

University of Padua and Université Libre de Bruxelles

European Master's Degree in Human Rights and Democratisation

Academic year 2002/2003

Diplôme De Master Européen en Droits Humains et Démocratisation

Année académique 2002/2003

**Guaranteeing the presence of “ethnic minorities” in the media:
a positive step towards the realisation of the freedom of
expression, the advancement of democracy, and a tool in the
fight against racism**

By: Pauleen Colligan

Director: Prof. Benoît Frydman

Tutor: M. Pierre-François Docquir

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1.Introduction

“The freedom to belong to an identity and to contribute to its definition presumes the freedom to be represented”.¹

Within this statement the question is inaudibly being asked whether this freedom to be represented, as part of any identity, while “presumed” to exist, is in truth universally accepted and applied? Are all identities equally and freely represented? Implicit in this phrase is also the assumption that democracy in complex societies requires cultural, democratic spaces *“which enable individuals and social groups to affirm themselves and be recognised for what they are and wish to be”*.² That is to say, that whether of fringe or minority view, within the dominant fora of popular culture, there should be mechanisms in place, which allow for the right to self-expression, in the name of self-development and self-representation, either as an individual or as part of a collectivity. These cited statements do, however seem to be acknowledging that this freedom of expression for all identities, and the right of each and all to play the leading role in the expression and representation of a particular identity is more a utopic scenario than a tangible reality.

Within the social, political and economic structures of working democracies, not all identities receive the same attention, and not all identities are given the same balanced treatment within societal systems. This is due largely to power relationships and structures, which have built up through historic processes and been re-enforced over time. The media, as an incredibly dominant and potent force in society, can play an immense role in enforcing and giving reason to such structural imbalances or in identifying such discrepancies. If however, all identities are given the tools or access to the tools of the media, and thus the fair and equal opportunity to express and represent their particular identity,

¹ Melucci, A., 1989, in Murdoch, G., *Corporate Dynamics and broadcasting futures*. in Aldridge, M., Hewitt, N. (Eds) “Controlling Broadcasting. Access policy in North America and Europe”, Fulbright Papers Vol. 13 Manchester, Manchester University Press, 1994, p.5.

² ibidem, p.5.

such imbalances should have less chance of existing, stereotypes of identities should have greater chance of being avoided, and the freedom of expression as an integral facet of a working democracy should be fulfilled. Herein lies the core proposal of this thesis. While not all identities can be analysed and considered, the argument that “ethnic minorities”, as pertinent, contemporary and often contentiously considered societal groups, should be afforded greater access to the media and, specifically the television, in order to realise their right to expression and to help diminish racist and prejudicial attitudes (both of which are key features of functioning democracies) shall be advanced. In doing so the standing and attitudes towards this proposition within the European Union (henceforth the EU) and the United States of America (henceforth the U.S.) will be compared and contrasted.

1.1 Definitions and explanations of key elements to be examined.

“Ethnic Minorities”

*“States shall protect the existence and the national or **ethnic**, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity.”³*

Article 1 of the Declaration on the Rights of
Persons Belonging to National, Ethnic,
Religious and Linguistic Minorities.⁴

Since the beginning of the 1990s, there have been significant international and regional developments with regard to the protection of minorities. In 1992 the United Nations General Assembly adopted the Declaration on the Rights of Persons Belonging to National, Ethnic, Religious and Linguistic Minorities. At the Helsinki Summit of the Conference on Security and Cooperation in Europe on 10th July 1992, the participating states decided on the establishment of a

³ Emphasis on word “ethnic” added.

High Commissioner of National Minorities, as an *“instrument of conflict prevention”*. In 1994 the UN Commission on Human Rights created a new UN Working Group on Minorities, while in 1995 the Council of Europe filled the void relating to minority protection in European human rights legislation, by adopting a Framework Convention on National Minorities.

