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Good Copy and Big Money

by Camille Moisan

Who owns the big audiovisual media and the press in France? How does this affect the pluralism and independence of information? An economist and a lawyer give a grim diagnosis of the situation and set out the principles that might allow information, a public good, to be better protected.

A review of : Julia Cagé and Benoît Huet, *L'information est un bien public. Refonder la propriété des médias*, Paris, Seuil, 2021, 264 pages, €15.

Julia Cagé, an economist, and Benoît Huet, a lawyer, are both familiar with issues relating to the media[1]. In *L'information est un bien public* (meaning "Information is a Public Good"), they combine their respective expertise to raise the alarm about the current ownership situation of these sources of information in France: "year after year, […] ten people, then just nine, have owned 90% of the media" (page 12). According to the two authors, this concentration in the hands of a few rich shareholders is detrimental to media independence and pluralism, which are essential conditions for democracy. Taking a historical, economic, and legal approach to the problem and drawing on examples from other countries (the United States, the United Kingdom, Germany, Switzerland, Ireland and Mexico), the two authors do more than just paint a bleak picture of the French system of media ownership. They also advocate a detailed

[1] See, for example, Julia Cagé's work, *Saving the Media*, Cambridge, Massachusetts, Harvard University Press, 2016. See also Benoît Huet's articles, "Quand Mark Zuckerberg impose ses lois à 2,2 milliards d'individus", *Le Monde*, 19 December 2018; "La liberté d'expression au défi des fake news", *Le Monde*, 25 August 2017; "Entreprise solidaire de presse : le modèle Charlie Hebdo, une aubaine pour les journaux ?", *Huffington Post*, 21 August 2015.

project designed to "democratise the governance and share ownership of media outlets" (page 12). This is probably the most interesting contribution of their work.

The current state of media ownership

In France, freedom of enterprise has created a great variety of forms and approaches for managing media outlets (page 67). They can, for example, be established as companies or associations, with different articles of association and rules of administration. Nevertheless, the authors' in-depth study of these various forms reveals that, in the current French legal context, none of them are particularly satisfactory.

The most popular administrative model for both press and audiovisual media outlets in France is that of the commercial company, due its benefits for shareholders. Investing in a media outlet gives shareholders both financial entitlements and decision-making rights that are proportional to their investments. Yet the "commercial company" model is a threat to the independence of newsrooms. There is a tension between journalists' mission to inform and the financial interests of shareholders, which can lead to a form of "censorship or self-censorship in newsrooms" (page 72). For example, the authors emphasise the subjectivity of French newspaper *Le Figaro*'s coverage concerning the affairs of the Dassault family, its main shareholder.

As for the more "disinterested" media management models, such as the association or the cooperative, although they help to limit "the risks of shareholder interference that affect commercial companies" (page 95), they face the major problem of funding. Receiving nothing in return is not attractive to donors or investors.

Having identified this issue, the two authors study possible ways of protecting independence and pluralism in media outlets that take the popular form of the commercial company. They particularly focus on two mechanisms: ring-fencing of media capital and rules to ensure pluralism. Media capital can be ring-fenced by transferring capital to a non-profit organisation, such as an association, a foundation or an endowment fund. Although this idea seems appealing, the authors show that these tools actually provide insufficient protection. Even the endowment fund, which the authors seem to favour, has certain limitations. In fact, "depending on how its statutes are written, the endowment fund can either protect a media outlet's independence or be a tool for constraining it" (page 137). Consequently, taking two French newspapers as examples, while for *Mediapart*, the fund's statutes "[provide] firm guarantees of independence for the newspaper" (page 138), the endowment fund that owns *Libération* is designed to guarantee strong decision-making authority to SFR, the sole founding company of the fund.

The analysis of the measures designed to guarantee media pluralism, be they anti-concentration rules or state aid for the press, shows that the currently available legal instruments in France are inadequate. For example, the scope of the rules limiting media concentration is particularly narrow. These rules simply state that one person cannot control more than 30% of the total national circulation of daily publications. Therefore, the rules do not apply to weekly or monthly publications, the local press or groups of companies.

