

Notes on Committee Decision

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Introduction

Norway is the first ranking of the “World Press Freedom” by Reporters without Borders (2017). Switzerland is the seventh ranking of the same research. What are their common characteristics? They are not Member States of the European Union. Furthermore, in the perspective of regulation for broadcasting, they do not have so-called totally independent regulatory committees, according to the European Regulatory Group for the Audiovisual (2015).

Can we think that independent regulatory committees are better for implementing broadcasting regulations in terms of freedom of speech and making such decisions compared with one regulator regime? This is what this note interests.

In this note, first, I discuss the definition of “independent regulatory committees” mainly based on European standards. Second, I use the simple theoretical model based on the social choice theory to show whether or not the committees are not always “tolerant.” Third, I evaluate some assumptions with previous behavioral economics literatures and empirical studies of Board of Education in Japan. Then, I provide things left to do as a conclusion of this note.

Independent Regulatory Committee

For the following, I will use “independent regulatory committee” just as bodies that consist of plural members for making decisions for implementing regulation. Even the European Union, who is strong supporter of independent regulator, has not been able to define “independent regulation body” for the audiovisual media services until adopting Directive (2018/1808/EU) amending Audiovisual Media Services Directive (2010/13/EU) in 2018. Until then, “independent regulation body” is used without any definition (Castendyk, Dommering, & Scheuer, 2008). In this context, the European Union usually refers to the European Convention on Human Rights and Fundamental Freedoms and its Recommendation and Declaration (Schulz, Valcke, & Irion, 2013). In these agreements, incompatibility, finance independence,

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competence for licenses, accountability, etc. are mentioned as the characteristics of the independence. However, these agreements also leave some discretion of Member States: “some parts of broadcasting regulation may be exercised by governmental administrative authorities” (Schulz et al., 2013: 59) so that it is difficult to precisely define “independence.” Indeed, Hallin et al. (2004) define three models in European, which are (1) Mediterranean or Polarizes Pluralist Model, (2) Northern European or Democratic Corporatist Model, (3) Northern Atlantic or Liberal Model (Hallin & Mancini, 2004). Type (1) and Type (2) are under state intervention in terms of subsidies, in particular (Hallin & Mancini, 2004: 67), which may exposure the risks of independence from states. In sum, the definition of “independence” has some variances even among EU member states. Then, as I define “independent regulatory committee” are just as bodies that consist of plural members for making decisions for implementing regulation in this article.

Theoretical Model

Now I move to the analytical session. Based on the definition of independent regulatory committees, I will compare one regulator system (thereafter “ONE REGULATOR”) and one independent regulatory committee system (thereafter “COMMITTEE”) by using primitive median rule based on Black (1998). The model is as follows:

–Let “S” be the space for speech, which is one dimension and has interval $[0, 1]$. For example, regarding political impartiality axis, “0” means supporting only conservative views and rejecting any liberal views, and “1” means vice versa.

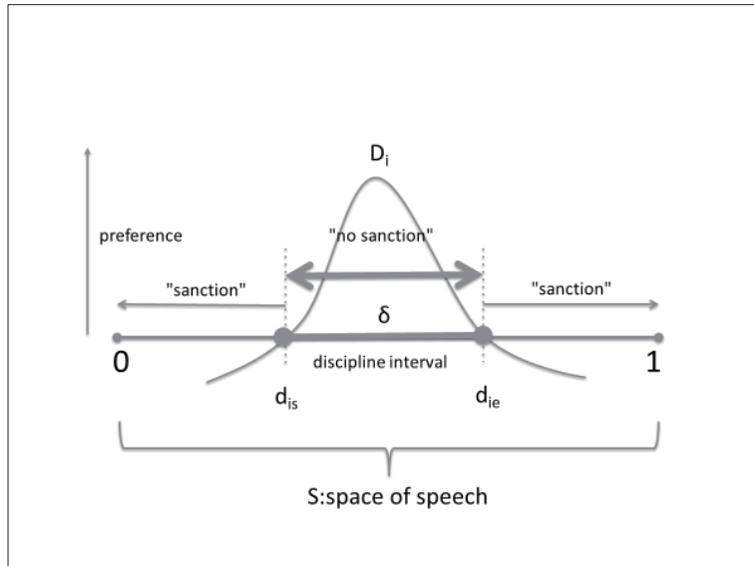
–Suppose each regulator i has his/her own discipline interval $[d_{is}, d_{ie}]$ where $0 \leq d_{is} < d_{ie} \leq 1$, and $i=1, 2, \dots, n, \dots, 2n-1$ (for ONE REGULATOR, $i=m$, standing for “Minister” only).