These developments, which were partly fuelled by the imminent collapse of Yugoslavia, and the revival of ethno-nationalism in Central and Eastern Europe, point to the increasing importance that has been afforded to minority protection questions on the international and regional human rights agendas. This is also largely due to the fact that discrimination against, and intolerance of ethnic groups is accredited with breeding human rights violations and conflict and can thus have an immense destabilising impact on a functioning democratic order. This was summarised neatly in 1992 in a report of the UN Secretary General, entitled *“An Agenda for Peace”*. In dealing with issues relating to “ethnic minorities” and conflict, the report observes: *“One requirement for solutions to these problems lies in commitment to human rights with a special sensitivity to those of minorities, whether ethnic, religious, social or linguistic.....The increasingly effective machinery of the United Nations dealing with human rights, should enhance the situation of minorities as well as the stability of States.”*⁵

At the most foundational level, however, and for the purpose of this thesis, what is meant by “ethnic minorities”? In examining “ethnic minorities” and working with the theory of **Makkonen**, it will be suggested that as minorities are fluid and ever-changing, then so too must be the definition⁶ and, therefore

⁴ Adopted by the General Assembly resolution 47/135 of 18 December 1992.

⁵ UN Document A/47/277 – S/24111, 17 June 1992, paragraph 18 in Alfredsson, G., *Minority Rights: International Standards and Monitoring Procedures* in “Latvian Human Rights Quarterly 5/6”, Human Rights Institute of the University of Latvia, Faculty of Law, Latvia 1998 pp.8-28.

⁶ Makkonen, T., *Identity, Difference and Otherness The Concepts of ‘People’*, in “‘Indigenous People’ and ‘Minority’ in International Law”. The Erik Castren Institute of International Law and Human Rights Research Reports 7/2000, Helsinki, Publication of the Faculty of Law University of Helsinki, 2000.

the classification with which this study will work is not to be treated as a monolithic concept. Moreover the “ethnic minorities” to be treated relates to newer, immigrant minorities, rather than those such as the Breton community in France or the Traveller community in Ireland, which have existed for centuries. A minority is considered as such when it possesses objective characteristics, that is to say when it possesses different traits from the majority population. It must also possess subjective characteristics, to be precise, it must also consider itself as different from the majority population, and enjoy a certain self-identification. Naturally, a minority must constitute less than 50% of a population. Working, however with the theory of **Alfredsson** how much access a minority will receive will vary according to the size of each “ethnic minority”.⁷ Finally there is the question of the time element, which has continued to be problematic when defining minorities, as the issue as to whether they need to have a long-term presence on a territory in order to be recognised arises. Believing, however, that the longer the amount of time allowed to elapse before a voice is given to a minority in a country, the greater the opportunity is for misinformed prejudices to build up, in keeping with **General Comment 23** of the Human Rights Committee⁸ no time limit on a territory needs to be specified to fulfil the criteria.⁹

Why does this study choose to look at the medium of television?

This study will look at the medium of television because it reaches the most people and the visual nature and huge ownership of television sets means it is more influential than the radio or internet, especially in the countries of the EU. In the U.S., newspapers are read by less than 50% of the population,

⁷ Part of lecture given to students of E.MA programme (European Masters Degree in Human Rights and Democratisation) Lido-di-Venezia, week of 11th November, 2003.

⁸ Human Rights Committee 1994. The Human Rights Committee is the treaty body, which monitors compliance with the International Covenant on Civil and Political Rights.

⁹ The definition of “ethnic minorities” with which this thesis works is a generally accepted definition and is either consistent with or very close to those definitions of “ethnic minorities” adopted by the various sources and texts alluded to throughout the thesis.

therefore as the most ubiquitous American cultural medium it will be a more true representation if the television forms the focus of the thesis.

Reality and television are mutually reinforcing. Television is meant to reflect society and all its peoples. But in turn television sells an idea of how society is and operates to the consuming public. The power of the television is hugely persuasive and depending on how it chooses to portray an individual or an event, it can have enormous effect on how society views and treats certain issues. Television helps set a kind of standard and create a structure of how the world behaves, it acts as point of reference for the public and helps orientate them in an increasingly tumultuous world. It is therefore, imperative that television acts and produces in a responsible and truthful manner, so as not to sell a false reality to the public, which thus validates certain attitudes and inspires and influences real life.

