

Life after Hutton: Reviewing the BBC Charter

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The first BBC charter, the DCMS website tells us, ran from January 1927 to December 1936. At that time, the BBC was cosily housed on Savoy Hill, just around the corner from here. The website also tells us that we are now approaching the end of the seventh charter. (1).

I have consulted the LSE's distinguished mathematicians, who confirm my suspicion that there is something odd about this arithmetic. Somewhere along the way, a decade has been lost. But that is not, as we shall see, the only odd thing about the governance of the BBC.

The current charter comes to an end in December of next year. One might think, therefore, that in twelve months' time it would be a good idea to begin thinking about it. Yet in fact the process has been underway for almost a year already. The Burns panel, on which I sat, was appointed last spring. One BBC governor pointed out to me the other day that 30 per cent of each charter period is spent reviewing it, which creates a difficult environment for the corporation's management. I have some sympathy for that view. On the other hand, there seems no limit to the groups and individuals who wish to make their contribution to the process. So time is needed.

Charter review is typically the occasion for some breast beating about the future of broadcasting, and the role of the BBC in our national life. The first charter was drafted following the report of the Sykes committee, which initially recommended licence fee funding. Subsequent renewals have spawned a series of further reviews: the Crawford Committee, the Selsdon

and Ullswater Committees in the 1930s, the Hankey Committee and, indeed, the Beveridge Committee in the 1940s - when the LSE first took a hand. Beveridge was happy to see the BBC remain as the sole broadcaster, though Selwyn Lloyd produced a dissenting minority report recommending the end of its monopoly. In more recent times the story has been taken up by the Pilkington Committee -which, I had not recalled, included both Richard Hoggart and Joyce Grenfell - the Annan Committee, the Hunt Committee, the Peacock Committee (Alan, not Michael) and the Davies Committee (Gavyn, not Howard). (2).

These days, formal committees and royal commissions have rather gone out of fashion. This government typically prefers reviews by individuals, normally written by officials in the treasury. Whether that produces an improvement in the quality of decision-making is a subject for another day.

Hutton

On this occasion, the background to charter renewal has been somewhat complicated by the Hutton Inquiry into the circumstances surrounding the death of Dr. David Kelly. (3). Of course Lord Hutton did not inquire directly into the governance and funding of the BBC, but his report cast some light on the complex relationship between the governors and the management of the corporation. And he concluded " the governors should have recognised more fully than they did that their duty to protect the independence of the BBC was not incompatible with giving proper consideration to whether there was validity in the government's complaints".

This conclusion, and indeed many others in Lord Hutton's inquiry report, has been heavily contested by those involved. As a result, its influence on the new charter will be small.

Indeed Hutton's conclusions on the role of the Governors were barely mentioned in the debate in public stimulated by the Burns panel, and the Burns panel recommendations owe little or nothing to them.

The medium term consequences of the Hutton report have been somewhat different from those which its author appears to have intended. In his recent book "Brown's Britain", Robert Peston (4) neatly summarises the reaction in the heart of government "Blair's immediate reaction was relief that the government was cleared of acting disreputably." He writes, "but his elation soon turned to despair. Hutton's report had been so forgiving of the government that it was widely derided as incredible. Far from restoring the Prime Minister's reputation, voters' confidence on the stewardship of the country fell even further."

The point about Hutton in relation to the Charter, as I see it, is that it creates an environment in which any steps taken by the government to alter the governance of the corporation risk being seen as an act of revenge, or at least of cutting the BBC down to size. Far from making it easier to envisage a different funding or regulatory regime for the Corporation, or even changes in the role and composition of the governors, Hutton has made it more difficult. For those of us who believe it is important to create a more rational framework to guard the BBC's independence that is yet another unfortunate outcome from the inquiry.

Burns

Perhaps, that is one reason why the government has chosen to take a slow and deliberate approach to the process of renewing the charter, beginning with a public consultation, then the reports by the Burns panel, and proceeding on through a Green Paper, presumably then a White Paper and conceivably a Bill, before the eighth charter itself struggles into the world. As Private Eye used to say, "This one will run and run."

