

# Five ways to govern a public broadcaster

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# 1 Introduction

Reforming public service broadcasters (PSBs) is a popular activity for European politicians. In the past five years, PSBs in Austria, Portugal, Italy, Spain, Slovenia, the UK and Finland have seen major changes to their governance. Reform efforts continue in the Republic of Ireland and - for the fourth time in fifteen years - in Italy. Politicians in the Czech Republic *had* sought to reform the national PSB, but had to settle for minor accounting reforms (Fucík, 2005).

Each of these reforms has particular details which are idiosyncratic or otherwise particular to the reforming country. In order better to understand reform efforts - and indeed to understand existing public service broadcasters - we need to identify (1) which elements of the *governance* of a public broadcaster are more important than the others, and (2) how these elements interact.

In this chapter, I provide a typology of five types of PSB governance. The five types I identify - the Northern, Parliamentary, Corporatist, French, and Residual types - are distinguished by two characteristics: their board structure, and their appointments process. Each type is associated with two further characteristics: their predominant method of funding, and their way of regulating controversial political content. The clustering of these characteristics into the five types suggests links between each of the characteristics, links which may constrain the design or the implementation of PSB reform.

In the second part of the chapter, I look at two trends in the governance of PSBs: the increasing amount of soft regulation; and a gradual move away from licence fee funding, and discuss how broadcasters can best improve their performance within each category.

Some definitions will help. By *public service broadcaster*, I mean any broadcaster in a modern democracy which:

- is funded in large part by the state through general taxation revenue or through a special hypothecated tax (licence fee);
- where the highest posts in the broadcaster are appointed by state organs;
- which principally broadcasts to residents of the same state which funds it;
- and which *aims* at (but is not always successful in) providing a broad range of socially useful content

There are roughly fifty broadcasters which meet this definition: they are listed in the table. As can be seen, the vast majority are found in Europe, although examples are also found in former British colonies. Non-European PSBs exist in Chile, Japan, and South Korea.

By the *governance* of a PSB, I mean, very simply, the system by which it is directed and controlled (Cadbury, 1992, 2.5). I mean it less in a political science sense - where it is used to pick out ways of deciding and implementing policy outside the formal structures of the state - and more in the sense of corporate governance. Recent issues of concern in corporate governance include the relationship between the owners of a company and its officers; the relationship between the board of a company and the management; the composition of the board (in particular the balance of external and internal directors); the rules which ensure the company complies with accepted standards of accounting, management, and social responsibility. These concerns cannot be directly transposed to PSBs: since PSBs are, at the same time, important political institutions and large companies, their governance fills a dual role. I concentrate on four aspects of governance which parallel the issues listed above:

1. the structure of the board: in particular, the choice between a single or dual board;

Table 1: List of national public service broadcasters

Country	PSB	Abbreviation
Argentina	Canal 7 Argentina	C7
Australia	Australian Broadcasting Corporation	ABC
Austria	Österreichischer Rundfunk	ORF
Belgium	Vlaamse Radio- en Televisieomroep	VRT
Belgium	Radio-Télévision Belge de la Communauté française	RTBF
Bulgaria	Bългарска Nationalna Televizija	BNT
Bulgaria	Bългарско Nationalno Radio	BNR
Canada	Canadian Broadcasting Corporation	CBC
Chile	Television Nacional	TN
Croatia	Hrvatska Radiotelevizija	HRT
Cyprus	Cyprus Broadcasting Corporation	CY/CBC
Czech Rep	Ceská Televize	CT
Czech Rep	Cesky Rozhlas	CR
Denmark	Danmarks Radio	DR
Estonia	Eesti Televisioon	EE/ETV
Estonia	Eesti Raadio	EE/ER
Finland	Oy Yleisradio	YLE
France	France Télévision	FT
Germany	Zweites Deutsches Fernsehen	ZDF
Germany	Arbeitsgemeinschaft der öffentlich-rechtlichen Rundfunkanstalten der Bundesrepublik Deutschland	ARD
Greece	Elliniki Radiophonia - Tileorassi SA	ERT
Hungary	Magyar Radio	HU/MR
Hungary	Magyar Televizió	HU/MTV
Iceland	Ríkisútvarpið	RUV
India	Prasar Bharati	BCI
Ireland	Radio Telefís Éireann	RTE
Israel	Israel Broadcasting Authority	IBA
Italy	Radiotelevisione Italiana	RAI
Japan	Nippon Hōsō Kyōkai	NHK
Korea	Korean Broadcasting Service	KBS
Latvia	Latvijas Valsts Televizija	LT
Lithuania	Lietuvos Radijas ir Televizija	LRT
Malta	Public Broadcasting Services Ltd	PBS
Netherlands	Nederlandse Omroep Stichting	NOS
New Zealand	Television New Zealand	TVNZ
Norway	Norrikskringskasting	NRK
Poland	Polskie Radio SA	PR
Poland	Telewizja Polska	TVP
Portugal	Radiotelevisão Portuguesa SA	RTP
Romania	Societatea Româna de Televiziune	RO/TVR
Serbia & Montenegro	Radiotelevizija Srbije	RTS
Slovakia	Slovenská Televizia	SK/STV
Slovakia	Slovensky Rozhlas	SK/SR
Slovenia	Radiotelevizija Slovenija	RTVSLO
South Africa	South Africa Broadcasting Corporation	SABC
Spain	Television Española SA	TVE
Sweden	Sveriges Television Ab	SVT
Sweden	Sveriges Radio Ab	SR
Switzerland	SRG SSR idée suisse	SRG-SSR
UK	British Broadcasting Corporation	BBC

