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A. Koltay, *Media freedom and the law. The regulation of a common European idea* (Routledge 2025)

This topical book is concerned with the intersection between media freedom, media regulation and the law. It identifies as the threefold aim of media regulation in Europe the protection of freedom, the guarantee of social responsibility and the protection from harm. It sets itself the task of examining the ways in which this aim is reflected in European legal frameworks and case law. Its geographic scope covers mostly the EU and the UK, while the US serve as a useful counterpoint. Its substantive scope covers both legacy and digital media, whilst recognising that a question mark hangs over the status of online platforms. It is suggested that the tension between the goal of democratic governance and liberalism as the political ideology of choice in Europe can be resolved by a 'correct interpretation of media freedom' (p. 5). Whilst its emphasis is on media freedom, it also extends to questions of freedom of expression, especially as regards online platforms. This volume is conceived as 'primarily a descriptive work', which aims to shed light on European regulations with the aim of understanding whether they 'actually reflect a certain common European ideal' (p. 6).

The book is divided into five chapters of which the first two focus on freedom of expression, media freedom and the distinction between the two rights, while the last three examine the regulatory framework for the press, for media services and for online platforms. The first chapter mostly charts familiar ground, namely the rationales for the protection of freedom of expression, the concept of speech and the grounds for restricting it. The furtherance of public debate is recognised as the strongest justification for the protection of freedom of expression. From this starting point the contentious conclusion is drawn that '[T]he media that do not deal with public affairs do not actually exercise media freedom, at least not in its entirety', and that their journalists are 'bound only by freedom of expression legislation' (p. 23). This line of reasoning is a recurrent theme in this chapter (see p. 69, 70). However, it is questioned later on when it is stated that the courts tread on 'dangerous ground' when they distinguish between content in the 'public interest' and other content (p. 90), and that the media should not be compelled to carry out its democratic functions (p. 122). Indeed, such a requirement would be at odds with the German Constitutional Court's (BVerfG) formal conception of the press, which does not allow for a differentiation according to the content and quality of a press product. It is more closely aligned with the European Court of Human Rights' (ECtHR) instrumental account of media freedom. Still, it poses risks in so far as it opens the door to value judgements about the importance of particular information. Also, it is unclear what an entitlement to a reduced scope of media freedom would entail. If it means subjecting certain categories of journalists to freedom of expression legislation whilst excluding them from (certain) journalistic privileges or commitments, there is concern that this would give rise to legal uncertainty and even arbitrariness, create an uneven playing field and be detrimental to the quality of information.

The second chapter examines the concept of media freedom, its difference from freedom of expression, the ways in which these rights are enshrined in national constitutions or laws, and their workings in practice. It notes that the media are afforded certain journalistic privileges even though this is not always mandated by the constitution or even by the law. The

chapter then considers the issue of prior restraint. The contentious EU bans on Russian media outlets are critically examined as an anomaly that deviates from the general European understanding of media freedom. The issue of social responsibility of the media, and the fact that their duties fall short of binding legal obligations, is considered as ‘perhaps the most delicate issue of the European concept of freedom of the media’ (p. 80). The fact that the press may harbour certain political allegiances is viewed as a distortion that needs to be overcome by ‘strict adherence to accepted ethical norms and by maintaining high levels of professional conduct’ (p. 83). However, the Anglo-Saxon axiom of objectivity is not universally espoused. In Germany, for instance, there is no expectation of press neutrality. The author recognises that social responsibility obligations are often unenforceable but posits that they are still ‘worth fighting for’ (p. 125). The journalistic duty of accuracy is considered to be one such example of a norm without binding legal force in the absence of a specific complainant (p. 97, 139). The chapter ends with the insightful conclusion that media regulation is not the most important indicator of media freedom. ‘Even with stricter regulations the media can be free, and even without regulation, it is not necessarily completely so’ (p. 125). Notably, the absence of regulation does not signify a policy vacuum, but is, in its ideal manifestation, a conscious choice aiming at ‘pluralism of expression rather than at dissemination of preferred ideas.’¹

A brief third chapter discusses regulation of the press, taking insights from a range of European jurisdictions into account. The author argues that ‘[T]he press is not the primary arena for achieving the objective of media pluralism’ (p. 139). Indeed, press self-regulation refrains from imposing duties of *internal* pluralism or impartiality, as they apply to broadcasting, especially public service broadcasting. Nonetheless, it still aims at creating an arena for *external* pluralism where the spectrum of public opinion is reflected in news publications with diverse political affiliations. Legal norms for the control of ownership concentration are also a mechanism for enhancing media pluralism (p. 139). Overall, this chapter expresses concern at the lack of enforceability of self-regulatory codes, and it recites Wragg’s position in favour of statutory or co-regulation of the press (p. 134). It would go beyond the limits of this review to discuss the merits and demerits of a mandatory membership of press regulatory bodies or of financial sanctions for serious breaches of press Codes (as opposed to the common publication of corrections and apologies or the more controversial right of reply). As recognised by Koltay, such coercive methods of press regulation are not typical of the common European model of press self-regulation, in so far as it is possible to speak of one notwithstanding the national diversity in this area.

