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Representing citizens and consumers in media and communications regulation

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Abstract

What do citizens need and deserve from the media? How should this ‘citizen interest’ be regulated? This article considers the consequences for citizens and consumers of the changing regulatory regime in Western democracies, from ‘command-and-control’ government to discursive, multi-stakeholder governance, focusing on the case of media and communications regulation in the UK. The Office of Communications (Ofcom), instituted in 2003, has the general duty to further the interests of citizens and consumers, interests it tends to align through the singular notion of the citizen-consumer. Just what is meant by this term, and whether it adequately captures the needs of citizens in a democracy or subordinates them to those of consumers, has been subject to much contestation, particularly from civil society groups, as well as being the focus of some soul-searching within the regulator itself. By triangulating a discursive analysis of the Communications Act 2003, with a series of key actor interviews with the regulator and civil society bodies and focus groups among the public, we seek to understand how these terms – consumer and, especially, citizen – are variously used to promote stakeholder interests, not always to the benefit of the citizen.

## Introduction

The terms ‘citizen’ and ‘consumer’ have become widespread in contemporary political and public discourse. This article examines the relation between them through a particular and telling case study: the UK’s Office of Communications (Ofcom) is a new ‘super-regulator’ formed by converging five legacy regulators following the Communications Act 2003. Conceived as a powerful sector-wide regulator that can respond flexibly to new challenges while being ‘future proofed’ against changes that might impede technological innovation and market expansion, Ofcom is developing a common approach to broadcasting, spectrum and telecommunications in a manner that reflects broader changes in governance taking place internationally and across other sectors under New Capitalism (Chiapello and Fairclough, 2002; Jessop, 2002).

The new style of regulation represents a move away from the previous hierarchical, ‘command-and-control’ regime (Black, Lodge and Thatcher, 2005). Its ‘softer’, ‘lighter touch’, ‘joined-up’ approach claims to democratize power by dispersing and devolving the role of the State, establishing more accountable and transparent administration, engaging multiple stakeholders, including civil society, in the processes of governance, and empowering the public by enhancing choice. Regulation must, it is argued, make unified and strategic decisions for the whole market, taking into account economic, technical and social policy trends and balancing the needs of the market with those of the an ‘empowered’ public. The first CEO of Ofcom said, early on:

‘Today our viewers and listeners are far more empowered. Digital television, the internet and increasingly broadband is putting more choice in the hands of the user. As a regulator, we will reflect that, welcome and encourage it. There can

no longer be a place for a regulator ... determining what people “ought” to have’. (Carter, 2003a)

For critical scholars observing this process, key questions arise regarding the future of the media and communications market, the contents and services available to the public, the mechanisms for representing the range and nature of public interests at stake and, crucially, the regulatory underpinning for the information and communication requirements of a democratic society. However, to ensure that the critical perspective has some purchase, scholars must not only be clear about what citizens need and deserve from the media but also, as we will argue, they must engage with the terms central to the emerging regulatory framework, not least because these are far from stable or uncontested. One way of framing the critical concern, therefore, is in terms of the relation between ‘citizens’ and ‘consumers’ - is ‘consumer’ taking over from ‘citizen’ in the communications sector, as suggested by the ubiquitous discourse of choice and empowerment? Does the ‘citizen’ have a voice in regulatory debates or is this voice being subordinated to the market? To begin to untangle these questions, we begin with the story behind the passing of the Act itself.

#### The Communications Act 2003 – a story of ‘citizens’ and ‘consumers’

A central feature of the lively debates over media and communications regulation throughout the 1990s was the struggle to reframe the position of the public (or ‘audience’; Livingstone, 2005) as befits a converged market and a deregulatory regulator that stresses governance over government. Two distinct terms emerged as the discursive solution – ‘citizen’ and ‘consumer’, supposedly dividing the semantic terrain neatly between them, resolving previous ambiguities (the plethora of ‘listeners’, ‘viewers’, ‘users’, ‘customers’, etc of the legacy regime). Yet this solution almost immediately began to unravel at the turn of the 21<sup>st</sup> century, as ambiguities re-

emerged and boundary disputes problematized the new regulatory regime, demanding remedial action of various kinds on the part of the regulator and civil society (Livingstone, Lunt, and Miller, in press-a).