2. the method by which the board is appointed: in particular, the institution(s) which select board members.
3. the predominant method of financing the broadcaster;
4. the procedures by which the broadcaster regulates political controversy over content

Looking at the structures of public broadcasting through the lens of corporate governance is an increasingly useful way of approaching the issue. As we shall see later, rules on state aid and decreasing support for licence-fee funding are increasingly causing public broadcaster to mimic the form and practices of large commercial organisations.<sup>1</sup>

Governance systems have conflicting aims. For large corporations, governance aims to maximise share-holder value, but also to remain within the boundaries of the law. As public institutions, PSBs must simultaneously maximise conflicting values: efficiency, accountability, and independence. Efficiency - "frugality of resource use in relation to given goals" (Hood, 1991, p. 12) - conflicts with accountability, as the broadcaster must divert funds away from producing content and into ensuring compliance. Accountability (to Parliament) conflicts with independence (from partisan control), as the mechanisms for investigating the activities of the broadcaster can become political fishing expeditions. And independence from any kind of direction may conflict with efficiency in the widest sense of market efficiency, as the broadcaster may use guaranteed sources of funding to acquire dominant market power or distort new markets. Towards the end of the chapter I discuss how PSBs of each type might best achieve these values.

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<sup>1</sup>In Italy, the Gasparri law remodelled Rai as a shareholder company. In Austria, board members of ÖRF now have "the same duty of care and responsibility as the board members of a joint-stock company" (Haller, 2001); the powers of board members of YLE now correspond to the Companies Act (Österlund-Karinkanta, 2006).

Examining the (corporate) governance of PSBs is not the only way of reducing complexity. There are other ways of comparing PSBs. A report on public broadcasting by the French Conseil Supérieur de l'Audiovisuel used regional or linguistic labels, contrasting the "Latin" broadcasters of the Mediterranean rim with the "Anglo-Saxon" broadcasters in Germany and the UK (Bourges and Fansten, 1998): the typological equivalent of petty name-calling. A recent Council of Europe report, by contrast, divided broadcasters according to a tripartite "structural criterion":

- "integrated structures, as in the United Kingdom, Spain and Italy, where [PSBs] control every area of public audiovisual activity;
- federated structures by region, such as the German system, which... reflects the country's political organisation
- fragmented structures, as in France, where each branch of the audiovisual sector is controlled by one or more separate public operators" (Mooney, 2004, para.27)

However, the first category - integrated broadcasters - is by far the largest; federated broadcasters are very few. Additionally, there seems to be little in common amongst the members of each category: the integrated model of Danmarks Radio would seem to have more in common with the fragmented structure of Sveriges Radio and Sveriges Television than with Rai or RTVE. The five types identified below are also based on "structural criteria", but improve on this classification by also sharing important characteristics concerning regulation and funding.

## 2 The first cut: board structure

The first step to classifying a public broadcaster's governance is to ask whether the broadcaster has a *single* or a *dual* board.

In a single board PSB, there is one board which manages and supervises the activity of the broadcaster. That is, it is responsible both for managing the company and ensuring compliance with regulatory or financial requirements. These tasks are not distributed equally within the board: the President of the board acts as the chief executive officer of the PSB, and, whether in law or in practice, enjoys effective control over the management of the company. She is also the figurehead of the company: as yet, only the Canadian broadcaster has separated the role of President, or chief executive of the company, from that of Chairman of the company, as recommended in a number of recent reports on corporate governance in countries which use single board structures (see Higgs 2003, para 5.3 and The Conference Board Commission 2003, pp. 18-19).

The single board model is not often used by European PSBs: only France Télévision, Rádio e televisão de Portugal and Bulgarian National Television and Radio use it. Outside Europe, the model is more common: it is used by all of the English-language PSBs, and Televisión Nacional de Chile.

In a dual board PSB, responsibility for management and ensuring compliance is divided between a supervisory board and an executive board. The supervisory board - variously described as a Foundation Council, Administrative Council, or Board of Governors<sup>2</sup> - typically takes on regulatory tasks not normally carried out by the board in a single board

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<sup>2</sup> I use the term supervisory board as the English language equivalent of the German *aufsichtsrat*; I use 'administrative council' to denote the French *conseil d'administration*, the Italian *consiglio di amministrazione*, the Spanish *consejo de administración*, and so on. 'Board of Governors' is the term formerly used to refer to the BBC supervisory board - now known as the BBC Trust.

