Policy Connection

How do government policies shape the media landscape?

DOMESTIC POLICY

The Policy Challenge

In Chapter 10 we focused on the role of the mass media in our political lives and on issues related to the diversity and concentration of news and social media outlets. Issues related to media concentration take on even greater significance if we broaden our view beyond news and look at entertainment, sports, and publishing, which have considerable influence on what we know and how we feel about the world. From this perspective, the U.S. media market in 1983 was in the hands of fifty corporations, many of them operating in a particular part of the media landscape—for example, television, print journalism, movies, and book publishing. By 2013, through a combination of mergers, buyouts, reorganizations, and corporate failures, that number had been reduced to six major corporations, which are often described as "multimedia conglomerates": Comcast, 21st Century Fox (formerly News Corp), Disney, Viacom, CBS, and Time Warner.[49] Moreover, many analysts believe the consolidation of the media giants will continue into the future.

The consolidation and concentration that have taken place in the mass media market resulted in large measure from decisions made by the owners and managers of the various companies. But those decisions were not made in a vacuum. Government policies—especially those related to the regulation of the marketplace—were certainly a factor. In this Policy Connection we explore how certain public policies influenced the strategic decisions made by private corporations and how they affected the structure of the mass media marketplace.

How Government Created Corporations

Our lives are touched daily by huge corporations, so it is often difficult to imagine that this form of business enterprise did not emerge as a major force in the American economy until the early twentieth century. In their classic work *The Modern Corporation and Private Property*, Adolph Berle and Gardiner Means noted that "the typical business unit of the nineteenth century was owned by individuals or small groups; was managed by them or their appointees; and was, in the main, limited in size by the personal wealth of the individuals in control."[50]

Business conditions began to change in the mid-nineteenth century as new technologies such as the telegraph and railroad made it possible to expand the scope of the market, and new organizational forms allowed for the scaling up of production.[51] As a business owner, you could take advantage of these changed circumstances by challenging the competition in the next town or region and capturing the market all for yourself. Better yet, you could form a cooperative relationship with the potential competitor—join forces through a merger or some other arrangement that would serve both your interests.

The problem at the time was that the legal environment was not suitable for effective or long-term cooperation—that is, there were no legal provisions for one company to join with another company in an expanded venture that could take advantage of the new technologies. In addition, each state had it owns laws regarding the status of business enterprises, and these laws were often designed to prevent cooperative arrangements among different enterprises.[52] Thus,

there was no direct or obvious way to merge or link the operations.

Starting in the 1850s,[53] the legal picture changed, as privately owned railroad companies took advantage of state laws to form shareholder-owned corporations that combined the assets and operations of the smaller enterprises. Businesses that increasingly relied on rail transport soon formed similar alliances and trade associations, in part to expand their markets and in part to counter the growing capacity of rail companies to demand higher prices.

In 1882, however, ten oil companies, led by John D. Rockefeller's Standard Oil of Ohio, entered into a "business trust" agreement in which the participating companies signed an "irrevocable deed of trust" that allowed a designated board of trustees to make all decisions for the combined enterprise.[54] The Standard Oil Trust eventually encompassed forty companies that effectively controlled most of the petroleum production, refineries, and distribution in the United States. Over the next three decades, similar trusts emerged in all sectors of the growing U.S. economy, from steel, sugar, and whiskey and tobacco.

The expansion of trusts was not welcome by all, and a strong populist movement among farmers and small-business owners in the Midwest had begun to organize in the 1860s and 1870s against the growing economic power and monopolistic practices of railroads and grain elevator operators. As trusts emerged, these populist groups began to campaign for state and federal policies that would reign them in. Thus, by the late 1880s, there was not only a growing public demand for laws to deal with the anticompetitive nature of trusts but also a growing need among the trusts themselves for some other legal basis for forming and maintaining their giant enterprises.