Jointly proposed by the Department for Trade and Industry and the Department of Culture, Media and Sport, The Communications White Paper (December 2000) acknowledged that ‘the communications revolution has arrived’ and so ‘sets out a new framework for communications regulation in the 21st century’ (Foreword). Its central objectives, as set out in the Executive Summary, were:

‘Protecting the interests of consumers in terms of choice, price, quality of service and value for money, in particular through promoting open and competitive markets; Maintaining high quality of content, a wide range of programming and plurality of public expression; [and] Protecting the interests of citizens by maintaining accepted community standards in content, balancing freedom of speech against the need to protect against potentially offensive or harmful material, and ensuring appropriate protection of fairness and privacy.’

To achieve these objectives, the White Paper proposed The Office of Communications (Ofcom), containing new two bodies: an independent Consumer Panel to further consumer interests where not met by the market and, within Ofcom, a Content Board to ensure citizen interests are met in relation to broadcast content.

Following a lively public consultation, the Draft Communications Bill (2002) marked a surprising linguistic shift, replacing the language of ‘consumer’, ‘public’, ‘community’ and ‘citizen’ with that of ‘customer’ throughout. The functions of Ofcom were defined in Clause 3(1)(a) thus – ‘to further the interests of the persons who are customers for the services and facilities in relation to which Ofcom have functions’. This apparently excluded the citizen interests expressed in the White

Paper, signaling the intention to form Ofcom as primarily an economic regulator. However, a decisive intervention was made during pre-legislative scrutiny of the Bill, conducted by the Joint Select Committee for the House of Commons and House of Lords chaired by Lord Puttnam. After hearing a considerable body of evidence from diverse stakeholders, including the civil society groups who had established a coordinating organization, Public Voice, during the passage of the Bill (Harvey, 2006; Redding, 2005), the Joint Committee Report (2002) supported claims that the draft Bill downplayed consumer and citizen interests through portraying them as ‘customers’, and argued instead for ‘the need for a broad understanding’ of ‘consumer’ (p.103). Stressing the media’s influence in shaping society, requiring regulation precisely because insofar as they are not reducible to a tradeable commodity, the report criticized the omission of citizens’ interests from the Draft Bill, and advocated two principal duties for Ofcom: to further the interests of citizens and to further the interests of consumers.

In its response to the Joint Committee, the Government acknowledged explicitly the terminological muddle impeding the passage of the Bill by issuing a terminological note (DTI/DCMS, 2002) which explicated the Government’s rationale through a mapping of the regulatory terrain onto organizational structures – in effect, a mapping of discursive categories onto power relations among state, industry and public. This terminological note divided the terrain into the ‘consumer interest’ and the ‘citizen interest’ in the media and communications sector thus:

<u>Consumer interest</u>	<u>Citizen interest</u>
Economic focus	Cultural focus
Networks and services	Broadcast content
Individuals	Community

Consumer Panel

Content Board

Legacy regulator: Oftel

Legacy regulator: ITC, BSC

In short, not only is the consumer interest understood in terms of economic goals while the citizen interest inheres in cultural goals, but this maps onto the domain of telecommunications networks and services, on the one hand, and broadcast content on the other. Consumers are here understood as individuals, or an aggregate of individuals, while citizens are recognized as having collective status. The former interests would, it was proposed, be addressed by Ofcom's Consumer Panel (this taking over the agenda of the legacy regulator, the Office of Telecommunications), while the latter would be addressed by Ofcom's Content Board (updating the role of legacy regulators such as the Independent Television Commission and the Broadcasting Standards Commission), these being some of the very different regulators now combined within Ofcom (Collins and Murrone, 1996).

In another surprising move, Clause 3 of the Communications Bill, published in November 2002, stated simply that the general duty of Ofcom would be 'to further the interests of consumers in relevant markets, where appropriate by promoting competition'. So, despite a shift from the 'customer' of the draft Bill to 'consumer', there was no equivalent mention of citizens, notwithstanding the recommendation of the Joint Committee and the terminological note above, reinforcing Ofcom once again as an economic regulator. As Jocelyn Hay, Chair of the civil society body, Voice of the Listener and Viewer, commented acidly, 'the Bill simply re-iterates a now largely discredited faith that the "market" and competition will provide choice and quality; it does NOT as experience shows' (Hay, 2002).