If certain sectors of a population are not being seen and represented on the television, it is almost like a sort of censorship, it creates a certain taboo around these people and this identity and it fails to normalise their existence or place in society. By presenting “ethnic minorities” on the television in all sorts of programmes, and in all sorts of situations and allowing them to present their own image, they are thus more integrated, their presence does not seem anomalous and this should hopefully spill over into attitudes of everyday life.

What does this study mean by “participation” of “ethnic minorities” in television?

Participation alludes to both access to the means of production and proportionate coverage and representation on the screen. The most integrated approach possible is however to be promoted. This means there would be minority representation on the boards of television companies or

else an equality commission within the company ensuring that there is a proportionate amount of minorities working in and on the television and that their representation is fair and equal to that of their racial counterparts. This approach hopes to avoid the pitfall as identified by **Georgiou** of the London School of Economics, who points out that allowing access and ownership of completely alternative television facilities can contribute to a certain exclusion and isolation of minorities.¹⁰

Should it be that the television in a given country is being dominated by the majority population of that country, in terms of ownership, control and over-exposure of the majority, and if those minority groups who form a significant part of the population are being under represented or poorly represented, this study then promotes the positive obligation of the state to allow the creation of some (proportionate to the size of minority) minority owned and controlled television stations. Otherwise, if substantial portions of the population are not being given access to expressing themselves or having their voice heard, a certain violation of the freedom of expression is occurring.

1.2 How is the participation and representation of persons of “ethnic minority” groups in the television relevant to the functioning of a proper democracy?

The sheer number and diversity of explanations attached to the word “democracy” means precision in the use of it must be employed. In keeping with **Beecham** it is proposed that the foundations on which democracy lies are popular control and political equality.¹¹ In a small group or organisation, where everyone has an equal and effective right to access information and to participate and contribute, these principles can be most fully appreciated. In a

¹⁰ Part of Introduction to “*Diasporic Minorities and their Media in the EU – A Mapping. Minority Media in Europe*: Part of the European Workshop, “*A Revolution from Below?*” London School of Economics, London 26-27 September 2002 www.lse.ac.uk 10/03/2003.

¹¹ Beecham, D. “*Democracy and Human Rights*”, Cambridge, Polity Press, 1999 p.9.

larger context, democracy is fulfilled in terms of members of society exercising control over those elected or entrusted decision makers. Yet in as much as the theories of popular control and political equality can apply to decision-making in any group or association, democracy has a much larger sphere of activity. Undeniably, one of the core criteria of a democratic society is that all types of social integration and alliance should be internally democratic. A large component of ensuring this fact is that a democracy should provide the socio-economic conditions for political equality to be realised in practice. This is where the theory of the interdependence and interlinking of human rights, be they political and civil or social, economic and cultural, becomes pertinent.¹² In order for people to utilise and benefit from their civil and political rights, they need to be in a position to do so. This means there should be the assurance of the availability of the facilities necessary for a citizen to part take in and allow the employment of their civil and political rights.

If moreover, the best decisions are to be made to ensure the public good or as close to it as possible is done, one basic requirement is that the people have access to accurate information, not only about the respective consequences of different policy choices but even to simply understand the true and correct state of affairs as they stand at the moment. Intrinsic to a well and proper functioning democracy is the ability of its' members to be able to make democratic decisions. But integral to making these democratic decisions are the "*conditions for effective political agency*"¹³ which includes being able to make informed decisions.

Working with this framework and understanding of democracy, the reason as to why greater representation of "ethnic minority" groups on the television and, as an embryonic correlation of this greater access of "ethnic minority" groups to the facilities of the television is necessary, is thus quite apparent. The

¹² Largely advanced by the Vienna Declaration 1993.