The fourth chapter turns its attention to the regulation of media services. Differently from the case of the press, an overarching layer of EU regulation of media services lends a certain uniformity to this area. The author touches on the intractable problem of identifying a rationale for the asymmetrical regulation of press and broadcasting. He posits that there is no convincing explanation for this disparity now that the historic justification of the scarcity of the electromagnetic spectrum has become untenable with the advent of digitalisation. He argues that ‘the abolition of such obligations, without increasing the burden on the press and

¹ I. de Sola Pool, *Technologies of Freedom* (Harvard University Press 1983) 8.

Internet content services, would leave us worse off – overall, democratically, culturally and socially’ (p. 146). This aligns with his sensible position that the regulation of the media system needs to be considered holistically (p. 127). The argument that obligations on media services could be relaxed if those on the press and the internet were scaled up is not unprecedented. However, a strong empirical grounding would be needed before re-jigging the regulatory balance between competing models in the media market. The title of the next section on the ‘Diverging regulation of the press and media services’ might suggest that it continues with the theme of differentiated regulation. However, this section provides a broad overview of the EU and national regulation of audiovisual media services, followed by a discussion of the importance of media pluralism in EU and ECtHR case law, and by two final sections entitled ‘Access to the media’ and ‘Specific content regulations for media services’. The former covers a whole range of issues of audiovisual media regulation including licensing obligations, ownership restrictions, quotas and political advertising among others. Two topics that are discussed more extensively are impartiality and public service broadcasting. The author advances good reasons in support of their maintenance as important pillars of pluralism and democracy despite the ostensible plethora of information in the online media environment. The last section, under the heading of ‘Specific content regulations for media services’, discusses issues ranging from censorship, hate speech and protection of minors to commercial communications among others. It is not entirely clear why these issues are more specific to media services than those covered in the previous section. Also, a discussion across the board of the rules that are applicable to linear versus non-linear media services, for example as regards the protection of minors, would have been useful.

Finally, the last chapter of the book is devoted to the very current issue of online platform regulation. This is the most analytical chapter and the one where the author’s voice most comes through. It is also the chapter, which squares the circle by returning to the topic of freedom of expression that was touched upon in the first chapter. Koltay argues that the stakes surrounding platform regulation are huge because the rules of publicity and democratic deliberation, once the purview of the state, are now shared with private actors. He rightly observes that ‘[T]he standards, policies and service terms and conditions applied by social media platforms result in decisions made in bulk, and they cannot be matched by any lengthy legal proceedings that might be launched in individual cases’ (p. 238). He extensively discusses the question whether the myriads of decisions reached by platforms, many of them algorithmically, can be equated with editorial decisions and benefit of freedom of expression protections. This is an ongoing debate whose outcome could further deepen the rift between the EU and the US. In the specific case of President Trump’s suspension, Koltay argues that it concerned non-illegal speech and hence exposed the enormity of platforms’ private power (p. 240). It is, however, arguable that, even from the US point of view, the presidential tweets in question were unlawful as a form of incitement to imminent lawless action, as confirmed by the report on the alleged 2020 election interference. In any case, in Koltay’s view, ‘the real power of platforms to influence public debates does not lie in their ability to delete content and ban users’, but in their capacity to prioritise and recommend content (p. 243). Indeed, the DSA algorithmic transparency obligations are one of its most promising aspects that might empower users to exercise control over recommender systems. The last part of the chapter

considers further avenues by which users' freedom of expression could be protected from private platforms. One such avenue, which is extensively discussed in this volume, is the horizontal effect of fundamental rights and its US counterpart, the state action doctrine. The author recognises that the requirements under Art. 14 DSA 'resemble the horizontal effects doctrine', but seems to doubt that its enforcement will amount to a wholesale subjection of platforms to fundamental rights. Such a subjection would be particularly problematic from the US perspective in view of the wide protection afforded by the First Amendment. Similar consequences would follow from platforms' equally contentious characterisation as 'common carriers'. While the last word on the *NetChoice v Paxton* litigation has not yet been spoken, the possibility of an extension of the state action doctrine to online platforms is very remote. Notably, it is deemed by the author to not be 'a realistic prospect in Europe either at the moment' (p. 265). It would have been interesting to further expand on the reasons why declaring platforms as public forums would also be unrealistic in Europe. It would also have been useful to discuss the ways in which EU and national regulations seek to protect media freedom from online platforms' decision making in ways that go above and beyond the protection afforded to ordinary users. The view that '[M]edia freedom belongs to everyone' (p. 286) is radical and requires unpacking.

Overall, this is an engaging work that provides the reader with a broad overview of the competing systems of media regulation in Europe and the US. It comes at a time when the shape of the online media ecosystem is still in flux, and where a holistic understanding of the drivers for, and challenges posed by, regulation is of paramount importance. Both the EU and national jurisdictions, which are in the process of finetuning their fledgling regulatory frameworks, may benefit from the comparative insights offered in this study. At the end of his work, Koltay reasons that 'real media freedom can only be created by the will and action of the most important actors in democratic systems, that is, individual people' (p. 287). Citing Judge Billing Learned Hand, he sounds a word of caution that, barring this individual commitment, 'no constitution, no law, no court' can uphold media freedom. This forewarning is especially relevant at the current conjecture when rule of law and democratic accountability are crumbling, and when media freedom and freedom of expression are blatantly attacked by the very actors who claim to defend them.

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