PSB but instead left to external regulators. The supervisory board is headed by a Chair or President. She is not usually the public face of the broadcaster: this role falls to the chief executive, or Director-General, who chairs the executive board. The executive board is not usually established by law in Western European PSBs; it is more often so in post-communist PSBs. The director-general usually appoints members of this executive board with the consent of the supervisory board. The division of labour between the supervisory board and the executive board or director-general is difficult to specify in abstract. It is a product of three factors: legal provisions specifying the powers of the respective boards (where such provisions exist, and where they are not very loosely-specified, as is the case in common law countries); the customary practice of the two boards; and the personality of the members of the board, in particular the Chair and Director-General.

A dual board structure is the most common choice for European PSBs. (Outside of Europe, Japan's NHK has also chosen a dual board, with, like the BBC, a twelve member Board of Governors appointed by the government, though with the consent of the Diet). In certain cases, though, the supervisory board has been so weak that the broadcaster has functioned as if it had a single board. In Spain before 2005, the Consejo de Administración of RTVE enjoyed little effective power of the broadcaster: although the law permitted the Consejo to forward candidates for the post of director-general, direct appointment by the government robbed the Consejo of this most important task of PSB supervisory boards. Following the Zapatero reforms of 2005, the dual board structure has been replaced by a single board.

The choice of a single or dual-board system has both corporate and political aspects. Most countries have adopted the most common board structure in business as the model for the board structure of the public broadcaster. Those countries in which private companies have single boards - Italy, Spain, Portugal, Greece, UK, Ireland, Australia, New Zealand,



Canada, South Africa, and Japan (Hopt, 1998, p. 229; Jackson and Moerke, 2005, p. 354) - have largely chosen a single board system in public broadcasting. The UK, the Republic of Ireland, and Japan have instead chosen structures outside of their respective normal corporate practice. Spain formerly had a dual board system, and has now moved to a single board; Italy has, at the time of writing, a dual board where the supervisory board has sometimes acted like a "collective managing director", making it resemble a single board with extensive managerial delegation (Zaccaria, 1984, p. 19).

Conversely, of those countries with two-tier corporate systems - the Scandinavian and German-speaking countries - all have opted for dual board systems. In those countries where both forms co-exist - France, Belgium, and most countries of Central and Eastern Europe - the majority of broadcasters have dual boards, but France Télévision and Bulgarian National Radio and Television have single boards.

The links between corporate board structure and the board structure adopted for PSBs suggests that the board structures of PSBs were selected, consciously or unconsciously, to mimic corporate practice. At the same time, however, the choice of a single or dual-board structure has a political logic. First, a dual-board structure may enhance the (perceived) independence of the broadcaster, since politicians do not, by law, appoint the chief executive officer(s) of the broadcaster, and are thus less implicated in its day-to-day output. Second, a supervisory board may act as a non-pernicious accountability mechanism: politicians may criticise the broadcaster freely to supervisory board members, who will absorb frivolous complaints and pass on more serious ones, freeing the executive officers of the broadcaster of the need to listen to politicians berating their work. Third, supervisory board members may act as ambassadors for the corporation, maintaining good public or personal relations with politicians or members of the public.

These roles are not always mutually compatible: the Board of Governors of the BBC was

replaced by the BBC Trust precisely because it was felt to be too good a "cheerleader" for the management of the corporation, to the extent of neglecting its oversight functions (Department for Culture, 2006, pp. 2-3). Nevertheless, they suggest that there will be important differences in the political character of dual- and single-board PSBs, holding other things equal. Of course, other things are not equal: the political character of the PSB also depends on the method by which the board is appointed.

### **3 The second cut: who appoints?**

The issue of 'who appoints' members of the supervisory or sole board of the broadcaster is relevant to the corporate governance of a PSB - and more relevant than it would be for corporations - because it involves a variety of political institutions, and because nomination by certain of these institutions has consequences for the political character, funding, and regulation of the broadcaster.

Here I consider only the issue of who appoints. The issue of appointments more broadly is complex. It includes several questions - appointees' tenure, the possibility of renewal, incompatibilities with other posts - which are extremely important in guaranteeing the political independence of the broadcaster (Lledó Íñigo et al., 2005, p. 131), but which I do not consider here.

In considering *who* appoints, I also simplify. Most mechanisms for nominating board members of PSBs involve multiple political actors, either separately nominating some portion of the board, or jointly nominating board members through proposal and confirmation. Instead of considering these combinations, I focus on the main political actor or institution - that is, an actor which appoints at least one-third of board members or more than any other actor or institution. The relevant institutions are:

- appointment by an independent sectoral regulator
- appointment by civil society
- appointment by parliament
- appointment by the government

(Appointment by the workforce is also used to elect board members in Australia, Austria, Denmark, France, and Romania, but in all cases the percentage of staff-appointed members is extremely slight).

Appointment by an independent sectoral regulator happens only in three cases: Poland, France, and Bulgaria. In the Polish case, the National Broadcasting Council appoints all members but one of the Supervisory Board (the remaining member is appointed by the Treasury). In France and Bulgaria, the appointments to the single board are made by the Conseil Supérieur de l'Audiovisuel (CSA) and National Council on Radio and Television (NCRT) respectively. The NCRT appoints all members of the Bulgarian broadcasters' managing boards; the CSA appoints five of fourteen members of the board of France Télévision, but this includes the President.