–Each width between d_{is} and d_{ie} is equal to δ (each tolerance is same) and unchangeable.

–Each regulator i 's discipline d_i is single-peaked and $D_{i-1} < D_i < D_{i+1}$ for all i .

–Each regulator i 's discipline interval is different and $d_{i-1s} < d_{is} < d_{i+1s}$ and $d_{i-1e} < d_{ie} < d_{i+1e}$ for all i .

Figure 1: A Regulator's Discipline and Voting Decision.



— When each regulator faces disputed issues on their table, each regulator chooses “sanction” or “no sanction.” He/She cannot choose to abstain. If each regulator thinks that the issue does not fall within his/her discipline interval, he/she chooses “sanction.” Otherwise, he/she chooses “no sanction” (see Figure 1).

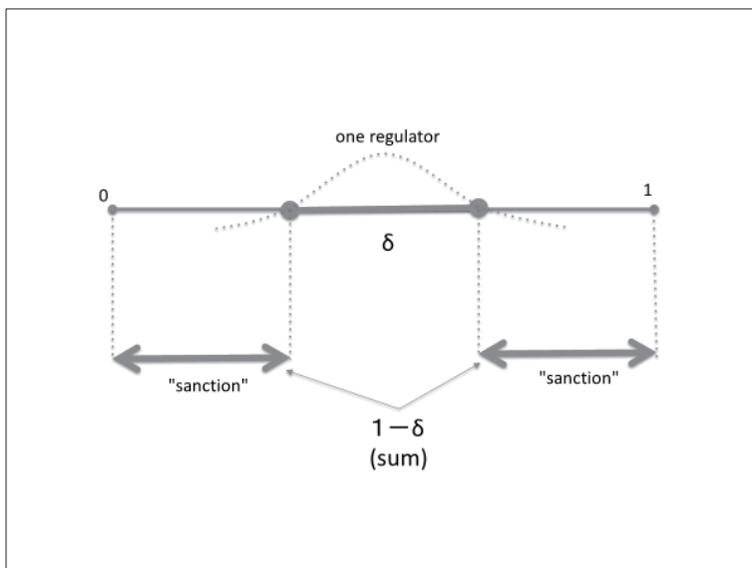
— For ONE REGULATOR, his decision is the final decision. For COMMITTEE, the final decision is made by a simple majority voting. For an issue, if more than n regulators choose “sanction,” the final decision is “sanction.”

Lemma

a) ONE REGULATOR

If the issue does not fall within $[d_{ms}, d_{me}]$, the decision is “sanction” by the assumptions. The extent of “no sanction” is δ (see Figure 2).

Figure 2: ONE REGULATOR's Voting and the Width of "No Sanction".



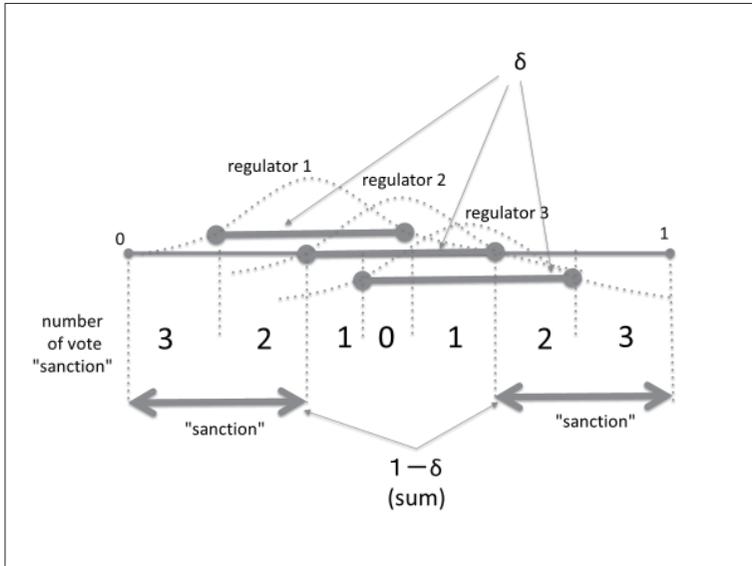
b) COMMITTEE

If the issue does not fall within $[d_{ns}, d_{ne}]$, the final decision of COMMITTEE is "sanction," where "n" is the median regulator. The extent of "no sanction" is at most δ .