Although a new clause was added, proposing that Ofcom should act to further the interests of 'the community as a whole', the question of 'the citizen' remained

contentious, with matters coming to a head in June 2003 when the Bill reached the Lords. Here Lord Puttnam proposed an amendment to Clause 3, reiterating the phrasing of the Joint Committee report that Ofcom should further the interests of both citizens and consumers. There followed a heated debate over the meaning of these terms, and over whether the Bill should specify just how Ofcom should approach conflicts between these interests. Although citizen interests were variously defended – as a term with ‘a lengthy and distinguished pedigree’ (Lord Bragg), as ‘fundamentally different from that of consumer’ (Lord Peyton) - little light was thrown on the nature of those citizen interests in media and communications. Meanwhile, Lord McIntosh, speaking for the Government, rejected the term ‘citizen’ because of its legal meaning of being a member of a nation-state (and so not including the entire public). To fend off dissent, he asserted as a matter of common-sense that consumer and citizen ‘are two sides of the same coin’:

‘It is not our intention - nor is it in the English language - to equate consumers with markets. The word that I have always used, in 50 years with the Labour Party, is that we have to be on the side of the "punters". I think everyone understands that... "Consumers" is not a doppelganger for the wicked and self-seeking market, which some people in the Chamber seem to fear.’

Lord Putnam countered equally forcefully:

‘My Lords, I do not wish to quibble with the Minister over words. However, the word "citizen" can define both the individual and the collective—whereas the phrase "community as a whole" could simply be a majority of the collective. They are quite different, both in law and as far as concerns Parliament.’



The subsequent vote defeated the Government and, a few days later, the Communications Act 2003 was passed in July. Clause 3 of the Communications Act set out Ofcom's statutory duties thus:

‘3(1) It shall be the principal duty of Ofcom, in carrying out their functions;

- (a) to further the interests of citizens in relation to communications matters; and
- (b) to further the interests of consumers in relevant markets, where appropriate by promoting competition.’

#### Furthering the interests of citizens and consumers – the story unfolds

In this regulatory domain, a discursive distinction between ‘citizens’ and ‘consumers’ has emerged from a protracted, public negotiation among multiple stakeholders representing a range of interested parties - with the citizen interest put first, and only the consumer interest directly linked to markets and competition. Yet as Black et al (2005) observe, the letter of the law is rendered meaningful through its interpretation, and thereafter, deliberations over these terms have been reframed by Ofcom, following its launch in December 2003. Just a few days after the Lords’ debate, Lord Currie (2003), Ofcom Chairman, commented with some frustration:

‘You may well have noticed that the careful balance established in the Communications Bill between the duties to citizens and those to consumers has been upset by a recent House of Lords amendment...that requires Ofcom to give paramountcy to the citizen in all matters concerning broadcasting and spectrum...This late change... seems to us to be unfortunate.’

Ofcom framed its mission statement thus: ‘Ofcom exists to further the interests of citizen-consumers through a regulatory regime which, where appropriate, encourages competition.’ In this hyphenated formulation, we can recognize a double elision compared with the terms of the Act; it conjoins ‘citizen’ and ‘consumer’ as the

‘citizen-consumer’, and it foregrounds competition as the primary instrument to further both sets of interests. The framing of Ofcom as an economic regulator is thus reasserted and, for the same reason, contested (e.g. Redding, 2005). In practice, Ofcom’s everyday discourse generally elides the two terms, speaking of citizens-‘n’-consumers as a single phrase, or using the terms with little clear distinction between them. As the then-CEO, Stephen Carter, commented (2003b):

‘We are all of us both citizens and consumers. ...To attempt to separate them or rank them would be both artificial and wrong. So it will be against that combined citizen-consumer interest that we will benchmark all our key decisions.’

Similarly, Kip Meek, Ofcom’s Senior Partner (Competition and Content) observed that ‘if it wasn’t in the Act, citizen-consumer language might not (.) we might decide that wasn’t terribly useful’<sup>1</sup>. For some, this may seem a sensible solution to a tricky problem, for indeed the language has not proved enlightening. However, as we explain below, we would argue to retain the distinction, quoting Lord Puttnam’s view that ‘this is more than a matter of semantics’ (Joint Committee Report, 2002, p.11). Jonathon Hardy from the Campaign for Press and Broadcasting Freedom described the inclusion of citizen interests in the Communications Act as ‘a slightly symbolic victory but important victory’.<sup>2</sup> So, what is it a matter of, what kind of victory?