Appointment by civil society is primarily associated with public service broadcasters in German-language countries. The percentage of the board made up by civil society nominees varies; but is always less than a majority, and usually more than a plurality compared to members nominated by other institutions. Boards with this method of appointment can also be recognised by their size: Barendt says the typical board has "at least 30 - 40 members... composed of, say, one member of the government, a member of each political party represented in the legislature, a representative of the Catholic and Evangelical churches, the Jewish community, trade union councils, employers' associations, sports, women's

and youth associations, teaching, farming and music bodies, and so on" (Barendt, 1993, pp. 61-62). In certain Länder, the percentage of "political nominees" is fixed below one-third; in other Länder, and in Austria, the percentage of political appointees is higher, although still with significant representation of civil society. The model has been exported to Croatia, Slovenia (until 2005) and Hungary, although the Hungarian version may be better classed as a model of parliamentary appointment, since the eight parliamentary appointees on the twenty-nine member board have special powers, including the exclusive right of appointment of the director-general.

Appointment by Parliament is the most common method of appointment. It is also the method most likely to apply to entire boards. It is found throughout Europe. The most important differences within this method of appointment concern the required majority for appointment (whether a simple plurality, majority, or two-thirds supermajority), and whether or not there is an explicit commitment to appoint board members in proportion to the parties' parliamentary strength.

Appointment by government exists in the English-language broadcasters (BBC, RTÉ, SABC, CBC, ABC and TVNZ) and some of the Scandinavian broadcasters (NRK, and partially in DR), as well as in Japan. If one considers the Förvaltningsstiftelsen för Sveriges Radio AB, Sveriges Television AB och Sveriges Utbildningsradio AB - which has as its only task the appointment of members of the boards of SVT, SR, and UR - as an arms' length agent of the government, this model can also be extended to Sweden. It is usually heavily qualified, however. In Canada, Australia, the UK and Norway, board members are appointed by the monarch or her agent (the Governor-General). In practice, this means that they are appointed by the cabinet; but one need not invoke Bagehot to argue that the constitutional fiction of regal appointment nevertheless gives the appointment greater dignity. In South Africa, appointments are made by the President, who may be seen to

enjoy the same *supra partes* appeal enjoyed by a monarch. In New Zealand and the UK, appointment is further circumscribed by the open competitive recruitment, following the introduction of the Crown Entities Act 2004 and the Code of Practice on public appointments. The UK public does not seem to believe that the appointment is dictated by the minister; if they view the competitive recruitment process negatively, it is because they believe the winning candidates were already successfully identified in the media before the interview (MORI, 2005, pp. 29-30).

### **3.1 Applying the two criteria**

How does combining the different types of appointment method to the distinction between dual- and single-board PSBs help us to understand the comparative governance of PSBs in a more holistic way? The combination of one dichotomous criterion (dual or single-board) and one criterion with four possible values gives eight possible governance types. However, some of these categories are barely populated or not populated at all.

For example, there were until recently no single board broadcasters appointed primarily by parliament or by civil society. Since 2005, Radiotelevision Español (RTVE) has had a single board appointed by two-thirds majority of Parliament. There is only one broadcaster - Telewizja Polska - which has a dual board and is appointed by an independent regulator.

There are good reasons why these categories are not popular. Recall that one reason why dual board structures might have been chosen is that they provide a political buffer which single boards lack. Appointment by independent regulator, or a heavily constrained executive, may provide a functional equivalent of that buffer. Conversely, appointment by parliament or civil society would present the risk of political control over the day-to-day

operations of the broadcaster, which might prompt negative reactions on the part of the public.