(Proof)

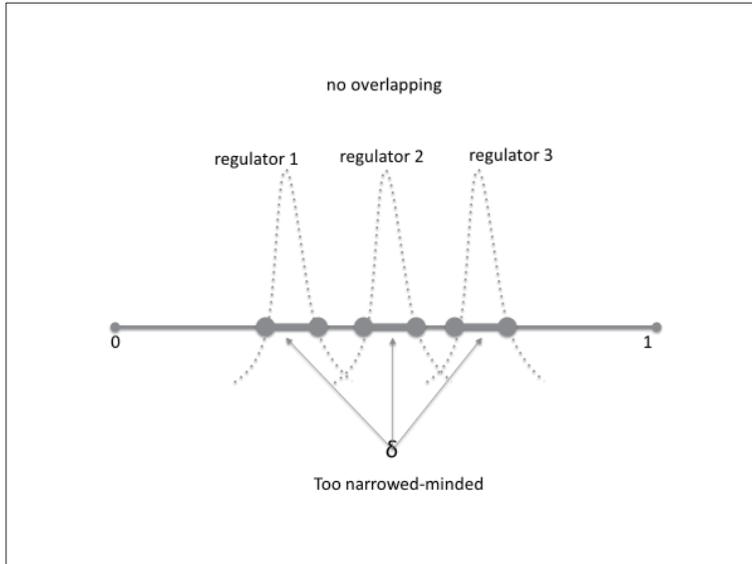
Suppose that the majority votes "sanction" and the median regulator vote "no sanction." In this case, all the regulators from 1 to n-1 (or "from n+1 to 2n-1") vote "sanction" and one or more than regulator from n+1 to 2n-1 (or "from 1 to n-1") vote(s) "sanction." In order to realize this, the issue would be outside of the regulator n+1's (or n-1's) discipline interval and the terminal point of the regulator n+1's (or the initial point of the regulator n-1's) discipline interval would be more that the one of the regulator n's interval, so to say, $d_{ne} > d_{n+1e}$ (or $d_{ns} < d_{n-1s}$). However, this is the contradiction of the assumption because $d_{ne} < d_{n+1e}$ (or $d_{ns} > d_{n-1s}$). For from n+2 to 2n-1 (or from 1 to n-2), same contradiction happens. So, without the median regulator, the majority is impossible. For contraposition, if the majority is formulated, the median regulator is one member of the majority (see Figure 3), whose interval is at most δ .

Figure 3: COMMITTEE's Voting and the Width of "No Sanction".



Let me see the situation where the extent of “no sanction” is less than δ . For intuitive understanding, let us suppose that δ is very small, say, each regulator is too narrow-minded. For COMMITTEE, if so, it might be possible that the overlapped interval were very limited, and the decision “sanction” might happen at more occasions. This situation is shown as Figure 4.

Figure 4: COMMITTEE's Voting and the Width of "No Sanction" If Regulators Are Narrow-Minded.



For example, even the interval of the median regulator would not be “no sanction” if no other $n-1$ regulators overlap the interval of “no sanction” of the median regulator. So, the extent of “no sanction” is at most δ . For ONE REGULATOR, the extent of “sanction” is $1-\delta$ and the extent of “no sanction” is still δ (Figure 2). □

So, it is not always true that COMMITTEE is more tolerant than ONE REGULATOR.

Discussion and Practical Implications

In general, it is thought that COMMITTEE is better than ONE REGULATOR in terms of keeping the space of speech and media free. However, according to the above model based on a simple majority voting, it is not always true. If the regulators in COMMITTEE are narrow-minded, the results become worse in terms of “tolerance” where the regulator do not exercise “sanction.” This eccentric implication is deduced from the assumptions a) that the width of the discipline, in particular, the one of ONE REGULATOR is equal to the ones of the regulators in COMMITTEE and b) that the regulators in COMMITTEE will not change their

‡ Another implication is to avoid a simple majority voting and to choose other decision processes, but it is beyond my scope of this note to consider them.

attitudes after the discussions[‡]. Following I will discuss these assumptions and point out the issues to be discussed for the COMMITTEE.

