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# Regulating for political pluralism on television

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# Political context

- Development of public service regulation driven by conflicting ideological forces: political liberalism, market liberalism, one nation conservatism, social democracy, etc.
- Result has been unique 'ecology' of public service broadcasting that casts different PSB 'roles'.
- Legitimacy and sustainability of this system under increasing pressure in the digital age

# Towards convergence

- Ofcom emerges in 2003 replacing 5 different regulators:
  - Broadcasting Standards Commission
  - Independent Television Commission
  - Office of Telecommunications (OfTel)
  - Radio Authority
  - Radiocommunications Agency
- Rationale was based on a regulatory tidy up in response to market convergence, especially between broadcast and telecoms
- BUT unified regulator was urged by commercial media lobbyists as a means to accelerate the relaxation of ownership rules, particularly in relation to cross-media ownership
- Some argue that there is strength in unity whilst others maintain that Ofcom's concentrated regulatory power renders it more vulnerable to both state and commercial capture than its predecessors.

# Regulatory structure

- Statutory basis affords some degree of independence from government
- BUT ministers appoint board members
- Funded by a mixture of broadcasting license fees, charges, and treasury funds
- Like judges, Ofcom *interprets* statutory media law in order to produce guidelines, codes and carry out enforcement of standards

# Broadcast licensing

- Accommodated by Article 10 but jurisprudence has limited restrictions to those
  - Prescribed by law
  - ‘necessary in a democratic society’
- Radio and TV licenses awarded on the basis of ‘beauty contest’ rather than auction (generally used for telecoms licensing)
- Ofcom has responsibility for ensuring and maintaining plurality, quality and reach of the broadcasting offer as a whole
- License awards also based on consideration of whether licensee is ‘fit and proper’
- Licensing followed by monitoring of standards and adherence to license terms (eg agreed format) and general broadcasting code

# Enforcement

- Alongside monitoring, Ofcom runs complaints system for viewers and in upholding a complaint, Ofcom may prohibit reruns of a programme, require correction/apology or impose fine if breach of code is considered serious or reckless
- Persistent breaches can result in suspension, shortening or revocation of license (but not BBC, S4C or Channel 4)
- Maximum fine is £250,000 or 5% of broadcaster's revenue
- In 2008, Ofcom fined ITV over £5million for multiple breaches in regard to phone-in competitions

# Media plurality - key concepts

- Diversity
  - Ownership
  - Representation (production *and* content)
  - Exposure
- Impartiality
- Availability/consumption/impact
- Intermediaries (aggregators, gateways) versus content providers (wholesale, retail)

# Media plurality regulation

- Widespread precedent and political consensus in western democracies that focus should be on media ownership and licensing
  - SIC (Italy)
  - KEK (Germany)
  - Diversity Index (US)
  - Public Interest Test (UK)



# history of deregulation

- Media ownership rules progressively abandoned through 1996 Broadcasting Act, 2003 Communications Act, and 2010 Digital Economy Act
- Only limited rules in regards to national cross media ownership remain (principally between Channel 3 TV licenses and national newspapers)
- Justifications
  - New technologies of delivery bring wider consumer 'choice'
  - The internet is a disruptive technology - threatens economic sustainability

# BUT...

- Television still dominant source of news in terms of both reach and impact
- Very small number of institutions capable of producing rolling news aimed at a national or international audience
- Mainstream news brands increasingly favoured by major algorithms and trust tends to be concentrated around a small number of established news providers, even in large markets

# So...

- Both external and internal plurality regulation is still needed, eg media ownership rules (external), impartiality rules (internal)
- But these rules must be harmonised and adapted to reflect the new information environment
- Legislative plurality framework should abolish fixed limits but provide indicative thresholds for plurality sufficiency, along with range of applicable remedies

# And...

- Legislative framework should also synthesise rules regarding net neutrality, broadcast licensing, media ownership, impartiality
- Supplemented by effective measures of public subsidy for non-profit media for local and community media as well as investigative reporting beyond PSB
- Effective public subsidies and scope of regulator competency must go hand in hand with effective measures to ensure independence

# Public Interest Test

- Proposed media mergers can be referred by Secretary of State for phase one or phase 2 review on plurality grounds
- Review carried out by regulatory authorities
- Secretary State plays quasi-judicial role making final decision based on advice of regulators