The Panel process was interesting. It was chaired, as I have already mentioned, by Lord "Terry" Burns. I guess one can take that for granted, since he chairs most inquiries, these days, from the Financial Services and Market Act through the National Lottery and Fox Hunting to BBC, and now the Football Association. If there were only enough hours in Lord Burns's days to allow him to handle Ireland and the Middle East, the world would be a safer place. The other members of the panel were Alan Budd of Oxford, Sly Bailey of the Mirror Group, Tim Gardam, a former broadcaster, Janet Finch of Keele University and Alice Rawsthorn of the Design Museum. My own role, I suppose, was to bring some experience of other regulatory environments to bear, though whether – as I was anonymously categorized in the Guardian – I am "an ultra-hawk on regulation" I leave it to others to determine.

I should emphasise that what follows is my personal view on the issues at stake. The Panel's point of view has been clearly explained in public in two documents, one green and one white (5) and (6). I am entirely behind the arguments put forward in those papers, as are all my former colleagues. Burns, unlike Beveridge before him, did not generate a minority report. But the way I will describe the reasoning is my own, and I would not wish to put words into my former colleagues' processors.

The most difficult task faced by any reviewer of the BBC and its charter is that of selection. The BBC is so broad and deep that no manageable report can hope to do full justice to all its activities. That, indeed, is one difficulty also faced by its governors and executive management. We received submissions on enormous range of issues. We orchestrated a wide range of seminars, on funding and governance of course, but also on arts coverage, the regions, sport, and the international side of the BBC's activities. Even though many of these issues were not covered in detail in the published reports, I hope that the airtime we gave to a range of different opinions will prove valuable to the BBC in the longer run.

As with most of the previous committees of inquiry, the eventual focus was in two areas: funding and regulation/governance. Obviously, the two questions are intimately linked. The way in which the BBC is funded carries necessary implications for the accountability framework and therefore for the regulatory environment and the governance structure. The reverse is also true. But for the purposes of exposition, I will consider them in sequence, beginning with the Funding.

Funding the BBC

The licence fee system has a long pedigree dating back to the foundation of the corporation. In his memoirs, Ian Trethowan, Director General from 1977-1982, summarised the position quite neatly: "The theory of financing public service broadcasting by a poll tax imposed on each set was sensible, and worked well. When the corporation was created in the early 1920s, the fee was fixed at 10 shillings and it remained unchanged till 1946. John Reith was Director General for 14 years and never had to negotiate an increase in the fee" (7). But inflation in the 60s and 70s, and the ending of the natural buoyancy in revenue from increased penetration first of television sets themselves, and secondly of colour sets, created an environment where increases in the fee needed to be regularly negotiated, which proved more difficult for politicians.

The interesting point about Trethowan's description of the licence fee, written in 1984, is that he cheerfully and correctly describes it as a "poll tax". That description, of course pre-dated Mrs. Thatcher's interesting experiment with the community charge, which has somehow damaged the term "poll tax" as a brand. I suspect you would need to look hard to find the BBC describing their licence fee in such terms today.

But just as a rose, by any other name, would smell as sweet, there is no escaping the regressive implications of the licence fee. The Broadcasting Commission under David Elstein, set up by the Conservative Party in 2003, described the problems of the licence fee very clearly (8). Perhaps slightly mischievously they quoted Geoff Mulgan, formerly the Prime Minister's head of strategy and now, among many other things, a visiting professor at this institution. He describes the licence fee as "probably the most regressive tax in Britain today. The licence fee alone stands as an egalitarian flat rate charge, linked in no way to ability to pay." Furthermore, it offends, he goes on "against basic principle of consumerism in that it is paid regardless of your opinions on the relative worth of channels". It is a tax, he concludes "which has no democratic components; it lends no choices to those who pay and conveys no information to the broadcaster."

There are other disadvantages, too, notably the heavy-handed nature of the enforcement regime which criminalizes non-payers, the evidence that poorer people in fact watch less BBC, and typically cheaper programmes, even if they might watch more television in total, so that there is a further element of perverse redistribution built into the system.