a) Width of Discipline

You may say that if the ONE REGULATOR is a member of the Diet, the width of the discipline should be narrower because he/she is entrenched to his/her own discipline. Is it true? If he/she is facing with the public and media pressures including critics from broadcasting industry itself, how can he/she stick to his/her own discipline. If so, he/she will face the difficulty to gain a majority in the next election. In fact, according to the Article 63 of the Constitution of Japan, “The Prime Minister and other Ministers of State may, at any time, appear in either House for the purpose of speaking on bills, regardless of whether they are members of the House or not. They must appear when their presence is required in order to give answers or explanations.” The Minister must explain if he is required to do so in the Diet. The Minister is obliged to brief why he/she has made decisions in front of the lawmakers and public mass, including constituencies. It is possible to consider that ONE REGULATOR who is Minister and a member of the Diet carefully looks at the public opinion and these pressures make him/her wider, at least, not to be very narrow.

Regarding COMMITTEE, the requirement of “independence” influences the width of the discipline. As a requirement of “independence,” committee members shall exercise their powers independently and impartially. In order to do so, they may not be dismissed against their intentions in principle. This is a good point of COMMITTEE. This “independence” system itself tries to structurally guard the members from the pressure of the third parties. If this “independence” is too rigid, what will happen? If regulators were not obliged to explain the reasons of their decision publicly, they might have few incentives to change their disciplines and not to behave as they like, so it could not be denied that their width might be narrower. From another viewpoint, Stigler (1975) advocates, based on the empirical data of the independent committee in United States, the theory of industry-acquired regulation where committee members would try to avoid the conflict for the industry for their future carrier. In these cases, the width of the disciplines becomes wider. We should take into account the problems based on these practical incentives in order to compare the systems.

b) Effect of Discussions

Discussions lead to “wiser” and more tolerant conclusion, is it true? In the context of broadcasting regulations, the committee deals with the issues touching upon beliefs and thoughts such as the freedom of expression and information as well as political viewpoints. It is true that some empirical studies show that “wiser” decisions are realized after the discussions. Lombardelli et al. (2005) implemented

the experiment whether individuals or group is wiser for the “appropriate” interest rate as the central banker, which seems that discussions lead to smart conclusions. However, this experiment is trying to look for the answer which can be calculated based on some functions. It is not for the experiment for finding the truth nor the idea nor the ideology decision. Sunstein et al. (2006) collected the decision data of US independent authorities including judges and found out the polarization. For the Federal Communications Committee, which is in charge of content regulation, the more the committee members are appointed by Democrat President, the more liberal the decision. It is possible to lead to so-called polarization, which is less tolerant. In order to avoid these situation Sunstein et al. (2006) insists that the committee consists of diversified members and asks for deliberative democracy.

I will see the experiences in Japan. Board of Education deals with the basic policy, including moral education, history, etc., which might be affected by the political stances, which is similar to the concerns of broadcasting. Ogawa (2006) supports the system of board of education in terms of possibility of taking minority’s opinions into account and of long-term strategic plan for education free from influence of mayor/governor changes. On the contrary, it criticizes the ambiguity of the responsibility and obligation and points out the substantial risks of control of administration by the way of financial resources (Ogawa, 2006). While Ogawa (2006) is qualitative research, Kajisa (1998) conducted empirical studies. It finds that the superintendent of the Board of Education, which leads the Secretariat of the Board, has substantial power and the almost all of the proposals from the superintendent have been accepted. Although the board consists of plural members, the intensive discussion was rare at that time (Kajisa, 1998).

This can be explained by the concept of “information signal” as we saw in Sunstein et al. (2015). The information and opinions by the first presenter are very much influential, indeed. In addition, the “reputation cascade” is also important. The board member is worried about the decline of his reputation in the said community if he/she says something out of focus. Then we can see the tendency that the follower speakers agreed on the former information or comments and the first speaker’s opinion is strengthened by the followers’ opinions. Moreover, the committee sometimes falls into “group-think” as I saw above. In general, defining responsibility is very important so we should also consider from this criteria.