Interestingly, Ofcom does not speak with a single voice, and in a parallel discourse, Ed Richards, then Ofcom’s Senior Partner, Strategy and Market Developments and now the new CEO, observed in a public speech about broadcasting that ‘at the very heart of Ofcom is the duality of the citizen and the consumer’ (Richards, 2003). He contrasted the ‘consumer’ and ‘citizen’ as follows. The consumer interest centers on wants and individual choice. Under conditions of

spectrum scarcity, market intervention has been required to maximize the range and balance of content; however, this requirement reduces as we enter the digital age of abundance, consumer preferences will be expressed through viewing choices and broadcasting will become more like the publishing, film and music industries, permitting regulation to recede. By contrast, the citizen interest centers on the long-term societal benefits of broadcasting in relation to democracy, culture, identity, and learning, all traditionally delivered through public service broadcasting. Although, he argues, the market will deliver some of this, there will be a continued justification for market intervention. Thus, a binary discourse is asserted:

<u>Consumer interest</u>	<u>Citizen interest</u>
Wants	Needs
Individual	Society
Private benefits	Public benefits
Language of choice	Language of rights
Short-term focus	Long-term focus
Regulate against detriment	Regulate for public interest
Plan to roll back regulation	Continued regulation to correct market failure

#### Defining the citizen interest

Implicit in the above are the multiple interests being advanced in a multi-stakeholder negotiation over regulation. Strikingly, the key terms of the Act are interpreted both as identical (the citizen-consumer) and opposed (citizen versus consumer). Just how Ofcom is to define the terms and, more fundamentally, reconcile the aims of maintaining a competitive market, meeting the needs of the public, and reflexively monitoring its own impact on both the market and the public sphere, was far from fixed by the Communications Act. Rather, this remains for the regulator to

negotiate for itself and with its stakeholders. The second half of this article examines the views of three categories of stakeholder – the regulator, civil society, and the public. It is beyond our scope to explore the views of industry, though this absence – empirically the most difficult to rectify, being significantly outside the public record – inevitably undermines the completeness of our account. Parliament is also a key stakeholder, but we have omitted this in part because its strategy is to devolve the role of the state to self- and co-regulation; the regulator’s perception of Parliament’s role does matter, however.

In a series of key actor interviews with senior figures at Ofcom and in civil society (25 interviewees in all, conducted ‘on the record’; see Livingstone et al, in press-b), we identified considerable confusion regarding the definition of the citizen interest, the consumer interest being notably easier to grasp. Kip Meek recognized the stakes are high, observing of the Communications Act:

‘It was hard fought over because as with many of these things, it became a metaphor for ... the soul of Ofcom was being fought over and ...if you include the word citizen, QED Ofcom will not just be an economic regulator, it will look more broadly than that and that is what it was about.’

The ‘soul of Ofcom’, however, remains elusive. Ofcom’s Director of External Relations, Tony Stoller, noted of the citizen/consumer distinction, ‘there are counters which are black and there are counters which are white, but most of the counters are shades of grey’.<sup>3</sup> The Director of Communications, Matt Peacock, responsible for public relations, conflated the terms - ‘citizens/consumers, people basically, as I prefer to call them’.<sup>4</sup> For the Director of Market Research, Helen Normoyle, definitional ambiguity justifies setting them aside as a guide for Ofcom’s research activities:<sup>5</sup>

‘It’s a very tricky question. Because some issues are obviously consumer issues and some issues are obviously citizen issues but at the end of the day we’re talking about people. So I, my personal preference is to cast the net wide and not to be too presumptive about what it is that we’re talking about.’

Such questioning of the practicability of the citizen/consumer distinction is commonplace, although as here, often expressed as a ‘personal’ view lest the speaker is seen to evade the exact terms of the Act. For Ofcom, distinguishing citizen from consumer raises issues of representation. Stoller asks, ‘if you engage with consumers, do you engage separately with citizens?’ His concern is partly with workload, and with the identification of separate consumer and citizen representatives, but he is more fundamentally concerned with the question of who they really represent. Thus he asks, ‘do we get better advice from self-appointed, um (.) probably issue-driven, (.) non-representative groups?’

In short, a key issue is that of representation: the citizen interest, as they see it, might mean that people could and should represent themselves; the consumer interest is, for them, well measured through the tools of market research and so is both straightforward and manageable. Indeed, from a market research perspective, citizens are, in practice, unrepresentative. The question of representativeness is indeed critical. As an institution in the public sphere (Habermas, 1997), Ofcom is accountable for which voices it includes and how they are weighed. For civil society bodies, these questions are equally critical, and it is salutary to note that the civil society bodies we interviewed struggled to give an adequate account of their legitimacy among the constituency they represent, making them vulnerable to the charge of representing partisan views.

