

Is a Fairness Doctrine Needed Today?: Let's Restore Fairness to Broadcasting

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The fairness doctrine has practical and symbolic importance for all Americans. It is a remarkably effective device for addressing one of the most difficult challenges facing a democracy: how to reconcile the public's right to receive information with the need to ensure that journalists have the broadest possible editorial discretion.

The fairness doctrine ensures that broadcasters bring opposing points of view to their listeners. In doing this, the doctrine reverently retains the fragile balance between the First Amendment interests and needs of broadcasters, on the one hand, and those of the listening public they serve, on the other.

Most broadcasters do a good job most of the time. Thus, while the doctrine affords the broadcaster complete discretion in selecting which issues will be addressed, what format will be used, and which speakers will be heard, it also provides a means to deal with the rare case of abject irresponsibility.

The fairness doctrine is needed now more than ever. In 1992, the Federal Communications Commission (FCC) purported to repeal the most important application of the fairness doctrine: ballot issues and other referenda. The Media Access Project's experience in the 1992 election cycle was that broadcasters followed the pattern that emerged in 1987, when general applications of the doctrine were repealed. Emboldened by the FCC's decision, more and more broadcasters have proved unwilling to present reasonable coverage on both sides of ballot issues.

The big loser is the public. Although owner of the airwaves, it is being deprived of critical information necessary to make informed decisions that affect our democracy.

The fairness doctrine has two components. First and most important, it affirmatively requires each licensee to cover controversial issues of public importance. The FCC has often described this duty as "the single most important requirement of operation in the public interest." This first element of the doctrine ensures that every broadcaster meets its duty to contribute to an informed electorate on public issues.

This first component is often overlooked by the doctrine's foes, who concentrate their opposition on the better-known second part of the doctrine, which requires overall balance in the coverage of those issues. The second part is designed to ensure reasonable opportunity for important opposing viewpoints on issues while affording maximal editorial discretion to broadcasters.

HOW AND WHY THE DOCTRINE WORKS

In operation, the fairness doctrine has fulfilled the objectives of the First Amendment by bringing more voices into the marketplace of ideas, thereby maximizing the discussion of issues in our democracy. This extraordinarily difficult accomplishment has been achieved through a largely self-enforcing administrative mechanism that minimally intrudes into the editorial processes of the broadcaster. The fairness doctrine has had virtually no day-to-day impact on the operations of broadcast licensees, affording significant protection at almost no cost.

By emphasizing citizen-broadcaster conciliation as a prerequisite to any FCC involvement, the fairness doctrine as administered has actually restricted direct governmental interference in the operations of broadcast licenses. It has also encouraged the development of ongoing relationships between broadcasters and members of their community of service, helping to create a forum that actually prevents misunderstandings and eliminates disputes before they arise.

The long-standing opposition of some broadcasters and journalists is understandable. No one likes to

be second-guessed. But the hands-off approach used in fairness doctrine enforcement is a narrowly tailored, judicially approved scheme that does not constitute censorship. The fairness doctrine is affirmative; it sometimes requires additional programming but never commands condemnation of past or future programming.

Even when the FCC gets involved, all the doctrine ever requires is that there be more speech. That's what the Media Access Project likes about the doctrine, and that's why we want it back in the U.S. Code: The doctrine never suppresses speech, and it always promotes more, not less, discussion of ideas. As long as people are talking to each other about how they think America should govern itself, democracy can and will flourish.

WHY IT'S STILL NEEDED

Some opponents of the fairness doctrine will say that since the FCC stopped enforcing most applications in 1987, nothing has changed--the world hasn't fallen apart. They also claim that broadcasters, freed from the so-called chilling effect of the fairness doctrine, are more willing to cover controversial issues of importance to their communities.

This is just not the case. Things have changed and not for the better. First and most important, there have been many problems. Since 1987, individuals and organizations that have tried to get controversial issues covered fairly have experienced ever-greater resistance from reticent broadcasters.

And these are only the cases we know about; many of the people we hear from report that broadcasters and the FCC staff dissuade them from attempting to enforce their rights as listeners. Broadcasters routinely told potential complainants that the doctrine had been repealed and that they had no recourse. We will never know about the hundreds or thousands of other instances of imbalance that go unreported.

Second, as mentioned previously, the commission has ceased enforcing the application of the fairness doctrine to ballot issues. The result has been a reduction in balanced coverage on important electoral matters, with broadcasters willing to open the airwaves only to those who pay cash.

Moreover, as a general matter, rather than increasing the coverage of controversial issues, the elimination of the first part of the fairness doctrine has resulted in an overall decrease in such coverage. Although most licensees continue to serve their communities with news and public-affairs programming, more and more stations are eliminating local newscasts and public affairs programming entirely. Editorialization has become almost nonexistent.

Even though some may quibble that quantitatively there is more news programming on television and radio today, there has certainly not been the explosion of controversial issue coverage the FCC promised would occur when it chose not to enforce the fairness doctrine.

Rather, much of this news programming is increased coverage of the entertainment industry, sports, and other "soft news," and entertainment programming that incorporates news-type footage of violent crime and natural disasters. This programming, although surely worthwhile in a constitutional sense, does not inform or advance the public discourse on controversial issues.

UNDERPINNINGS STILL VALID

One thing that has increased since the repeal of the fairness doctrine is demand for the increasingly scarce public airwaves. It was because of spectrum scarcity that the Supreme Court found that Congress and the FCC had correctly determined that broadcasters asking to use the airwaves must serve as trustees for the public in their operations.

Deprived of their longtime claim that spectrum scarcity is a thing of the past, opponents of the fairness doctrine point to the development of new technologies that are increasing the available sources of

information.

Although new technologies are always welcome, Congress recently found that the so-called explosion in new media has largely been a fallacy, thanks to the cable industry's monopoly over its systems and programming. Congress also found that the new technologies do not replace over-the-air broadcasting. No new medium will soon supplant broadcasting's unique role as the only real-time, day-to-day, minute-to-minute source of information on local issues.

IT WILL NOT HURT TALK RADIO

The claim that current legislation to reinstate the fairness doctrine is specifically aimed at conservative radio talk show hosts is pure bunk.

Long before Rush Limbaugh went national, there was strong bipartisan support in Congress for reinstating the fairness doctrine. Efforts to pass legislation to reinstate the doctrine in 1987 and '89 failed only because of lack of presidential support.

This is not a Left/Right issue. Conservative lawmakers who voted for the 1987 fairness doctrine legislation include Rep. Thomas Bliley of Virginia, Sen. Jesse Helms of North Carolina, and Rep. Newt Gingrich of Georgia.

The doctrine is no threat to talk radio. The genre was born and thrived under the fairness doctrine, which never got in the way of Larry King, Alan Burke, or Pat Buchanan. Talk shows actually ensure compliance with the fairness doctrine by addressing and discussing controversial issues of public importance.

Significantly, the fairness doctrine does not require that a particular show be internally balanced, much less require "equal time" for opposing viewpoints. The doctrine only requires reasonable balance in a station's overall programming, measured over weeks or months, when there has been significant discussion of a controversial issue of public importance. The station has broad discretion on how to provide balanced coverage. The result is more speech, not less.

ADDITIONAL READING

Patricia Aufderheide, "After the Fairness Doctrine: Controversial Programming and the Public Interest," *Journal of Communication* 40, no. 3, 1990.

Mark Conrad, "The Demise of the Fairness Doctrine: A Blow for Citizen Access," *Federal Communications Law Journal* 41, no. 2, 1989.

Fred Friendly, *The Good Guys, the Bad Guys, and the First Amendment*, Random House, New York, 1977.