Others to Do

In this note, I focused on the decision-making procedure. However, other things should be discussed. For example, if ONE REGULATOR is a politician, it is concerned that he/she would intervene in the programs which were against his/her political discipline. Even for COMMITTEE, however, Powe (1987) and Hasebe (1992) points out that political intervention occurred. So the important thing is to

expect the possibility of the political intervention in any systems and to prepare the countermeasures towards them. One of the possible countermeasures is embedding transparency and accountability into the system where the people can monitor the regulators' decisions as much as possible and they can exercise their powers such as by voting. The concrete design for transparency and accountability is very important both for ONE REGULATOR and COMMITTEE.

In addition, we had better consider from the constitutional viewpoint. For the presidential system, the separation of powers is more rigid, and the member of the Cabinet is a political appointee. He/She basically has the responsibility for the President. However, for the parliamentary system, the Ministers bear the prime responsibility for the Diet and they should explain in front of the Diet. This point should be considered more carefully by looking into the experiences in the parliamentary system such as the Office of Communications in United Kingdom.

Conclusion

In this note, based on the literatures of the social choice theory and behavior economics, I show that the committees are not always "tolerant" and point out the issues to be discussed. However, this is just a note and, in order to reach conclusions, we need more elaboration for many perspectives as I mentioned in "Others to do."

Finally, freedom of expression is fundamental rights and fragile. Broadcasting is nowadays playing a key role for exerting freedom of expression. So it is always important and necessary to continue to pursue the best regulation system. However, at considering the regulatory regime, the most important thing is how to maintain and cultivate freedom of expression. Hence, it is too naive to accept the regulatory regime based on the rationale "others do so we do" and we need more discussions.

REFERENCES

- BLACK Duncan (1998). *The Theory of Committees and Elections*. The Netherlands: Kluwer Academic Publishers, chapter 4.
- CASTENDYK Oliver, DOMMERING Egbert, & SCHEUER Alexander (2008). *European Media Law*, Kluwer Law International BV., The Netherlands, p.996.
- EUROPEAN REGULATORY GROUP FOR THE AUDIOVISUAL(ERGA) (2015). *ERGA Report on the Independence of NRAs*. Belgium: Author, p.15.
- HALLIN Daniel C. & MANCINI Paolo (2004). *Comparing Media Systems: Three Models of Media and Politics*. Cambridge: Cambridge University Press.
- HARADA Yuki (2011). "Denpa Kanri Iinka no Igi/Kyoukun [Implications and Lessons of the Radio Regulatory Commission]". In *Joho-Tsusin-Seisaku-Review [Review of Information and Communications Policy]*, 2: 1-37. Tokyo:

- Institute for Information and Communications Policy, Ministry of Internal affairs and Communications.
- HASEBE Yasuo (1992). *Terebi no Kempo Riron [Constitutional Theory for Television]*. Tokyo: Koubundo.
- KAJISA Tetsuya (1998). *Kyouiku Inkai no Seisaku Keisei nikansuru Jisshouteki Kenkyuu [Empirical Studies about Policy Process in Board of Educatuain]*. Tokyo: Taga Shoten.
- LOMBARDELLI Clare, PROUDMAN James, & TABOT James (2005). "Committees Versus Individuals: An Experiment Analysis of Monetary Policy Decision Making". MRP (Munich Personal RePEc Archive) Paper No.823.
- OGAWA Masahito (2006). *Sityouson no Kyouiku Kaikaku ga Gakkou wo Kaeru [Reforms of Education in Local Governments Change Schools]*. Tokyo: Iwanami Shoten.
- POWE Lucas A. (1987). *American Broadcasting and the First Amendment*. Berkeley: University of California Press.
- REPORTERS WITHOUT BORDERS (2017). "2017 World Press Freedom". Retrieved from <https://rsf.org/en/ranking>
- SCHULZ Wolfgang, VALCKE Peggy, & IRION Kristina (2013). *The Independence of the Media and Its Regulatory Agencies*. Bristol and Wilmington: Intellect, chapter 3.
- STIGLER George J. (1975). *The Citizen and the State: Essays on Regulation*. Chicago and London: The University of Chicago Press, chapter 9.
- SUNSTEIN Cass R., SCHKADE David, ELIMAN Lisa M., & SAWICKI Andres (2006). *Are Judges Political? An Empirical Analysis of the Federal Judiciary*. Washington, D. C.: Brookings Institution Press, pp.37-38.
- SUNSTEIN Cass R. & HASTIE Reid (2015). *Wiser: Getting Beyond Groupthink to Make Groups Smarter*. Boston: Harvard Business Review Press.