More surprisingly perhaps, although they are clear about the importance of critiquing the dominance of economic regulation, civil society groups also struggle to define the citizen interest. Gary Herman of the Campaign for Press and Broadcasting Freedom comments, ‘I think it’s horrible, the citizen/consumer opposition’.<sup>6</sup> Allan Williams, Senior Policy Advisor for communications at Which? (formerly, The Consumers’ Association) also brushes aside the distinction as unworkable.<sup>7</sup> ‘Well, they [Ofcom] talk about citizen-consumer, I mean, as much as we do - everyone fudges that’. For civil society groups, the issue is not so much one of representation but rather one of communicative effectiveness. Williams explains:

‘The risk is if you have just the language of citizens then you end up with, with a load of nebulous and quite high level public interest-type objectives rather than actually looking are people getting the best deal in this market.’

An advocate must have a clear message to be effective, and the ‘nebulous’ or ‘fuzzy’ concerns of citizenship (perhaps especially as advanced by academics) can be frustrating to the cause of those concerned with achievable outcomes. The Chairman of Voice of the Listener and Viewer, Jocelyn Hay, despite firmly supporting Ofcom’s role in relation to citizen interests, recognizes that:<sup>8</sup>

‘It is much easier to regulate consumer issues which are basically economic issues and redress and fair representation and so on than citizenship issues which involve social, cultural, democratic issues which are far more difficult to quantify and measure.’

This reference to quantification is important: Ofcom is an evidence-based regulator, with a sizeable research department and budget. Issues that fit poorly within a market research ethos fit poorly within its purview altogether. This raises the second issue for civil society, that of resources. Hay continues, ‘We don’t have the resources

to do the research that is necessary in order to make it objective'. Williams agrees, 'it's a capacity issue, you know, that there are lots of issues that we can deal with as a consumer organization and we try and prioritize...' These accounts give primacy to 'hard facts', acknowledging a high threshold to be passed if civil society voices are successfully to question the evidence-base of Ofcom's policy. Observing such trends, Freedman (2005) argues that 'evidence-based policy' not only prioritises an individualized, segmented conception of the public, but it also serves to exclude those voices that lack the capacity to produce competing evidence. Capacity depends crucially on money and time, but also on expertise. The challenge for civil society bodies lies both in obtaining these resources, and in doing so without compromising their independence.

Paradoxically, the more open and transparent the regulator, the greater the problem of capacity for civil society. Ofcom, like other new regulators, is required to put considerable effort into a sustained engagement with diverse voices reflecting different interests, establishing a complex network of stakeholder relations across industry, the political sphere, consumer representatives, journalists, and the public, and operating with a commitment to transparency and accountability in its regulatory practice. Thus it publishes numerous reports, press releases and, especially consultations each year. However, civil society bodies are stretched, facing tough decisions about priorities, and worried about their funding base; meanwhile the regulator is frustrated at the difficulty of obtaining sufficient representation from a diversity of stakeholders. There is an irony here, for before the Communications Act was passed, civil society groups had pushed for a converged regulator; only after its formation did they begin to worry about the concentration of power in a single 'super-regulator', a concern long flagged by the industry (Lunt and Livingstone, in press).

Alliances with civil society are also important to Ofcom's ethos, however, for the new regulatory regime replaces the enforcement of top-down regulations with horizontal partnerships. The Chairman of Ofcom's Consumer Panel, Collette Bowe, adds a further twist to the relative difficulty of furthering citizen over consumer interests, when she observed that:<sup>9</sup>

'The citizen issues are much harder because you have to find some other deliverers who you can forge an effective alliance with to deliver. Doesn't mean you're not still responsible for doing something, but it's a harder and more complex, more diffuse.'