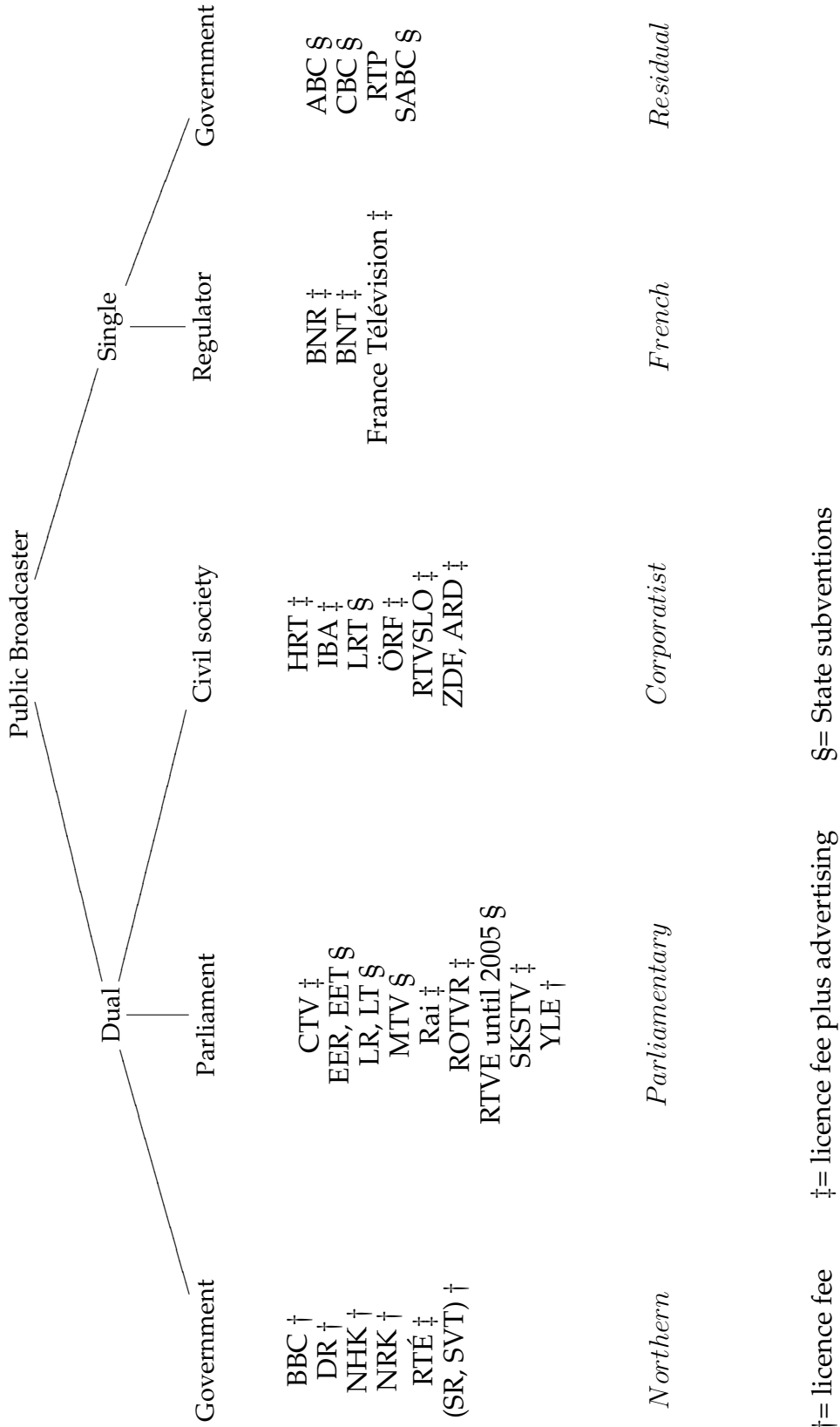
Equally, where the political buffer of a supervisory board exists, the additional buffer of appointment by an independent sectoral regulator may lead to accusations that the broadcaster has ceased to be accountable to the people, but it only accountable to another technocratic organisation. Consequently, cases like this will only be found where there exists great concern over the political independence of PSB.

Discounting these three categories, we are left with five governance regimes for public broadcasters: the Northern, the Parliamentary, the Corporatist, the French, and the Residual. These types are shown in Figure 1. Foreshadowing the sections to come, we may say that:

- Northern PSBs have a supervisory board largely appointed by the government, with long-lasting directors-general. They are largely funded by the licence fee without advertising revenue, and have adopted self-regulatory schemes to police political content.
- Parliamentary PSBs have a supervisory board appointed by the parliament, with higher turn-over in directors-general. They are funded by a mixture of different sources of funding; their own regulation of politically controversial content is poor, although some external monitoring does exist.
- Corporatist PSBs have a supervisory board nominated in large part by civil society, with members also appointed by the parliament in varying proportions. They accept advertising revenue, but are far more reliant on the licence fee than Parliamentary PSBs. They have some self-regulation of politically controversial content, but legal recourse also exists.

- French-style PSBs have a single board nominated by an independent regulator. They are funded by a mixture of the licence fee and advertising revenue. Politically controversial content is externally regulated through such devices as the *regles des trois tiers*.
- Residual PSBs have a single board appointed by the government. They are funded by a licence fee and state subventions. They have adopted self-regulatory schemes to police political content.

Figure 1: Five prototypes





Whether these associations represent causal links, mere correlation, or evidence of related development, is unclear. Two of the groups - the Northern and Corporatist - are largely geographically contiguous; parts of a third group - the Residual broadcasters - share a common heritage as former British colonies. The possibility of related development is therefore high. Ireland continues to base parts of its public broadcasting legislation on the British experience (Oireachtas Joint Committee on Communications, 2007, pp. 71, 73, 75); broadcasting legislation in Slovenia was adopted after repeated visits from the Council of Europe and representatives of the European Commission (Matkovic et al., 2002), and the Action Plans of the EU's European Neighbourhood Policy continue to exhort changes in public service broadcasting in neighbouring countries. Whatever the link - causal, correlational, or symptom of interdependence - I refer to the shared patterns in regulation and funding as 'outcomes'. The first of these outcomes is the system of funding public broadcasting.