These arguments have been well set out by economists and others over many years.

So, indeed, have the counter arguments in favour of the licence fee system. It keeps BBC funding largely out of the public expenditure process, with its political dimension. It promotes editorial independence and generates a stronger relationship between the BBC and the population as a whole than would otherwise be the case. Furthermore, there is evidence that licence fee payers do not particularly resent the impost at its current level. The BBC themselves have produced research which suggests that most people regard it as reasonable value for money, and that many would be prepared to pay more.

Of course the fact that there is a willing buyer and a willing seller does not necessarily mean that busy body economists or competition lawyers might not choose to intervene in the market to improve it. After all, individuals may be making their judgements based on imperfect information, and they have no means of knowing what kind of broadcasting offering might be generated if their funding was channelled in a different way. But undoubtedly this lack of popular opposition to the licence fee produces a high hurdle over which those who would dismantle it must jump.

These arguments are interesting, and good recent work has been done on the licence fee by Dieter Helm and others (9). Some of it was submitted to the panel. But many of the arguments are ones which have been canvassed many times over in the last 79 years. Are there any new elements in the equation this time round, which might cause us unlike William Beveridge, Gavyn Davies and Joyce Grenfell, to reach a different conclusion?

I see two new factors which might give us pause for thought. The first is the arrival of the digital age. The second is the projected decline, which has been well described by Ofcom, in those other elements of public service broadcasting, in the commercial world, which have hitherto provided some counter balance to the BBC's dominant role. (10).

It is important to be clear just why the arrival of digital television might affect the funding argument. In itself, a change in the technology of delivery of broadcasting carries no implication for the nature of that broadcasting. The BBC have attempted to illuminate the debate, but I am not clear that they have entirely succeeded. They commissioned a series of papers under the heading "Funding Public Service Television in the Digital Age", which they published with the misleading and somewhat provocative title "Can the market deliver?" (11). The papers are introduced by a foreword by Mark Thompson which adopts the time-honoured technique of setting up an Aunt

Sally and knocking it down. Thompson says: "Some commentators argue that these technological advances mean that the age of public value in broadcasting is over." I have searched diligently, but failed to identify any commentators who have argued that.

What has been argued, and which is obviously a more difficult point for the BBC to counter, is that the pros and cons of the licence fee may be altered in circumstances in which it is possible to switch off an individual who is not prepared to pay. In those circumstances, is it reasonable to adopt an approach based on compulsion and the law? And if it is possible to switch off a non payer and prevent her from seeing licence fee funded output, in what respects does the system then differ from a subscription service?

In those circumstances, the arguments for and against a subscription basis for the BBC become rather different. So far, the subscription horse has refused at the fence of enforceability, in that free-to-air broadcasting cannot be denied to free riders.

The BBC clearly understands the point, even though Mark Thompson avoids it. We can say this with some confidence, because the thinking of the ancient regime has been set out for us by Greg Dyke in his memoirs - "Inside Story" - published at the end of last year. (12).

There Greg Dyke explains the rationale for the BBC's introduction of Freeview. He adduces two reasons. First, that it is "important that the UK goes digital because that it is the only way to ensure that all BBC services – on radio and television – are available to everyone." But his second reason is defensive and related explicitly to the licence fee. Once you have bought the Freeview box you make no further payments, and the box is not programmed to allow for digital channels to be switched off. Indeed, as Dyke explains, "Freeview makes it very hard for any government to make the BBC a paid television service. The more Freeview boxes out there, the harder it will be to switch

the BBC to a subscription service since most of the boxes can't be adapted for paid TV. I suspect Freeview would ensure the future of the licence fee for another decade at least, and probably longer."

Freeview was, therefore, a cunning move on the part of the Corporation. It is now being appreciated as such by many commentators. Should this ploy, now made transparent, be allowed to succeed? David Elstein is one who thinks it should not. Indeed he argues that a relative small amount of expenditure could adapt these boxes for subscription services.