In response, two major policy changes took place, one in the state of New Jersey and the other at the federal level. In 1888 and 1889, New Jersey liberalized its corporate laws to allow companies chartered in the state to legally merge and to own stock in other chartered companies, including companies chartered outside the state. Almost immediately, many of the largest trusts sought to be incorporated in New Jersey and moved their legal homes to the state; these included Rockefeller's Standard Oil, which then became Standard Oil of New Jersey.[55] Other states followed New Jersey's lead in liberalizing their business-chartering laws.[56]

At the federal level, in 1890 Congress passed (with near unanimous votes in both the House and the Senate) the Sherman Antitrust Act, which outlawed trusts and any other "conspiracy" that fostered monopolistic behavior. The act was a reaction to public demands, but it did little more than put into statutory law what was already regarded as a basic legal standard under common law. For the major trusts that had already taken steps to incorporate, it closed off one major option for future competitors.

But most notable for our concern here is that these policy changes at the state and federal levels transformed the business landscape. Between 1895 and 1904, more than 1,800 businesses disappeared as the number of new corporations increased. We can attribute part of the change to market turmoil during this period, but a significant portion was the result of the shifting landscape brought about by modifications in state and federal laws.

Antitrust Enforcement as Policy

Like any other policies, those that shape industries have changed over time. One constant has been that states have retained the authority to determine whether and how businesses can be incorporated.[57] Federal antitrust policy, however, has gone through many changes. Although the Sherman Act of 1890 is often regarded as a major development in this area, for nearly a decade it was rarely used, and then it was often used against labor unions rather than corporations. During the administrations of Theodore Roosevelt and William Howard Taft, however, enforcement picked up as the Department of Justice issued 120 lawsuits against companies in different industries. The results were mixed, as in each case the courts applied a "rule of reason" that focused on whether the alleged monopoly was acting in a way that damaged the competitive environment. The behavior of Standard Oil of New Jersey was found to violate that standard, and in 1911 the courts ordered the corporation to be broken up into smaller entities, thus creating Standard Oil of Indiana (later known as Amoco), of New York (Mobil Oil), and of

California (Chevron Oil), while the New Jersey corporation (called Esso—created from *S* and *O*, the initials of Standard Oil) remained viable. In many other cases, however, federal lawsuits against trusts failed in court or were dropped.

In 1914, again riding a popular wave of antitrust sentiment, Congress passed two acts. The Clayton Antitrust Act included provisions focusing on corporate practices that tended to be monopolistic, whereas the Federal Trade Commission Act established a regulatory body (the Federal Trade Commission) that would monitor business practices in general and scrutinize how corporations were organized. In 1933, the antitrust work of the Department of Justice was consolidated under the newly organized Antitrust Division. Over the years, Congress has added or modified other provisions of antitrust policies, with states also playing a role under their own laws regarding anticompetitive practices.

The history of antitrust actions under the joint jurisdiction of the Antitrust Division of the Department of Justice and the Federal Trade Commission has often been characterized metaphorically as a pendulum pattern, with periods of active enforcement followed by periods of lax enforcement. But it has also been characterized as evolutionary, as enforcement has adapted to both the nature of legal interpretations and economic changes within specific industries.

Although the media conglomerates are subject to the general antitrust policies of both the Federal Trade Commission and the Department of Justice, core parts of their holdings come under the jurisdiction of other government agencies, especially the Federal Communications Commission, which has regulated the nation's airwaves since its creation in 1934.

That's Entertainment!

Because a good deal of our daily lives is spent consuming various forms of information and entertainment generated by mass media corporations, we should be aware of how those giant organizations developed.

But knowing the details about the unique background of each of these major conglomerates does not explain how the industry went from fifty in 1983 to these six in 2014. Each made critical strategic decisions, and some succeeded, whereas others did not. What is important is that many of those decisions were linked to government policies.