## **4 The first outcome: the predominant method of funding**

No PSB has a completely pure system of funding. All rely for revenue on a mixture of four funding sources: government subventions, licence fees, advertising revenue, and programme and product sales. The last of these is only a major source of revenue for those broadcasters with large international (the BBC, potentially other Anglophone broadcasters) or domestic (NHK) markets. Consequently, the main combinations of funding sources are: a combination of state subventions plus advertising; a combination of licence fee plus varying degrees of advertising (including programme sponsorship); and licence fee revenues without advertising.<sup>3</sup>

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<sup>3</sup>One broadcaster - Romanian television - uses a combination of all four funding sources: licence fee, state subventions, advertising, and limited commercial activity

Funding by licence fee without advertising revenue is found in the Northern PSBs. Five of the six PSBs in this category are not permitted to sell advertising in their domestic programming (though the BBC sells advertising which part-funds BBC World and BBC America). RTÉ, which faces a much smaller domestic market and incurs the costs of London-induced wage inflation in labour costs, has had to rely on advertising since its formation.

Funding by state subvention plus advertising is typically found in the Residual PSBs. This funding model is also now found in Hungary: since 2002, the state has paid for citizens' licence fees from general taxation revenue. Although this method slightly reduces the government's discretionary power over the broadcaster's funding (with total revenue from licence fees being automatically determined by growth in the population and in television sales), it exposes broadcasters to the same threat of unstable revenue flows, and the sectoral regulator has expressed fears about the measure's impact on the independent of MTV (Lengyel, 2002). Two of the broadcasters in this category - Television New Zealand (TVNZ) and the Australia Broadcasting Corporation (ABC) had benefitted from licence fee funding in the past before the fee was abolished.

Corporatist and the French model PSBs share a similar funding profile, with both funded by a mix of licence fee and advertising revenue. The licence fee component tends to predominate: ARD, ZDF, BNT and the IBA depend on the licence fee for approximately 80% of their income; France Télévision, HRT and RTV/SLO depend on it for around 60% of their income (EBU Information and Statistics Network, 2005, pp. 2-7). ÖRF is therefore unusual, taking less than half (46%) of its income from licence fees. Most unusual is the Lithuanian broadcaster, which relies on state subventions.

Finally, Parliamentary-model PSBs have the most mixed funding structures. The Estonian and Latvian broadcasters rely on state subventions. Since 2002 and 2004 respec-

tively, MTV and SK/STV have also moved over to funding through state subventions, abandoning their respective licence fees. Rai and Ro/TVR have a mixed licence fee advertising system, but Rai has had occasional cash injections to stave off bankruptcy (Ignazi and Katz, 1995), and RO/TVR also relies on state subventions for an eighth of its income. RTVE was initially meant to be financed by state subventions, but has come to rely instead on advertising and state-backed indebtedness. YLE is therefore an exception, relying almost exclusively on the licence fee.

Why should there be a link between the basic governance choices of a broadcaster and the predominant method of funding? There are two possible explanations. The first is that both the basic governance structure and the method of funding reflect political decisions about how much independence to grant the broadcaster, and that consequently governance structure and funding structures flock together. For example: civil society models of PSB are chosen in an effort to grant the broadcaster independence. The licence fee, by providing the broadcaster with a stable and non-discretionary source of funding, aids independence; therefore, it was chosen to match the goal of granting independence. Conversely, parliamentary models are chosen in an attempt closely to control or supervise the politics of the broadcaster; thus, state subventions, which provide highly discretionary sources of revenue,<sup>4</sup> are a method of control, and are thus chosen alongside the parliamentary model.

An alternative explanation is that the method of funding is more variable than basic governance structures, and that the choice of basic governance structure influences the broadcasters' content, which in turn alters public willingness to pay directly or indirectly for a licence fee. For example: invasive parliamentary control over MTV led to poor quality output and a precipitate drop in audience-share in the early 1990s; the drop in audience

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<sup>4</sup>Although the amount of discretion is limited in some Central and East European PSB legislation

share led to extremely high rates of licence fee evasion (EU Monitoring and Advocacy Program and Open Society Institute, 2005, p. 822), and this was a major reason in the decision to move to state subventions. Or, corporatist type boards might (give the impression that they) ensure that content caters to a wide range of societal interests, which in turns makes citizens willing to pay their licence fee.

## **5 The second outcome: the control of political content**

### **5.1 Self-regulation**

Self-regulation of controversial content is typically found in the Northern broadcasters and the Residual broadcasters. By self-regulation, I mean that these broadcasters has developed codes which govern their output; that citizens may bring complaints against the broadcaster if they feel these codes have been violated; that these complaints are adjudicated by some part of the broadcaster itself; and that regulation of content external to the broadcaster is minimal.

The BBC is the best example of this system of self-regulation. In the 1980s, it developed what were then known as the Producers' Guidelines, a collection of guidelines on content which brought together non-binding advice found in previous documents (on coverage of politics, violence on screen, etc.,). The Producers' Guidelines have expanded to become the BBC Editorial Guidelines, a 228 page document covering topics from the protection of children to guidelines on the reporting of terrorism. Viewers may bring complaints to the Editorial Complaints Unit (ECU) if they believe that a specific item broadcast has breached the BBC's editorial standards. The ECU - and, on appeal, the BBC Trust's Editorial Standards Committee - considers the complaint, giving a ruling couched in the terms

of the Editorial Guidelines. Complaints may also be made to the sectoral regulator, Ofcom, but Ofcom is specifically excluded from dealing with complaints about impartiality or inaccuracy.