Where did the panel emerge from these arguments? The conclusions are summarised in the first of the two published papers, entitled "Emerging Themes." (5). There we said "that the balance of the debate lies in the favour of the licence fee for the time being. However, we are impressed with the arguments that suggest that it is becoming increasingly difficult to sustain the licence fee in the long term when conditional access is available." We therefore recommended that sometime during the next charter period there should be a "detailed examination of the way in which conditional access might be developed to deal with circumstances where support for the licence fee is questioned." The halfway point would be a good moment for a review.

It may be argued that this is an elegant exercise in constructing a fence on which to sit. In my view, however, it is a rational place to be at present. The public service broadcasting landscape is changing rapidly, as is the technology. And whatever we may think about the public policy merits of Greg Dyke's astute manoeuvre, we have to take the position as we find it. My hunch is that before the end of the 8th charter, there will have been a shift to a more mixed funding model, perhaps one of the options set out in the panel's paper. But I think it would be unwise to disrupt the licence fee arrangements now, in spite of their many disadvantages. This is not an intellectually elegant defence of the poll tax, but it will have to do for now.

Contestability

We did, though, raise the question of whether all of the money raised by the licence fee should necessarily go to the BBC. One may reasonably think that the licence fee is a sensible means of funding public broadcasting, but that the BBC should not necessarily receive all of the £2.8 billion which the fee currently raises. It has always been possible to envisage that a proportion of the licence fee should go elsewhere but the argument has not been taken seriously in the past. Why might it be worth considering again now?

The reasons lie in an assessment of the likely evolution of public service broadcasting outside the BBC. In an era of spectrum scarcity it was possible to devise funding mechanisms for the commercial sector which created, and effectively financed, a public service obligation on independent companies. That was done in a rather different way for the ITV companies and for Channel 4 but the principle was the same. In a world of limitless digital spectrum these arrangements are far more difficult to sustain and Ofcom has, in its excellent review of public service broadcasting which has served to inform the debate about the BBC charter has calculated that a significant deficit, which it estimates at £400 million, will emerge as digital switchover looms (10). As the panel's interim report points out, "it follows that, if the BBC is not to be left to be a monopoly provider of such programming, a new economic model of funding must be available to incentivise commercial public service broadcasters. An element of competition for licence fee funds is one model that could ensure the continuation of "competition for quality" that has defined the UK broadcasting system to date."

Ofcom have themselves proposed other arrangements. Their report appears to reject the notion of top slicing the licence fee, though the grounds for that rejection are not entirely clear. They consider some kind of licence fee supplement might be appropriate. I find that a somewhat implausible prospect. If money is to be raised through a poll tax for public service

broadcasting, I cannot see that two poll taxes are better than one. Indeed the government rejected the Davies Committee's proposal for a separate digital licence fee in 2000 (13).

The question of how large the licence fee should be to fund a diversity of public service broadcasting is a different one. My own view, therefore, is that there should be one licence fee, but that we should look hard at whether it would be possible to find a mechanism for creating some element of contestability in that funding channel. New Zealand has set up a system along these lines, which is generating some useful experience of how it might work. A BBC-funded paper by Mayhew and Bradley Jones is somewhat negative about its transferability to the UK, though they do conclude that "a contractual approach to the procurement and funding of specific, clearly defined areas of public service broadcasting could complement and strengthen the core UK institutional PSB system". (14). There could well be an emerging role for such contestability in the future, albeit probably, as the authors suggest, on the margins of the existing funding system.

I would not wish to go as far as Alan Peacock now recommends, in his recent paper on 'Public Service Broadcasting without the BBC' (15) In an IEA publication which incorporates that piece, Carolyn Fairbairn, then of the BBC, well articulates the potential downsides of a full contestability model (16)

But if an element of contestability is to emerge, that immediately raises the question of how it should be managed, and by whom. Those questions link neatly to the second area of focus in this Charter Review, the arrangements for the regulation and governance of the BBC in the future. This was the subject on which the panel spent the greater part of its time.