### Emerging directions

Since the citizen interest is difficult to define, especially compared with the consumer interest, requiring the construction of diffuse stakeholder alliances, and not amenable to quantitative research, this undermines the allocation of resources to furthering the citizen interest. Such problems are compounded by the lack of direction and capacity regarding this issue on the part of civil society. However, there is another motivation for change, driving the regulator to reconsider the notion of citizen interests in anticipation of its external evaluation in terms of clarity of purpose, organizational efficiency and accountability to Parliament. This is not, it must be said, pressure from civil society: Deputy Chair, Richard Hooper, observed: 'I think the good thing is that on the whole I don't think there are citizen groups out there who think that the citizen has been neglected.'<sup>10</sup> Ofcom's Secretary, Graham Howell, adds: 'I'm not conscious of us being put under pressure by citizens' groups to suddenly bring citizenship up the agenda.'<sup>11</sup>



There is, however, an awareness that Ofcom will be scrutinized by Parliament, being ‘a creature of statute’, as Robin Foster, Ofcom’s Partner for Strategy and Market Developments is quick to claim.<sup>12</sup> Bowe adds:

‘The scrutineer is the public, I mean literally the scrutineer has to be Parliament, I think. Parliament acting on behalf of the public... And, you know, interestingly in Ofcom’s case, the word ‘citizen’ is used in the legislation as well as ‘consumer’, and I think it’s for Parliament to hold Ofcom to account for how it’s interpreting that remit.’

Clearly, it is inconsistent to claim both the citizen and consumer is an artificial and unworkable distinction and yet that they raise distinct issues that map neatly onto the remit of the Content Board and Consumer Panel respectively. Moreover, it is becoming evident that the latter is not the case. Rather, the Consumer Panel is now broadening its purview to encompass citizen interests, for ‘there are consumer issues around broadcasting ...like digital switch over’, said Julie Myers (Policy Manager of the Consumer Panel<sup>13</sup>), and citizen issues in relation to telecommunications. Foster described the relation between Ofcom’s duties and its organisational structures as ‘a delicate balancing act’, noting of the citizen interest that:

‘it was...largely talked about in terms of the media, the broadcasting side of Ofcom’s activities, but in fact when you, the more you think about it, the more some aspects ...of the issues which actually the Consumer Panel, so-called, is very interested in, are in many ways what I would describe as citizenship issues. They’re about universal availability of telecom services around the country, they’re about affordable access to, telephony services ...for the less well off. They’re about protecting the more vulnerable groups to make sure they have

access to, uh, to communications. And all of those actually feel more like citizen rather than consumer issues.’

Driving this is the idea of the citizen interest as social inclusion (Ofcom Consumer Panel, 2005). Bowe explains:

‘We realized very quickly ...that what we were talking about was not consumers. We were talking about citizens. We were talking about people who were perfectly capable in principle of going to the shop and buying the thing as a consumer, but actually might they be isolated from our society in a way that made it difficult to know that that was what they should be doing?’

Indeed, Ofcom (2005, p.39) announced a new work area for 2005/6, namely to ‘identify and articulate more clearly how the interests of citizens should be incorporated in Ofcom’s decision-making process in a transparent and systematic way’. Civil society bodies are now appraising the success of this endeavor. Pat Holland, Campaign for Press and Broadcasting Freedom, is cautiously optimistic:<sup>14</sup>

‘they are more open to arguments around ...citizenship... they haven’t exactly got as far as using the phrase like ‘positive regulation’ or ‘enabling regulation,’ which are the sorts of phrase we would use, but I think there, there has been a definite opening to those ways of thinking.’

However, although such directions may presage an expanded conception of the citizen interest, a related trend – evident in the above quotations from Foster and Bowe - narrows down the very notion of citizenship, associating it paradoxically with vulnerability. It seems that, in the framework of economic regulation, the justification for regulatory intervention is more easily sustained on the grounds of vulnerability than it is on the grounds of public value. Several Ofcom figures recounted narratives of the vulnerable citizen, at risk of social exclusion, these warranting a normative

approach combining the ideology of social welfare with a neo-liberal agenda. This approach relies on a quantitative, market research analysis in which the ‘citizen’ is constructed as a quantifiable but small segment of the population, as Ofcom’s

Director of Market Research observes:

‘So this is an instance where Ofcom or maybe the government or whoever would need to do something to intervene, to protect these citizens and to make sure that they don’t get left behind because the market by itself will not take care (.) it’ll take care of the eighty percent or the ninety percent who are economically active or fit.’

Here, citizens are defined in terms of vulnerable individuals, lacking a voice, and so revealed through market research, rather than in terms of their collective status not only as the public, but as the public able to represent themselves directly.

