Daithí Mac Síthigh, ***Medium Law*, 2018, Routledge, 176 pp, ISBN 9781138677715**

Introduction

Have you ever wondered how to package the vast amounts of regulation in the growing area of media law? Daithí Mac Síthigh offers the law of the medium as a tool for this effort. He explores the emerging notion of convergence and engages with the task of better regulation through improve legislative writing. The book contains an eclectic yet instructive range of examples, from media to ritual, that points out the 'need to take a more holistic approach to media-related research.'

Medium Law is distinct as legal scholarship. It does not set out a new theory. It is also not a book about one discrete area of law. Instead, Mac Síthigh provides, in thought form, something that is quite practical and which we deal within each day: how to sift through all the regulation out there? This is not to suggest he advocates convergence. Rather, he contends 'the idea of converged, cross-platform, medium-neutral media regulation is unattainable in practice and potentially undesirable in substance.' Though the focus is on media law, Mac Síthigh admits that 'there is a strong normative dimension in that asking questions in this way is based on an assumption (which some would contest) that there is value in categorising media regulation in this fashion.'

Medium Law is an engaging, thought-provoking book and a unique offering insofar as whether or not the reader agrees with the analysis, it will unquestionably lead to further probing of the premise applied to legal regulation.

Content of the Book

This book is not just about legal regulation, but the particular challenges faced by technological innovations. The second chapter, 'The medium and the media', presents the book's foundation.

Mac Síthigh's book title aptly employs the word medium, as does this chapter. In Chapter 2, he canvasses communications theory and in particular the 'Toronto School'. The most notable member of this School would be Marshall McLuhan whose lasting legacy may well be his 1964 statement 'The medium is the message' (from *Understanding Media: The Extensions of Man* (Toronto: McGraw Hill, 1964)). He identified the message of any medium as 'the change of scale or pace or pattern that it introduces into human affairs'. Relying on a pioneer in communications theory focuses attention on the use of information technology through which communications are conducted. Mac Síthigh's focus is more on McLuhan's predecessor, Harold Innis. Still, both are important figures here for their 'sustained engagement' with the medium. In a tidy encapsulation that explicates the book as well as challenging McLuhan's famous aphorism, Mac Síthigh ends the text with the following: 'The medium is not necessarily always the message, but an account of media law that focuses on the regulation of the message will only ever be an incomplete and unsatisfying one.'

Chapters 3-8 contain medium-specific analyses. It should be noted that the research exhibited across these chapters is detailed, comprehensive and significant. The range of media examples only hints at the voluminous regulatory mechanisms in place as well as the associated public debates to which this book refers. Questions arise: such as, what are the cultural values of cinema as compared to at-home viewing platforms? In addition, regulations are conveyed in a remarkably accessible manner. These observations may be easily glossed over by a reader and so warrant highlighting. Furthermore, they advance the original contribution of this book as illustrations of a novel approach to media regulation. Overall, chapters 3-8 reveal 'cross-cutting themes regarding the relationship between the medium and

the law.' These are identified in Chapter 9's conclusion as: human rights law, technology, regulatory borrowing, and transparency regarding assumptions. With human rights, Mac Síthigh queries how the ECHR concepts of necessity and proportionality will interact with the more discrete laws of areas such as copyright, privacy and defamation. With debate in the various media having been truncated, there is scope for more robust discussion. Of the four identified themes, technology is perhaps most evident as the notion of convergence underlies much of the discussion. Implicitly, there is a call to carefully consider the implications of converged regulation; such as, the dubiousness of the proposition that one regulatory size could fit all. Regulatory borrowing is most often the starting point for regulation because laws applying to one medium form the reference point for others. The questions then flow: what are the differences between the media and how are these to be regulated? Finally, and yet extending from borrowing, the unpacking of assumptions (for example the potential for applying the notions pertaining to one platform being transferred to all others) stands out as a monumental challenge. Without presuming that digitization of communications will lead to progressive, improved ends, an awareness of the implications of more sophisticated media may be a cautionary matter as much as a signpost.

Broader Application of Medium Law

It may not be the orthodox entry for a book review, but *Medium Law* (as noted above) compels legal scholars, regardless of discipline, to consider the premise's broader application as well as its underlying assumptions. Labour law is the example considered here. Labour law has a penchant for being diverted by contemporary novelties and overlooking of what that item may be an emblem. The 'gig economy'[1] has been such a diversion. When considering whether an Uber driver is an employee, worker or independent contractor, the issue is one of employment status. There is a profound bluntness in the statement of the District Court of Northern California to Uber's claiming to be a technology and not a taxi company:

> Uber is no more a "technology company" than Yellow Cab is a "technology company" because it uses CB radios to dispatch taxi cabs, John Deere is a "technology company" because it uses computers and robots to manufacture lawn mowers, or Domino Sugar is a "technology company" because it uses modern irrigation techniques to grow its sugar cane. Indeed, very few (if any) firms are *not* technology companies if one focuses solely on *how* they create or distribute their products. If, however, the focus is on the substance of what the firm actually does (*e.g.*, sells cab rides, lawn mowers, or sugar), it is clear that Uber is most certainly a transportation company, albeit a technologically sophisticated one.[2]

When considering (what might be called) the philosophy underpinning Uber's argument, the premise quickly falls apart. It is tantamount to stating, I use technology therefore I am a technology company. This premise entirely ignores the fact of a networked society in which technology has become an essential tool in day-to-day business and social communications. The above-cited passage may well become a plain language reference in the future for arguments that seek to divert attention away from the core aspects of interactions. Similarly, the holistic approach endorsed by Mac Síthigh calls attention to what might be called the reification of the symbol. We see this in the 'gig economy' when attention is diverted from the fact of change and its impact. Labour law has been preoccupied when the test for determining employment status is amended in a discrete manner. A medium-based analysis

1. Differing understandings of what this term means range from economic practices to labour arrangements. Here a working definition applies to employment exclusively: 'participants who trade their time and skills through the Internet and online platforms, providing a service to a third party as a form of paid employment': CIPD, *To gig or not to gig: stories from the modern economy* (March 2017), 3.

2 *O'Connor et al v. Uber Technologies, Inc.*, (2015) C.A. No. 13-03826-EMC (N.D. Cal.), 10.

is particularly poignant given how app-based work (a hallmark of the gig economy) shapes and controls the scale and form of association in the personal work relationship.

Moving Forward

The query here is whether there is/are a further dimension(s) to the idea pursued. For example, regulation has often been focused on a one-way movement, from the regulated to the corresponding users. With information technology and the wider recognition of data protection rights, a dialectic has become more evident. Users of information technology are not only consumers, but they are also ‘prosumers’ (as coined by Alvin Toffler). The back-and-forth movement of contemporary communications may prompt further discussion of the nature of medium regulation.