Governance and Regulation

The BBC's governance structure is peculiar. In his memoirs Ian Trethowan describes it as "an extraordinary way to run the most renowned broadcasting organisation in the world". Greg Dyke is, characteristically, even blunter: "The current system of governance should certainly be scrapped. You cannot carry on running one of the biggest media systems in the world with a governance system more suited to a small charity". Indeed to say that a major overhaul is required is now barely controversial. Gavyn Davies has offered a robust defence of the role of the governors, in a speech he made at the Said Business School in Oxford a few months after his resignation. But his successor Michael Grade has made no secret of the fact that he wishes to change both the composition of the governing body, and its role and relationship with the BBC's management. He has already made some moves on both fronts, bringing in Anthony Salz of Freshfields and broadcaster Richard Tait to strengthen the board, and introducing a whole series of additional structural changes under the general heading of "building public value" (17). I will come on to discuss those in a moment.

Unfortunately, while there is almost unanimous agreement that the system should change, there is rather less agreement on how, and why. To take the why first, some commentators focus on the governors lack of knowledge of broadcasting, and see that as the prime problem. Others focus on the political issues. Others, outside the Corporation, think that the problem is to find a way of preventing the BBC acting in a predatory way in relation to its competitors, and that a new governance model should focus on that role. Still others believe that the prime issue is how the Corporation deals with complaints.

My view is that the essential problem is one of structure and accountability. I share Greg Dyke's view that "the logic of the current system whereby the governors are both regulators and also responsible for management no longer

holds water. While it may have worked over the years it no longer stands up to intellectual analysis in a world more and more obsessed by accountability”.

Whether ‘obsessed’ is the right word I am not sure, though, as another Chief Executive working in the twilight world between the public and private sectors, I can see what he means. But I also think that the accountability issues are closely linked to the question of independence. The Hutton episode did show that lack of clarity about the governor’s role made the BBC more vulnerable to political interference than it ought to be. Furthermore this lack of clarity has led to other undesirable features of the relationship in recent years. The government have taken to serving up a series of one-person reviews of aspects of the BBC’s business. Think of the Lambert Review of News 24 (18), the Graf Review of the BBC’s online services (19), or the Gardam and Barwise Reviews of digital radio and television (20).

While these reviews have produced useful recommendations, their very existence suggests that there is something wrong in the way in which the relationships between the government and the Corporation are structured. It should not be necessary for the government regularly to interfere in this way in the BBC’s business, if there were an effective regulator focusing on the public interest. Of course I know that this government has a particular predilection for one-person reviews, and perhaps it is unrealistic to think that, even if they set up a satisfactory watchdog, they would completely stop barking themselves. But the public policy aim should be to devise a system of accountability, regulation and governance which pushes ad hocery to the margins, and creates a stable framework, based on rules and clarity of responsibility, within which the Corporation can move forward. (I am beginning to sound like Gordon Brown, at this point, though perhaps without the conviction that comes with the Scottish accent).

Building Public Value

This analysis is not far from that of the current governors themselves, under the new chairmanship of Michael Grade. In an important paper last year, the BBC described its approach to assessing the public value of their output, and also outlined a new approach to fulfilling the governors' traditional roles. It is fair to say that this new approach remains under construction, so to speak. But the essential characteristics of it are that the governors are attempting to create a separation between governance and regulation, albeit within the existing legislative framework, without any formal alteration of the responsibilities they hold. That evidently imposes some limitations on the degree of change which can be engineered.

On this model there will in future be a physical separation between the governors and the management. The governors have already moved across the road into new premises. They are supported by a new governance unit, separate from the management of the Corporation itself. And the longer-term aim is that the relationship between the governors and the executive should be set within a framework of service licences. In other words, the BBC's management would set out the basis on which, say, Radio 1 would deliver public value in the future. The governors, after negotiation, would agree the terms of that service licence, and monitor delivery against it in some way. But the responsibilities for month-to-month delivery would rest clearly with the management, perhaps within a framework of targets incorporated into the licence.

This, I would acknowledge, is an artful construction. The governors have also shown the seriousness of their regulatory intent by commissioning a series of reviews of aspects of the BBC's operations. So, for example, they commissioned a paper on the BBC's European coverage, to assess whether it

was adequately balanced, in giving due weight to the views of different constituencies in the European debate.