# Public interest test

- Three key limitations
  - Places discretionary power in the hands of regulators and ministers
  - Does not account for concentration as a result of organic growth
  - Does not accommodate effect of online intermediaries on news flows and media concentration

# Impartiality

- Enshrined within section 5 of Broadcasting Code
- Means not taking sides and qualification 'due' means adequate or appropriate to the programme's subject or nature
- Does not mean equal division of time has to be given to every view, or that every argument and every facet of every argument has to be represented.
- In general, due impartiality may be achieved over a series of programmes 'taken as a whole' (dealing with same or related issues) rather than in a single programme

# Impartiality limits

- Impartiality rules are a form of content regulation and therefore pose inherent threat to Article 10
- regulates the balance of viewpoints but not the balance of facts, issues or topics that are covered, i.e. can the editorial slant of a news programme or series be altered simply by the process of story or issue selection?
- Can balance be achieved across programmes when some programmes reach vastly greater audiences or who enjoy more of an agenda setting reputation compared to others?
- New rules needed to account for the pace of acute political controversies where journalists become more reliable on, and more vulnerable to media management techniques (especially through regards single anonymous sourcing)
- All of this is supposed to be captured by the term 'due impartiality' but it leaves a great deal of room for discretionary judgement on the part of the regulator



# Case study: Labour leadership crisis

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Television and Online News Coverage of the Labour Party in Crisis