Among the success stories is that of Sumner Redstone. His family's National Amusements Company was a key player in the movie-distribution business through its ownership of movie theaters around the world. Convinced that content would prove to be more important than distribution in the long term, Redstone made significant investments in several movie studios during the 1960s, and he was on the lookout for other investments. The opportunity came in 1970, when the Federal Communications Commission issued a set of rules that prevented the major television networks from airing nonnews programming that they had a financial stake in. That rule revolutionized television production by forcing the networks to go outside their companies to develop prime-time shows, but it also led CBS to spin off its very successful production and syndication division—Viacom—into a separate corporation.[58] Redstone immediately took a major financial position in the new company. As Federal Communications Commission rules were relaxed, Redstone brought CBS under the control of Viacom in 1999 and, several years later, spun off a newly reconfigured CBS while retaining control over Viacom.

The relaxation of those Federal Communications Commission rules in the 1980s was actually part of the major shift in all antitrust enforcement that was part of a general trend favoring deregulation of the American economy. Some antitrust efforts pursued at that time (e.g., the forced breakup of the AT&T monopoly in telecommunications) complemented the deregulation agenda, but in other areas, such an the entertainment industry, antitrust enforcement was eventually relaxed.[59] One result, according to historian Jennifer Holt, was that the "well-regulated borders" that kept the different parts of the entertainment and media industry apart were slowly eliminated, and as they were, the consolidation and integration of media properties began.[60]

The pivotal development was a 1983 decision by the Antitrust Division not to challenge the plans of three media companies—Columbia Pictures (at the time owned by Coca-Cola), HBO, and CBS—to

back the creation of a new Hollywood studio: TriStar Pictures. The arrangement effectively joined three segments of the media industry—movie production (Columbia), cable distribution (HBO), and television broadcasting (CBS)—in a venture that would become the model for similar combinations. The logic at the time was that antitrust laws could be applied to mergers and other efforts that might reduce competition *within* media markets (e.g., movies, cable television, and broadcast television) but not *across* markets. That logic opened the door to corporate decisions that eventually led to the consolidation and integration of media companies—and, as a result, the emergence of today's media industry giants, as the borders gave way to investment frontiers.[61]

Conclusion

How do government policies shape the media landscape?

Although this Policy Connection has highlighted how government antitrust policies helped shape today's media industry, we should also recognize the role of other factors. Copyright and patent laws have been crucial in the development of media technologies,[62] as have the regulatory rules regarding content and ownership of media properties that we discussed in Chapter 10. The growth of these media conglomerates has also been tied to the globalization of the economy, which has subjected these companies to the legal and political forces of other nations.

Ultimately, however, it is the decisions made by the top managers at these conglomerates that determine their form and future. The U.S. media landscape in 2014 was dominated by six conglomerates, but the form and number of these media giants remain in flux. For example, the number of media giants actually increases at times when their owners decide to "spin off" some of their holdings for business reasons. Thus, in 2013, Rupert Murdoch split NewsCorp from 21st Century Fox, and Time Warner put its publications division into a separate company, Time, Inc. Other moves indicate more consolidation. The media landscape is likely to change even more in the coming years.

In addition, the future of the media industry is increasingly linked to decisions made by technology and online giants such as Apple, Google, Amazon, and Netflix. Each has already made a difference in the various segments of the media industry, especially in music production, book publishing, and movie/television distribution and production. Their decisions, as well as any further shifts in antitrust enforcement and other regulatory policies, will likely determine what the media industry looks like in five years.

QUESTIONS FOR DISCUSSION

1. **Many observers have argued that the continued consolidation of media holdings poses a threat to American democracy because it puts more control over information and news in the hands of a small group of corporations. Others claim that these fears are unwarranted, because the media industry is so competitive and new technologies emerge that tend to limit control. How concerned are you about the trend toward the consolidation and concentration of media ownership in the hands of a few corporations?**
2. **The media industry is not the only segment of the American economy that has been subject to domination by a few corporations. Consider the roles that companies like Apple, Microsoft, and Google play in their markets. Despite many antitrust actions against it dating back more than a hundred years, the oil industry remains dominated by a few companies. The pharmaceutical, telecommunications, and eyewear markets are also highly concentrated. What role should the government play in these markets? At what point and to what extent should antitrust policies be used to break up such concentration in different markets?**