But the question one needs to address is whether these behavioural changes within the existing structure will be adequate in the longer run. Will the system be sufficiently robust to persuade future governments not to interfere? Just as importantly, if they increase the emphasis on their regulatory role, do the governors create what we might call a corporate governance deficit at the heart of the Corporation? In other words, if the governors move across the street, who is left to advise and counsel the Director General and, indeed, to defend the Corporation when it is under pressure? The normal role of non-executive directors of a company seems not to be performed by anyone under these new arrangements. There is no “critical friend” of the management if the governors are operating primarily as regulators, at arm’s length from the Director General. In a typical corporate board, you would not see the non-executives publishing reports critical of management performance.

My own view, and indeed that of the Burns Panel as a whole, is that it is not possible to resolve the contradictions that lie at the heart of the governors’ responsibilities simply through behavioural change. I share Greg Dyke’s conclusion that “there needs to be a separation of powers with the BBC Board, made up of executives and knowledgeable non-executives, responsible for the running of the BBC, and an outside regulator with the job of checking on it”.

So if the old arrangements are generally thought to be unsatisfactory, and if the building public value approach is not adequate to resolve the contradictions, what else might be done? Is there a third way?

Options for Change

Broadly, one might imagine three third ways. (The LSE is fertile in this area). We could acknowledge that the obvious candidate to regulate the BBC is Ofcom. Or we could set up a new regulator for the BBC alone, what has been known in the jargon as 'Off-Beeb'. Or it may be possible to operate on the BBC's internal structure to create a more formal separation between regulation and governance, what the panel called in its interim report 'In-Beeb', a witty term, which was not otherwise particularly helpful in describing what we meant. (5)

The arguments for handing the job to Ofcom are powerful. Ofcom, in any event, has some responsibilities for the BBC. It has oversight of harm and offence, privacy and fair treatment, and some responsibility on quotas for hours of news and current affairs programming, for regional programming, original production and regional production. So, unless the government wishes to legislate to remove all these responsibilities from Ofcom, which seems unlikely so soon after its establishment, it is bound to remain part of the landscape in any event. Furthermore, experience in other industries has suggested that regulators set up with a remit limited to one company can be difficult to manage. When OFTEL faced up to BT alone, the relationships were very poor. The same was true of OFGAS and British Gas, to an almost pathological degree. Experience in financial services and in communications has therefore led the government to create broad regulators, able to step back from the circumstances of an individual company, to see the interactions between different subsets of the industry, and to regulate accordingly.

This is a powerful set of arguments, and I cannot help wondering whether, if the timing of Ofcom's establishment and Charter Review had come together

more tidily, the government might not have extended the new regulator's remit from the start.

What are the arguments against the Ofcom solution? Greg Dyke argues that it would be unwise to extend Ofcom's coverage, because it is essentially a regulator of the commercial sector, and commercial interests would dominate in its decision-making. It is hard to know how much weight to attach to that argument. The proof of the pudding would be in the eating. There is also a more general point about the breadth of coverage of a communications regulator. Could Ofcom cope with the addition of the BBC? As someone who has put together a regulator on an even larger scale, I do not attach great weight to these arguments. If you have more jobs to do, you hire more people to do them. There is a need for a different type of management structure, perhaps, but the BBC certainly should be cautious about these arguments about extravagant scope and scale. Following that line of argument, it is quite easy to demonstrate following that line of argument, the BBC itself is constitutionally unmanageable.

The most persuasive argument against the exclusive use of Ofcom is that the type of relationship which would be needed between the regulator and the BBC is of a different character from that which applies to Ofcom's relationship with commercial broadcasters. There are more complex judgements to be made on the nature of public service broadcasting, and of what the BBC are now calling public value. There are different accountability relationships to Parliament which need to be considered, and there is the overriding importance of creating a stronger buffer between the government and the Corporation. I am not sure that Ofcom, with its broader role, could satisfactorily perform that buffer function. What we need is a new, rather than an old, buffer.