Self-regulation by the broadcaster is found in the majority of the Anglo-phone broadcasters - RTÉ, ABC, and CBC. Self-regulation in most of the Northern PSBs, however, is usually self-regulation of journalists. Sveriges Television drew up an internal code in the 1960s; but this was superseded both by the ethical codes of the Swedish Journalists' Union (and also by progressive rulings of the Radionämnden (now Granskningsnämnden för radio och TV)).

## **5.2 Legal recourse**

Control of political content through the court system is in opposition to the kind of self-regulation practised by Northern and Residual PSBs. Where systems of self-regulation exist, courts have typically given the self-regulating bodies ample discretion. UK courts, "very conscious... of the experience and professionalism clearly possessed" by the broadcasters, have given the BBC a "wide margin of discretion or appreciation" (Court of Appeal, Civil Division, 2002, para. 27, 32). Consequently, outside of the specific area of the allocation of electoral broadcasts, court cases by politicians on the basis of partiality have been lacking.

Conversely, cases based on the violation of due impartiality, accuracy, or pluralism, are commoner outside the Northern and Residual PSBs. The broadcasters tend to be given surprisingly little room for error: Austrian broadcaster ÖRF lost a case in which it had been accused of partiality for not being prompt enough in dissociating itself from a political comment made during a live variety show it broadcast (Grosshans, 2004).

### **5.3 External regulation**

The French model of PSB is distinctive for taking a particular approach to the regulation of political content. Since 1989, French television stations - including private stations - have been obliged to follow the 'rule of three-thirds', according to which they should allocate in their news coverage roughly one-third of time to the government, one-third of time to the legislative majority, and one-third of time to the legislative opposition. This rather mechanistic approach to content regulation has also been applied in Romania by the analogous Consiliul National al Audiovizualului (National Audiovisual Council). In both cases, the respective councils enjoy sanctioning powers over the broadcasters should they fail to respect the rule.

Although this approach has only been exported wholesale to Romania, certain component parts - the monitoring of the screen time accorded to the various political parties, and the presumption of a three-way split - have been used by other regulators. The Autorità per le Garanzie nelle Comunicazioni (Agcom), the Italian sectoral regulator, publishes a monthly breakdown of the percentage of screen-time given over to all of the (numerous) Italian parties on all terrestrial channels. The Hungarian regulator, Országos Rádió és Televízió Testület (ORTT), publishes similar information, but has also experimented with coding the type of appearance (for example, as "positive" or "negative"). In both cases, however, the regulator enjoys no official sanctioning power.

## **6 Recent trends in governance**

Of course, no typology is ever-lasting. The background conditions which give rise to certain institutional features, generating pressures for change or rendering previous struc-

tures non-viable. This is particularly the case in broadcasting, as the effective end of channel scarcity and the increasing dispersion of the audience have, within a relatively short space of time, generated powerful changes in our relationship with public service broadcasting.

Independent of these technological pressures for change, there are, I suggest, two medium-term trends which can be seen in the governance of public service broadcasters. One - the gradual move away from licence fee funding - is a potentially destructive trend, which threatens to destabilize both Parliamentary and Northern model PSBs. The other - the increasing amount of soft regulation - is a potentially helpful trend, although more so for current PSB under-performers of the Parliamentary category.

The gradual move away from licence-fee funding consists of two related developments: first, an increasing reliance on advertising revenue in mixed funding systems; and, second, the wholesale abolition of licence fee funding in certain countries.

So far, five of the countries listed in Table 1 have moved away from licence-fee funding of their public broadcasters: ABC (1974), TVNZ (1999), RTP (1992) and, in recent years, Flemish broadcaster VRT (2001) and MTV (2002) (Inglis, 2004; Norris, 2004, p. 20; Sousa and Marinho, 2002, p. 7; Lengyel, 2002).

Two of these licence fees - the Australian and New Zealand - had been partially undermined prior to their eventual abolition. Although the Australian licence fee had increased in value, "from [1948] on the proceeds of the licence fee went to the Treasury and the ABC depended on its annual appropriation in the federal budget" (Inglis, 2004). The New Zealand licence fee had seen its value frozen in the seventies; the final abolition of the licence fee in 1999 was therefore a non-event, as the practical significance of licence fee revenue for the Broadcasting Corporation of New Zealand (as it was then known) was negligible.

Why were these licence fees abolished? First, these broadcasters never enjoyed a monopoly position in the market. Under monopoly, the argument against the licence fee - that one may pay for services one never watches - is not valid. If this argument is not made during the initial period of a licence fee regime, the system can become safely installed. Second, the broadcasters always faced strong commercial competition. In particular, MTV and VRT fell below one-quarter audience share. At this point, the argument against the licence fee becomes much stronger. Third, the broadcasters always relied on other sources of funding, which directly (through the mere presence of advertising) and indirectly (through its effect on the programming and scheduling strategies of the PSB) undermined their distinctiveness. In doing so, it gave rise to a second argument against the licence fee - that one should not have to pay for a 'merit good' when it ceases to be meritorious.