#### The public’s perspective

What then, are the public’s views? As part of our research, we conducted 16 focus group interviews during May 2006, with a total of 114 people selected to encompass a range of socio-demographic circumstances.<sup>15</sup> The interviews addressed the public understanding of regulation broadly conceived, with communications as one area explored in detail. We have seen, in the foregoing, how the regulator, and civil society, envisions and, indeed, speaks for, the public. Here we ask how the public envisions the role of regulation in their lives.

We suggest that their views are best captured by Billig et al.’s (1988) notion of dilemmatic thinking. People are neither apathetic and disengaged, nor actively engaged and responsive to regulatory initiatives or consultations; rather, they are profoundly ambivalent, expressing strongly felt but contrary views that, though aware of the contradictions, they were often unable to resolve. Where we had feared puzzled

responses or silence to our initial probe – ‘what do you think of when we say, “rules and regulations”’ – instead we received a barrage of anti-regulation views. Stories of stupid or unnecessary rules – in the workplace or school, getting a pension or hiring a car – were plentiful. Hostility to the ‘nanny state’, much evident in the tabloid press, and tales of ‘red tape’ impeding the application of common sense suggested a public supportive of the deregulation agenda: consumer choice, individual rights, liberalized markets. As a middle class, midlife interviewee said, ‘Health and Safety at work - get the garlic and crosses out! It is ruining the industry, it’s controlling this country I think. Ridiculous at times it gets.’ This theme was readily picked up – ‘they bring another rule out instead of thinking, well, we’ve already got enough rules, why don’t we perhaps manage the ones that we actually have a little bit better?’ One retired respondent concluded cynically, ‘the people that actually make the laws haven’t a clue what they’re doing.’

Yet these views were qualified as we got further into each discussion. Alternative stories emerged - of consumer failures, unprotected consumers, dangerous situations, and exploited individuals. Talking of finance contracts, one young person had learned the hard way that ‘they write these things and the consumer can fall foul of regulations designed to protect you by virtue of your own ability to understand it.’ Concerns for vulnerable groups (the young, elderly, and weak), pressured consumers (suffering lack of time or ‘information overload’), and irresponsible individuals (damaging the collective through their selfishness or thoughtlessness) all revealed limits to public support for deregulation and, indeed, a rather righteous support for consumer protection regulation. One retired person, recalling now-gone financial regulations, observed that ‘it’s now just a market, and so what the government tries to do is to get banks to regulate themselves, to not lend too much to the wrong people.’

Another respondent concludes, ‘I don’t think they [the banks] have any moral conscience at all.’ Regulation, on this view, should be guided by public values.

However, although the discussions covered many issues, those that directly influence people’s health, work, finances, or family generated more attention than did the media and communications sector. With prompts, we obtained tentative statements on the importance of a trustworthy news media, complaints about media panics or bias, and concern over the costs of mobile phone tariffs; but for the most part, this was not an area of regulation that elicited strong views. For risks that affect people as individual consumers (price, contract, choice, product information, etc), the connection between regulation and daily life mattered; for risks that affect people as citizens, as a collective, particularly in the long-term, such connections were less compelling. Last, across the entire range of issues, and notwithstanding the strong views often expressed, few people described taking action regarding rules they considered unfair, regulations they wished changed, contracts they could not understand, risks they were worried about, or institutions supposedly designed to advise or respond to them (see also Couldry, et al, in press). In short, the public struggles to speak as a collective, being torn between its self-image as agentic or vulnerable. It seems unclear how to articulate its responsibilities (especially compared with its rights), and cannot readily find a point of focus for action (- hence exit without voice is a common response; Hirschman, 1969).

### Critical alternatives

We suggest that contemporary debates over governance are shifting ‘the public’ center stage. But how to conceive of the public – citizen? consumer? – remains hotly contested. For commentators, this contestation may provide an opening for critical intervention. Ofcom’s critics – including the Consumer Panel, known informally as

Ofcom's 'critical friend' – argue that the regulator should encompass the 'citizen interest' instead of, as others in this volume might prefer, broadening the notion of the 'consumer interest', one reason being that to market liberals (notably, the media and communications industry), the consumer interest is (and will continue to be) interpreted narrowly in terms of price, choice, and value for money, thus legitimating an economic model of regulation. Arguments to broaden the consumer interest, instead of in favor of the citizen interest, will become aligned with this narrow interpretation, with academic redefinitions treated as 'just academic'. The narrow interpretation, as Needham (2003, p.5) points out, replicates:

'patterns of choice and power found in the private economy. The consumer is primarily self-regarding, forms preferences without reference to others, and acts through a series of instrumental, temporary bilateral relationships.