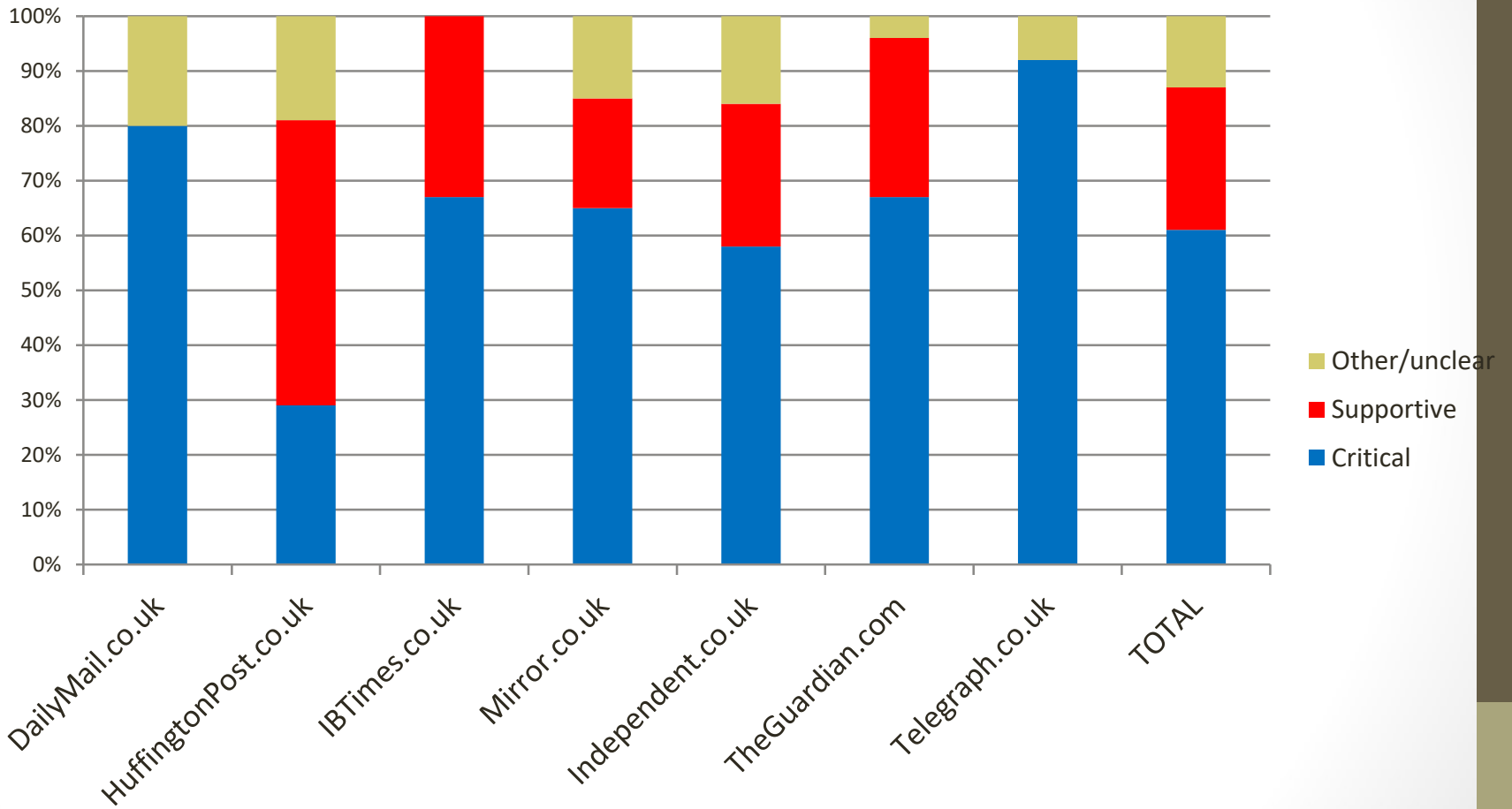
# Assumptions

- Two legitimate sides of the leadership debate
- Each resting on a range of points or 'issues' (leadership, representation, etc)
- Each advanced by range of active sources (MPs, movement organisers, ordinary people)