Could that be created within the Corporation itself, perhaps building on the Michael Grade proposals? That, in essence, was the direction of thinking

behind the panel's 'In-Beeb' option. When it was raised in a paper in early December, The Times, in a leader, thought it was a rather good idea. The notion was that the Governors would issue the service licences, but there would be a separate Managers Board, with non-executive directors, which would be responsible for meeting their requirements.

The final panel discussion of governance, in early December, spent some time on this 'In-Beeb' option. We tried to determine just how accountability would operate within such a structure. How would the money flow? Who would be accountable to whom and for what? How would appointments be made to the twin boards which would co-exist somehow within the Corporation?

These questions proved very difficult to answer. Michael Grade himself led an impressively rigorous forensic attack on the idea. He was clear in his view that to create two Boards within the BBC structure would lead to confusion. It became clear that the problems of accountability and role definition which apply to the BBC's new model were equally, if not more relevant to 'In-Beeb', albeit in a slightly different way.

A Public Service Broadcasting Commission

The panel's final report, therefore, firmly rejected this hybrid model (6). Instead, it recommended the establishment of a Public Service Broadcasting Commission, which would sit alongside the BBC Board. The solution is, in fact, similar to that recommended by the Culture, Media and Sports Committee, under Sir Gerald Kaufman. Their report, last December, recommended "one body for the accountability of the BBC, and another which is in charge of the BBC" (21). With the management body chosen through "a professional appointments system rather than a system based on gender, ethnicity and other tokenism", in the Committee's words. The governors, by contrast, "should be appointed on the basis of relevant experience – particularly in the

media – and charged with the specific role of regulating the BBC and maintaining its independence”. In the Kaufman model, what the panel sees as a Public Service Broadcasting Commission is a reconstitution of the BBC governance, but in other respects what they recommend looks more like ‘Off-Beeb’ than ‘In-Beeb’.

The detailed reallocation of responsibilities between the PSBC and the BBC’s board of management is set out in the paper attached to Lord Burns’ letter to the Secretary of State for the Department of Culture, Media and Sport, published on 28 January. Broadly, the PSBC would undertake the public interest oversight of public money invested in public broadcasting and would recommend to the government the level of the licence fee. It would take on the current accountability role of the governors combined with some of the responsibilities of the government and would ensure that the Charter objectives for public service broadcasting were met. It is very important to recognise that this model envisages that some powers pass down from the government to the Commission. In other words, the PSBC would give approval for new services and would be responsible for commissioning ex-post reviews of those services. This would, we hope, severely restrict the government’s ability to, and indeed desire to, interfere through ad hoc reviews. Ofcom would continue to be responsible for the regulation of competition and pan-broadcasting industry issues.

With PSBC in place the BBC Board could be reconstructed to meet the principles which have been carefully articulated, after many iterations, in the new combined code on corporate governance. While the BBC is, of course, a unique organisation, as its spokespeople never tire of telling us, in many respects its governance needs are similar to those of major companies in the private sector. So a reconstituted BBC Board would be responsible for providing leadership to the Corporation, developing its strategy and overseeing the appointment of senior executives. The Board would be constituted very much along the lines of those of major corporations, with a

non-executive chairman, a majority of independent non-executive directors, and with the Director General and perhaps a small number of other executive directors also sitting as full members. We have set out in the report proposals which would help to preserve the independence of that Board, and to surround the appointments decisions with rigorous procedures to guard against purely political nominations. There are other models in the regulatory sector, of which the arrangements for the Financial Services Authority are one, which incorporate such protections.

A division of responsibilities along these lines would clarify the accountability of the two bodies. The PSBC would be accountable to Parliament and government for delivery of the purposes set out in the Charter, while the BBC Board would be accountable to the PSBC for delivering against strategies and service licences. In that respect the interesting new arrangements devised by Michael Grade for service licences, and the articulation of public value, could be incorporated into this revised model.

The response to this proposal has been positive. Ofcom noted that it was 'better equipped to adapt to future changes in funding and provision' than the BBC's proposals. Greg Dyke said in the Independent that Lord Burns' proposals 'would not only create a BBC that is more politically independent and easier to run than it is today, but it would be better able to fight off the power and influence of the Rupert Murdoch's Sky' (22). Maybe the Times will be less supportive this time round.