Proposed principles

Luckily for the reader-citizen, the last chapter of the book is more optimistic and offers fresh ideas. Because "information is a public good" (page 186), Julia Cagé and Benoît Huet suggest introducing new rules designed to "protect journalists' independence and freedom to inform" (page 186) and to escape the trap of the media's current situation. Their proposal for a "law for the democratisation of information" (page 195) is based on four fundamental principles and targets not only the media, but also the organisations that own media outlets. To ensure its efficacy, the authors suggest that obtaining a frequency (for the audiovisual media) or the main public subsidies (for press companies) should be conditional on compliance with these four principles (page 219). In other words, in order to exist, media outlets would be obliged to respect these principles.

The first principle states that the governance of the media should fully involve "journalists and employees" (page 196). They should make up at least half of the members within the governing bodies of media outlets and of the endowment funds or foundations that own them. The aim is to ensure they have a real say in the management of media outlets.

Secondly, the two authors are in favour of generalising the right of approval. This right, which means that transfer of company shares requires the prior approval of the board of directors, currently applies only to press companies. Combined with the first principle, generalising the right of approval would help to strengthen journalists' and employees' influence over share transfers, because at least half of the board of directors would consist of journalists and employees.

The third principle aims to make governance and share ownership more transparent, in order to improve reader confidence in the media by exposing potential conflicts of interest (page 210). The example of French newspaper *Le Monde* is particularly significant. The publishing company is owned 75% by Le Monde libre, which is owned 36.7% by NJJ Presse, which is owned by NJJ Médias, which is owned by NJJ Strategy, which is owned by NJJ Holding, behind which is Xavier Niel. However, Niel is also the director of the company Free. Although most readers of *Le Monde* are aware of this today, this is only because of the newspaper's code of ethics. There is no general rule requiring that this information be published. Consequently, the authors recommend that every media outlet should have to "visibly and accessibly make full information available to all citizens about the identity of the members of its managing bodies and the composition of its capital" (page 209).

Finally, Julia Cagé and Benoît Huet recommend increasing the human and financial resources of newsrooms by requiring them to have a minimum number of staff journalists and by setting aside a substantial part of the profits. More precisely, the aim would be to create "a mandatory statutory reserve devoted to the maintenance and development of business activity" (page 216).

This measure designed to democratise the media is complemented by two additional measures. First, the authors suggest creating "media independence vouchers" (page 222). These vouchers, which are reminiscent of the "democratic equality vouchers" already proposed by Julia Cagé in the context of political party funding[2], would provide "a new form of public funding of the press" (page 223) dependent on compliance with the four principles mentioned above. Every year, each citizen could decide to allocate 10 euros to a media outlet of their choice. However, there would be a limit: no one media outlet could receive more than 1% of the vouchers. This would also guarantee media pluralism.

Moreover, the two authors suggest the creation of a continuity fund for the media, which would be an improved version of current methods for ring-fencing

[2] Julia Cagé, *The Price of Democracy*, Cambridge, Massachusetts and London, England, Harvard University Press, 2020.

capital. This would offer multiple advantages for the independence of newsrooms: the possibility of providing financial support to the media outlet, the impossibility of selling securities, and no state supervision.

This work thus contains many ideas and sound proposals. The final chapter can be seen, in the authors' own words, as a "toolkit" (page 240) to help readers rethink the ownership of the media in a democratic system.

A central role for citizens?

There is just one small thing that could be improved about this work: the aim of democratising the media pursued by the authors is perhaps somewhat lacking in precision. The project described in the final chapter seems a little unclear when it comes to determining who should be given the power to make decisions. For example, on the democratic governance of the media, the authors state that in addition to the presence of journalists and employees in governance bodies, "one possibility would be to go further by ensuring […] that readers/listeners/viewers are also represented" (page 199). The authors suggest restricting the category of readers to "subscribers". However, as they themselves ask: what should be done in the case of the free media? (page 199). And why should occasional readers, or even potential readers, not be taken into account? A few pages later, on the subject of the transparency of governance and share ownership, the authors suggest that information on the governance and ownership of the media should be accessible "to all citizens" (p. 209), therefore including a much wider circle of people. Consequently, there is one question that Julia Cagé and Benoît Huet do not answer clearly: who, ultimately, should be at the heart of the media democratisation process? Journalists, readers and/or citizens?

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