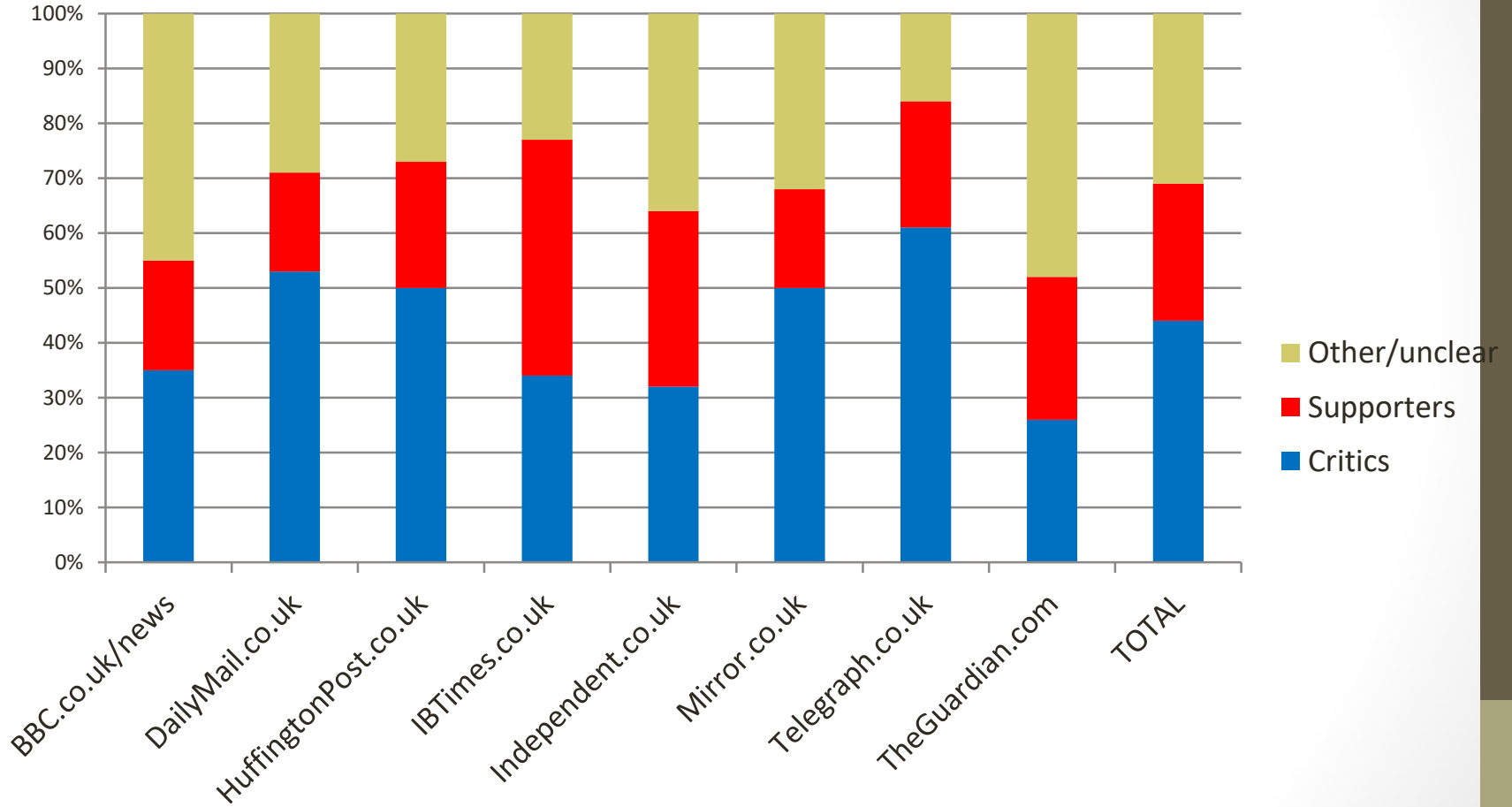
# The sample

- Previous research (MRC, 2015; Cammaerts et al. 2016) demonstrates 'attack dog' press
- This study focused on prime time TV news bulletins
  - Subject to broadcasting code
  - Reach across fragmented audiences
- AND online sample of mainstream news outlets to provide benchmark range of issues/frames and assess 'counter-weight'

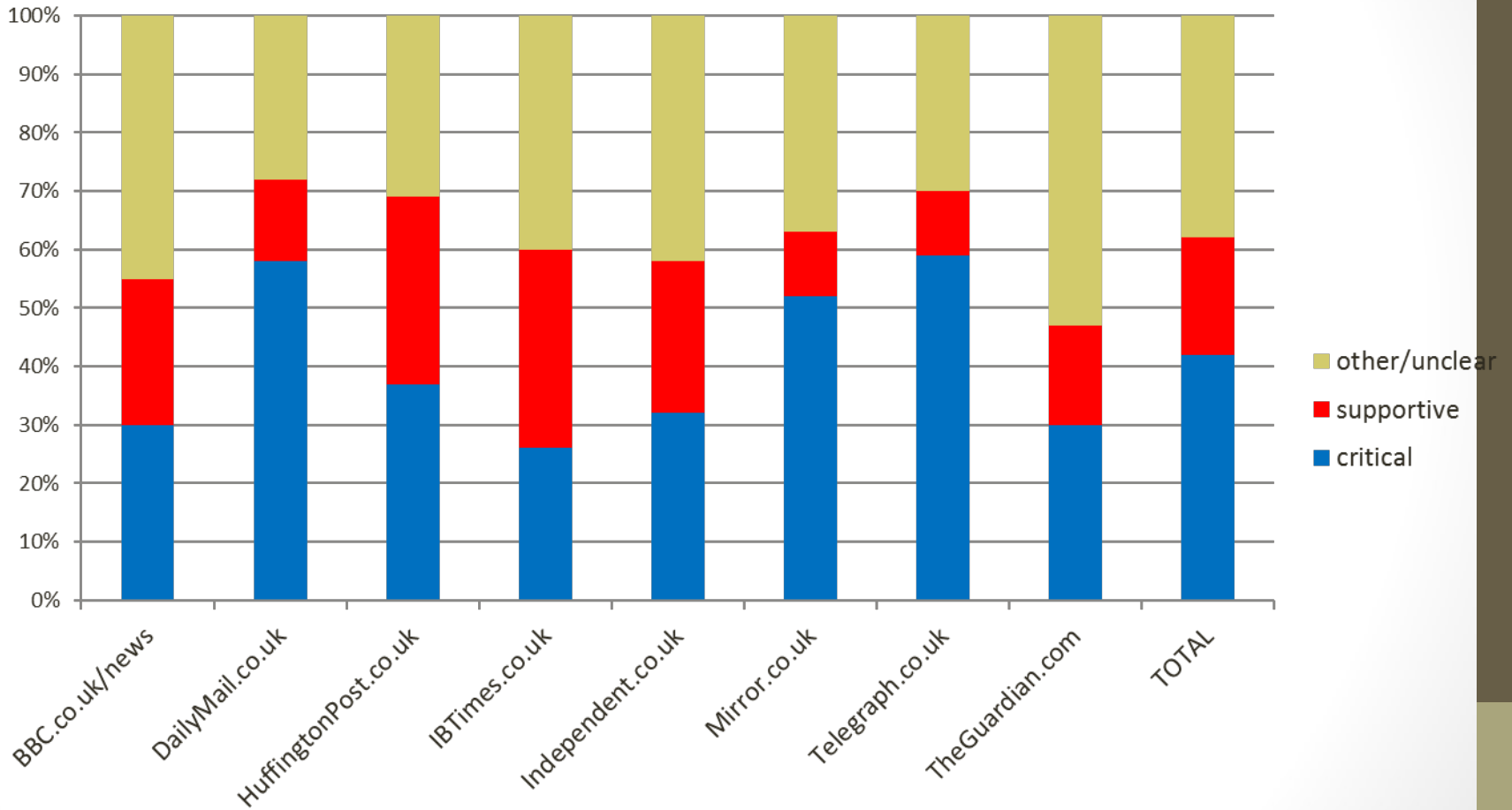
# Distribution of 'voice'