Accountability is secured by competition and complaint, and power exercised through aggregate signalling.'

How, then, should one conceptualize the citizen interest in positive terms? There is broad agreement amongst academics concerned with the relation between the media and politics in liberal democracies. All argue that access to information and communication resources are fundamental to informed citizenship and a prerequisite for democratic participation. Many are concerned that neo-liberal economics and neo-conservative politics have altered the balance of power in media and communications to the detriment of citizens, through trends in the political economy of media ownership (increasing conglomeration), globalisation and cultural imperialism (reducing cultural variation), a conservative, mainstream media culture that fails to support the expression of diverse and radical political opinions. The outcome, it is

held, is that citizens are treated as consumers, granted consumer rights (choice, price, etc) but not citizen rights.

What is the alternative? Murdock and Golding (1989) focus on the distribution of communicative resources (notably, access to information and communication content and technologies, maximum diversity in content production, mechanisms for feedback and to enable participation). Developing Scannell's (1989) advocacy of 'communicative entitlements', Hamelink (2003) proposes gathering under the label, 'Communication Rights' those rights already recognised by the United Nation's Universal Declaration of Human Rights that relate to information and communication, in order to promote their visibility and implementation:

'Communication is a fundamental social process and the foundation of all social organization...Communication rights are based on a vision of the free flow of information and ideas which is interactive, egalitarian and non-discriminatory and driven by human needs, rather than commercial or political interests. These rights represent people's claim to freedom, inclusiveness, diversity and participation in the communication process' (p.1).

He argues that governments and civil society bodies should be obliged to create the conditions for freedom of expression, universality of access, diverse sources of information, diversity of ownership, and plurality of representation. Garnham (1999) develops Sen's analysis in terms of capability, rather than either resources or rights, arguing that, given considerably unequal starting points within any population, public policy should seek to equalise the set of alternatives genuinely open to people (i.e. their capabilities), recognising that they may then choose, or not choose, to take these up. Access to, and the content of, the press, television, internet etc should be evaluated, therefore, not in terms of what they provide (as goods or services) but what

possibilities they afford or impede. The question, in other words, is what opportunities become available to the public, what real choices become open to them, in a particular information and communication environment? For Garnham, then, the citizen interest should be understood in terms of human needs, both individual and societal.

Last, we note how McChesney (e.g. McChesney and Nicholls (2003) seeks to translate the citizen interest into practical action, encouraging a media reform movement that proposes such interventions as developing community radio and television, applying antimonopoly laws to the media, establishing formal study to determine fair media ownership regulations, reinvigorating public service broadcasting, and so forth. Pitched partly at the American context and partly at the global communications market, this represents one among several movements seeking to challenge the consumer-focus of the contemporary communications sector and its regulators. To the extent that national contexts vary, such movements must inevitably be tailored to specific regulatory regimes. But to the extent that the critical concerns are common, each can and should learn from the other, developing and sharing a discourse of – in the UK’s terms, the citizen interest, but in other terms, communicative resources, rights, entitlements, and capabilities – in order to intervene in the process of media and communications governance more widely.



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### Endnotes

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<sup>1</sup> Interview with the first author, 20 July 2005.

<sup>2</sup> Interview with the first author, 21 July 2005.

<sup>3</sup> Interview with the first author, 10 August 2005.

<sup>4</sup> Interview with the first author, 13 July 2005.

<sup>5</sup> Interview with the first author, 27 June 2005.

<sup>6</sup> Interview with the first author, 21 July 2005.

<sup>7</sup> Interview with the first author, 4 March 2005.

<sup>8</sup> Interview with the first author, 19 April 2005.

<sup>9</sup> Interview with the first author, 28 September 2005.

<sup>10</sup> Interview with the first author, 20 June 2005.

<sup>11</sup> Interview with the first author, 9 June 2005.

<sup>12</sup> Interview with the first author, 9 June 2005.

<sup>13</sup> Interview with the first author, 28 June 2005.

<sup>14</sup> Interview with the first author, 21 July 2005.

<sup>15</sup> They were half men and half women, half middle class and half working class, living in eight areas of the UK (urban, suburban, rural), and from four categories of life stage: young people in their first jobs, parents with young children, those in midlife, and the recently retired.