Nonetheless, one may anticipate some possible objections to the Burns approach. Any proposal to create a new regulatory body must expect to be examined carefully, and indeed with some scepticism. Is there a risk that these arrangements could muddle accountability on the one hand, and add unnecessary cost and bureaucracy on the other?

I have already made my view on the first point clear. And anyone who wishes to object to the structure on grounds of muddled accountability needs to deal first with the many criticisms of the existing arrangements on those grounds. The cost argument is not trivial. But we are largely talking here about a redistribution of responsibilities between the government, Ofcom, the governors and BBC management. The DCMS incurs costs today in service approvals and in financing serial one-man reviews. The BBC governors have armed themselves with staff support to perform their regulatory role, and the BBC itself is already gearing up to bid for the service licences. So there is no a priori reason why the structure proposed by the panel should be any more costly, while it will certainly be more straightforward and transparent. According to Greg Dyke, the BBC are already 'spending several millions of pounds on new regulatory staff.'

I am persuaded, in short, that the arrangements proposed in the Burns Panel's final report would have major advantages. They would buttress the BBC's independence. Nothing will stop governments trying to intervene in the affairs of a publicly owned broadcaster if it irritates them enough. If what we might call the 'Humphrys quotient' rises too high they will complain. But we should make it as hard as possible for the government to circumvent the regulatory system. So, for example, if it is offended, the government should be required to complain to the BBC in the normal way. The PSBC should set out the basis on which the BBC would, in the first instance, handle complaints. And the regulator would provide an appeals mechanism for handling complaints that had not been adequately resolved by the Corporation itself which, again, the government should be required to use.

Contestability Revisited

Before I conclude, I will loop back to the funding question. I explained earlier that there was a relationship between funding and regulation. In the long run, the greater confidence there is in the regulatory system that oversees the

BBC, the more defensible the licence fee will be. But if I am right that, over time, as the public service broadcasting landscape changes, and the BBC's monopoly of public service broadcasting is willy nilly reinforced, then we may need to think of a way of promoting some element of contestability in funding, and of competition in provision.

The Public Service Broadcasting Commission, if constituted on the lines recommended by the panel, could oversee some element of contestability initially, perhaps, at the margin. If we think that the licence fee will need to be reviewed at some point during the Eighth Charter, as the panel recommended during its interim report, then it would be sensible to provide now for a mechanism which would allow for a development of alternative funding streams, rather than be faced in five years' time with the difficulty of promoting new legislation.

I believe a solution along these lines would be the best guarantee of a continued strong and independent BBC, which was certainly the main objective the panel had in mind. It is also the solution most likely to ensure continued popular and political support for a licence fee. The BBC would not, itself, have to be the principal advocate of the licence fee, which is always awkward. The PSBC would take on that role.

Next Steps

In introducing his Committee's report, Gerald Kaufman argued that we should move away from periodic charter renewal, and towards a regulatory and governance structure which will be more durable, and which provides mechanisms to deal with issues which emerge in relation to the BBC as the technology and the competitive environment change.

The panel was not invited to address the question of the charter renewal process itself, and did not do so. From my part, I think there is a strong case for trying to move away from ten year reviews, for precisely the reason which one governor has advanced – that it imposes a kind of planning blight over the Corporation for 30 per cent of its life. Sadly for the Corporation, the current charter review still has some way to run. The government have promised a Green Paper as the next stage, and I understand that it is imminent. I will be disappointed if the panel's suggestions on funding and governance are not presented as one option on which they will consult in a Green Paper process. The latest Ofcom paper recommends that approach.

I hope, therefore, that we will see further debate on pros and cons of a Public Service Broadcasting Commission in the next few months. The government is unlikely to wish to bring the process to a conclusion this side of the General Election. But I am sure the BBC is very much hoping for clarity about the future to emerge before the end of this year. They can then get on with their core businesses of making entertaining programmes, promoting culture, educating the population, informing our democratic processes and responding to outraged complaints from the No 10 Press Office.

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