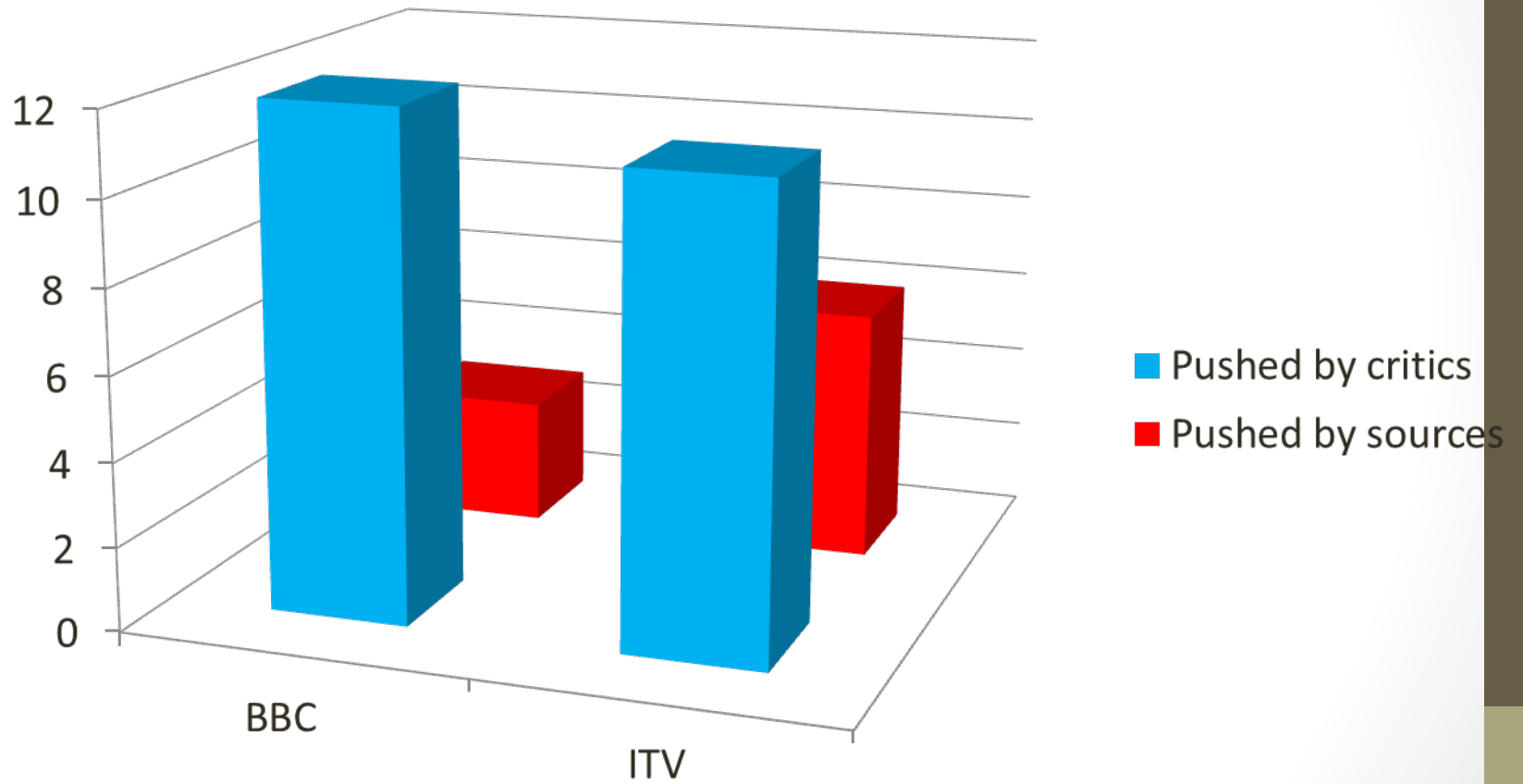
# Primary sources compared



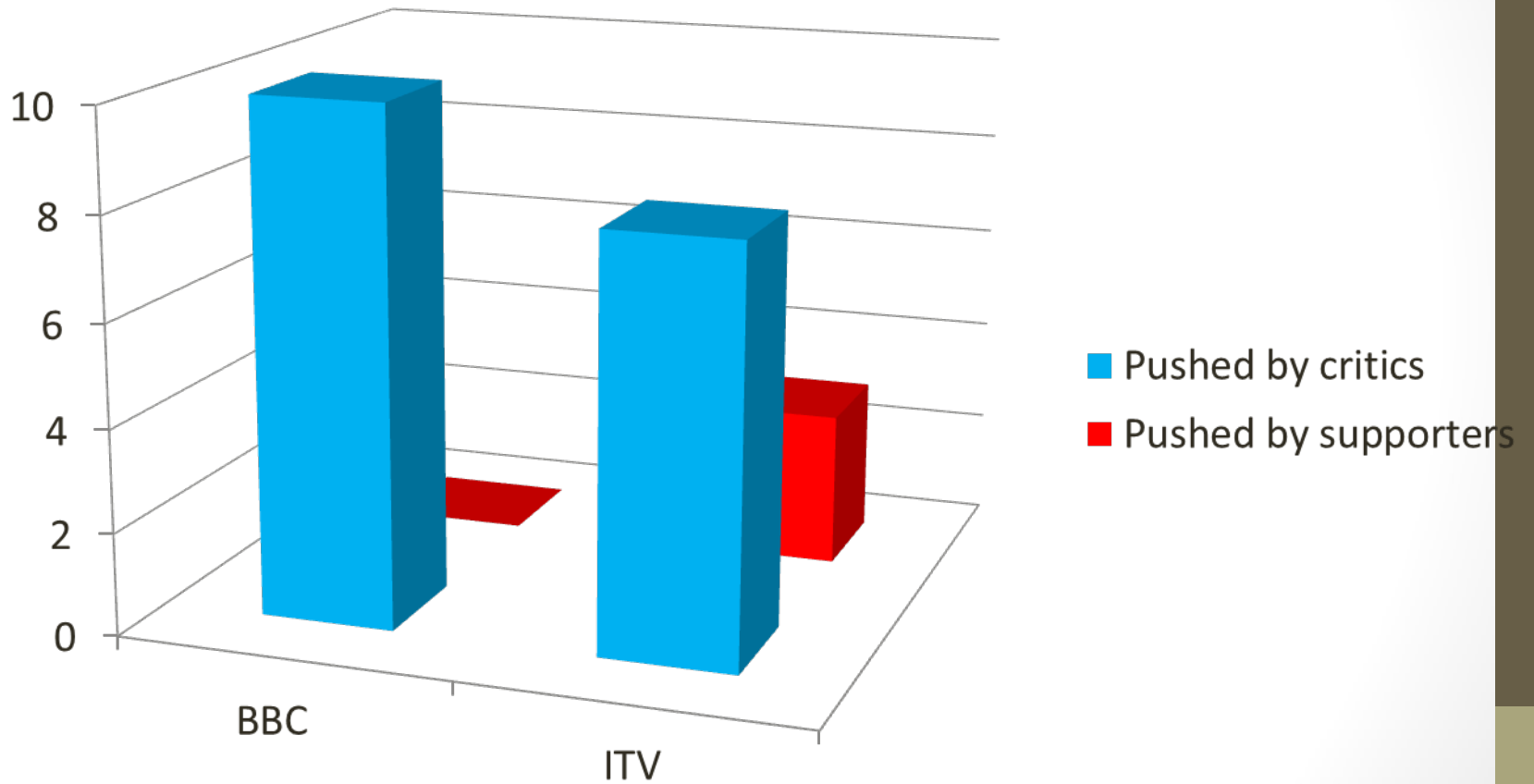
# Primary issues compared



# Issues on TV

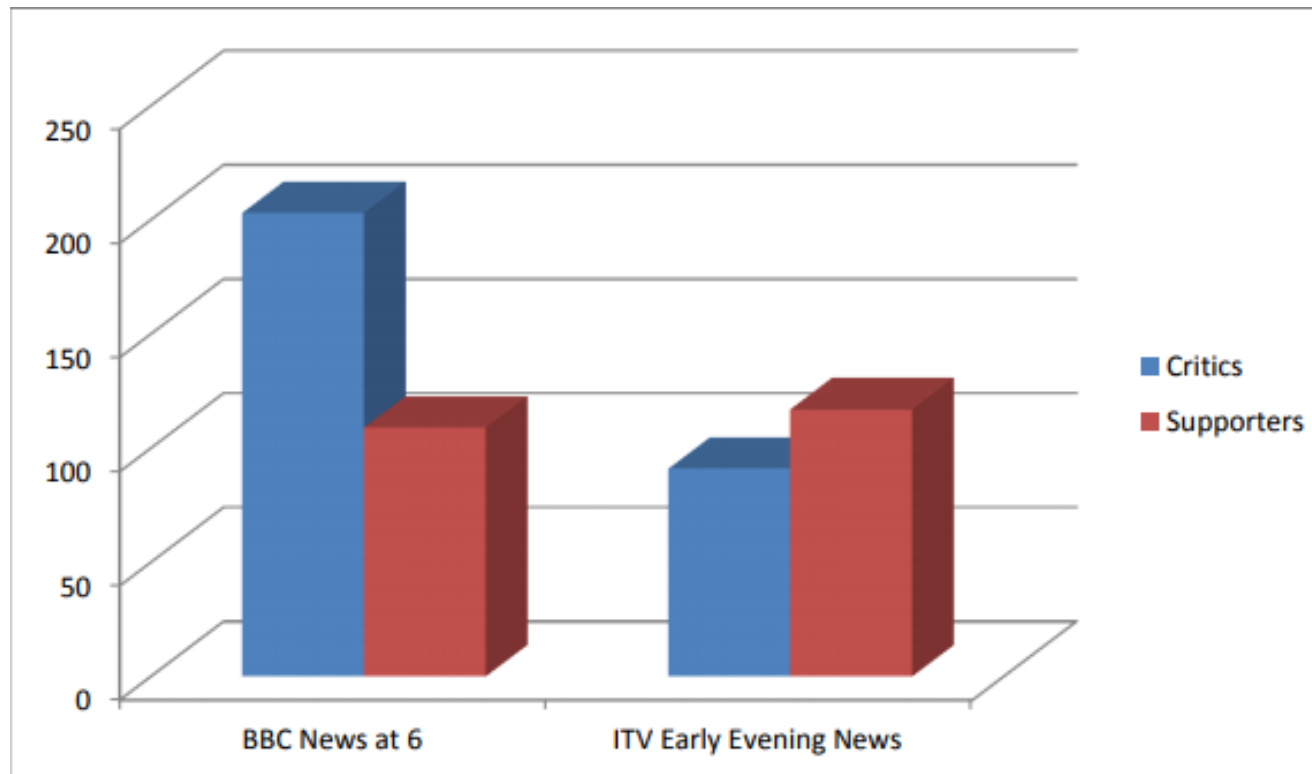


# Issues in TV headlines





# Sources on TV



# Arms length in appointments



- Ministers/government

- Independent appointments commissioner

- Independent appointments panel

- Regulatory board

# Arms length in contacts

Leveson called for...

- the quarterly disclosure of “the simple fact of long term relationships with media proprietors, newspapers editors or senior executives”
- “details of all meetings. and the fact and general nature of any discussion of media policy issues”; and
- “a fair and reasonably complete picture...of the frequency or density of other interaction (including correspondence, phone, text and email)”.
- He also emphasised the urgency of such measures stating that “the suggestions that I have made in the direction of greater transparency about meetings and contacts should be considered not just as a future project but as an immediate need”.

# The importance of cross-subsidy

- Google and Facebook increasingly favour mainstream news brands to the detriment of alternative/independent/non-profit providers
- They generate huge profits from advertisers in a way which has accelerated market failure in news
- They *benefit* from the 'pull' of news content provided by others
- They should therefore contribute to the support of those forms of public interest news most acutely impacted by their growth (local/community/non-profit/investigative)

# Plurality reconsidered

- Market distinctions (television/radio/print/online) of diminishing relevance
- Size matters (consumption and impact over availability)
- Editorial 'voice' matters (wholesale over retail)
- Internal versus external plurality
- Relevant legislative and regulatory framework extends to rules and remedies in respect of:
  - Media ownership and broadcast licensing
  - Content regulation (eg broadcasting code)
  - Net neutrality rules
  - Algorithmic governance
  - Contacts/meetings between media and political elites

# Thanks!

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