Consequently, the trend against licence fee funding is most concerning for those broadcasters which rely largely on advertising for their income, and/or have low market share: typically, the Parliamentary type outlined above. Licence fee-funded broadcasters with relatively pure funding types seem to be safe for the medium-term.<sup>5</sup> The BBC, for example, has lived with the threat of radical alteration to its funding stream since the Peacock Report of the nineteen-eighties; and yet, the most recent Charter Review guaranteed the licence fee's existence until 2016.

The second major trend in PSB is the increasing amount of soft regulation targeted at PSBs. Public broadcasters are less extensively regulated than their commercial counterparts (Nordahl Svendsen, 2002, table 2). However, the amount of regulation they face is increasing, and it often takes the form of 'soft' regulation (Coppens and Saeys, 2006): non-legislative agreements between the government and the broadcaster, which may be

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<sup>5</sup>It might be added that PSBs with mixed funding types face greater problems in conforming with EU directives on state-aid, ensuring that licence fee revenue is not used to cross-subsidise commercial activities.



binding or non-binding, and which may involve some kind of sanction.

There are huge potential costs in this method of governing PSBs. Concern has been expressed that the need for periodic renewal of such regulatory schemes will lead to an erosion of the autonomy of the broadcaster; or that the lesser scrutiny attached to service contracts will lead to "function creep", as broadcasters are asked to meet more objectives with fewer resources. The Italian broadcaster Rai recently estimated that objectives worth 100m euro had been added to the service contract between drafting and final parliamentary approval (Apcom, 2007). Certainly, one cannot but agree with Coppens and Saeys, (p. 279) who write that "the intervention of an independent regulator [in the monitoring of the service contract] is a necessary condition for safeguarding the public broadcaster's autonomy".

At the same time, however, well-constructed regulatory schemes - preferably those that do involve evaluation by non-governmental parties - can offer opportunities to broadcasters where they introduce new possibilities for self-regulation: for example, the establishment of broadcaster-level processes by which it can be determined whether the broadcaster has violated its editorial values. Two recent cases are the establishment of posts for editorial ombudsmen in the Spanish and Slovenian broadcasters; although the latter had still to be appointed eighteen months after the establishment of the post (Matkovic et al., 2002).

## **7 Conclusion: applying the typology to Denmark**

How can we apply this typology to Denmark and use it to understand the challenges faced by the Danish public service broadcasters? There are two issues: first, whether TV2

falls under the definition of public service broadcaster provided here, and if so, which type it most closely resembles; and second, how closely Danmarks Radio fits the Northern type.

TV2 fulfills three of the four criteria I set out in my definition of a public service broadcaster. It broadcasts throughout Denmark, has a board appointed by the Minister for Culture, and is required under Chapter 5 of the 2002 Radio and Television Broadcasting Act to carry out a public service remit. It is less clear whether it meets the remaining criterion, of being funded in large part by state subventions or a hypothecated tax. Until 2005, TV2 received a small amount of money - around 5% of its total income (EBU Information and Statistics Network, 2005, p. 5) - from the licence fee. Since 2005, however, the broadcaster has been entirely reliant on commercial revenue.

I am tempted to argue that the lack of public funding is good reason for saying that TV2 is not a public service broadcaster - or, if it is currently a public service broadcaster, its public character will not remain for long. The reason why I define a public broadcaster as one which is both appointed by state institutions and funded by public money is that the two have historically gone together: the carrot of public money justifies the stick of board appointments. Absent public money, the case for continued and rather direct state involvement through appointing members to the board of the broadcaster is less strong. Conversely, arguments for treating the company like any other commercial company grow. Indeed, were it not for the extraordinary legal confusion surrounding the recapitalisation of TV2, long-standing privatisation plans may have succeeded, and we would be able to talk about TV2 as a normal commercial company. Whilst such a company would still face public service obligations on content, that would not necessarily make it a public service broadcaster. ITV in the United Kingdom is a rapacious, if recently rather unsuccessful, commercial company; it is obliged to meet certain public service requirements in its con-

tent, but few would consider it for that a public service broadcaster in the same sense in which the BBC is a public service broadcaster. Privatisation of TV2 would require the company's public service obligations to be stipulated in a more detailed fashion, similar to the increasing soft regulation discussed above.

Turning less dogmatically to Danmarks Radio: earlier, I included DR as one of the Northern PSBs, despite partial parliamentary involvement in board appointments, a characteristic of the Parliamentary model. Continued parliamentary involvement suggests to me a continued desire on the part of the parties to interfere or watch over DR's content. Given this desire, increasing ministerial involvement, in an attempt to imitate other Northern PSBs, might be seen as a power-grab. It may be possible to use sources of self-regulation to rebuff ministerial attempts at interference; but existing self-regulatory schemes did not, for example, prevent rather clumsy government interference over DR's coverage of the Iraq war. These trends in governance do not, therefore, provide easy remedies, but should establish which of DR's peers form competitive reference points.

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