the Iraqi press is forbidden from publishing or broadcasting content that incites violence or civil disorder, or advocates the return to power of the Ba'ath Party.)

What CPA directives do not try to do is guide how the press *should* operate, a deficiency which stands in contrast to the first lesson gleaned from the regulatory histories of post-communist media in the Czech Republic, Hungary, and Poland: oversight should be centralized, systematic, and institutionalized, but, to the extent possible, *depoliticized*.

For the Iraqi print press, there is no discernable registration procedure. A licensing procedure for broadcast media, set up in October, 2003, appoints the Ministry of Transportation and Communications as an oversight body, but points out that the "final licensing (and) authorization authority" is retained by the CPA itself, which cannot be mistaken for a depoliticized entity.

Enforcement of media rules – including the execution of Order Number 14 – is centralized in the highly politicized corporeal body of one person, L. Paul Bremer III, the American administrator in Iraq. By virtue of his authority as Administrator, Bremer has the power to shut down media outlets he thinks have violated Order Number 14, and to confiscate their property. The appeals process consists of submitting a written request to Bremer himself, asking him to change his mind.

Also important is the long-term economic viability of media outlets: such longevity requires both regulation and capital, meaning that the initial proliferation of media sources does not ensure a plural media scene in the long run. In Iraq, the CPA and Bremer himself have praised the emergence of some 230 print titles since

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2 The following information about Iraqi media is no longer current.

U.S. forces arrived earlier this year, as a harbinger of a democratically free press. But many of these titles are directly linked to (and funded by) political parties and religious groups, and therefore have small, self-selected readerships. Few aim to be a national paper of record, or have the resources to try.

In contrast, the Iraqi Media Network (IMN), funded by the U.S. Defense Department, is sure to be a media behemoth (although whether Iraqis will actually get their news from the IMN remains questionable). The network, which now consists of one television station, one radio station, and two newspapers, plans to expand its operations through a $98 million Defense Department contract in 2004, after which point it will be (hypothetically) handed over to the new Iraqi government. Regardless of the number of alternative news sources (which are painfully small by comparison), the IMN monopoly is positioning itself as the largest, and one of the only financially stable, media outlets.

Another lesson is that the nuances of the privatization process do matter; specifically, oblique privatization can lead to overly-concentrated ownership structures.

There is no general requirement for transparency in Iraq, even in the ever-important broadcast media. The identities of many investors have remained secret, at their own request (somewhat ironically, this includes one Czech businessman who has his eye on an Iraqi television station). In short, there is no way to tell who will own what in Iraqi media.

Also, as seen in the Eastern European examples, the *nature* of ownership matters. At a minimum, owners should understand the basic requirements of journalism; they should also know how to operate the particular media they own.

The best (or worst) counterexample of this in Iraq is the IMN itself, which was set up by the U.S.-based Strategic Applications International Corporation (SAIC). A long-time Defense Department contractor, which recently won the security contract for the 2004 Olympics in Athens, SAIC (as you may have guessed) is not a media organization. A recent *Economist* article notes that SAIC "has shown as much aptitude for delivering news as the BBC would if it had to deliver missiles." That is, not much.

The subtext of this discussion, of course – and the basis for idea of the "consolidation of media freedom" – is independence, which raises the question of whether it is appropriate to talk about "independent media" at all in today's Iraq.

It is, in fact, essential. As we learned from the Central European examples, democracy – if that is indeed the goal for Iraq – *must* articulate itself through an independent media.