¹³ Beecham D.. op. cit., p.11.

freedom of expression is a basic civil and political right and is recognised as such in virtually every political and cultural system. Article 19 of the Universal Declaration of Human Rights is exemplary of the general format of articles relating to this right when it declares “ *Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers*”.

The access of minority ethnic groups to the facilities necessary to allow them express and represent themselves is hence an integral corollary of the realisation of this right. Many “ethnic minorities” make up substantial proportions of the populations of the EU and U.S., but their freedom of expression is being curtailed due to lack of access to the facilities to have their voice heard, be it from mainstream media not involving them, to the unavailability of the capital necessary to having influence, to the basic lack of training in this area, which would allow participation and expression. However if a significant section of the population are not having their say, not being properly or sufficiently represented, then the democracy in place is faulty. Moreover, as previously indicated, inherent to democracy is access of the citizenry to correct information, in order to be best able to vote for policies for the public good. In the interests of the public good, the general public needs to know the full range of views and arguments on a matter from all groups of that society. Therefore access to the tools of expression is not just an issue of being fair and just to “ethnic minorities” but also of what is necessary to the general public to fulfil the tenets and conditions of a proper democracy.

1.3...and, how does their presence help fight racist attitudes?

While inherent to the promotion of a better democracy is the fight against racism, this thesis believes that this issue is a matter significant enough to be mentioned in its own right, in relation to the question of greater minority representation in and on the television. As a result the importance of

promoting more input and illustration of minorities in television as a tool for combating racism forms an adjacent theme to this thesis. Racism is a malaise mainly of Western societies, which strikes at the heart of democracy. While traditional racism was inadvertently given a pseudo-scientific basis in the middle of the nineteenth century by the publication of Darwin's *Origin of Species*, scientists in more recent years have pressed the idea that "race" is a cultural construct rather than a biological given. Although this traditional, biological racism has persisted somewhat, the more prevalent form of racism is today grounded in anthropology *"at the end of the twentieth century, racist theories tend to stress anthropological characteristics of the target groups. For example, racist ideology emphasises the unique nature of the language, religions, mental and social structures and value systems of immigrants of African, Arab or Asian origin, for instance, in order to justify the need to keep human communities separate"*.¹⁴ Contemporary racism, therefore abandoning its predecessor's discredited biological foundation and grounding its prejudice on cultural markers, *"has moved"* as the UN report puts it *"towards ethnic discrimination"*. *"Neo-racism, then, as the term is now used, includes hatreds based on the perception of culturally (rather than genetically) determined characteristics"*.¹⁵

In the European Parliament report drawn up on behalf of the Committee of Inquiry into Racism and Xenophobia in 1991,¹⁶ coverage by the media on immigration and such issues was highly criticised. At the time, the report noted that "ethnic minorities" were more often than not portrayed in the European media as criminals or destabilising influences. Often they appeared in stories about social and political disorder, as perpetrators of violence, and

¹⁴ *"Elimination of Racial Discrimination: Measures to Combat Racism and Racial Discrimination and the Role of the Sub-Commission"*. Report of the Secretary General's Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, the Economic and Social Council, United Nations. E/CN.4/Sub.2/1992/11 14 July 1992. Taken from Biltes *"World Racism Report 1998"* Intermedia 1999.

¹⁵ Biltes *"World Racism Report 1998"* Intermedia 1999 p.15.

¹⁶ This report was based on the findings of the Committee of Inquiry, rapporteur: Mr Glyn Ford (Luxembourg, Office for Official Publications of the European Communities 1991. Taken from Biltes *"World Racism Report 1998"* Intermedia 1999.

as incapable of adapting to traditional national standards. The report found that frequently questions were posed to the public in prejudiced styles such as *“should immigrants be expelled and will their expulsion reduce unemployment?”* Television was also found to rarely depict daily life and concerns of immigrants and minorities either in their own language or the language of the majority population. Furthermore, media operated by members of ethnic groups tended to be poorly distributed and unavailable to wider audiences. The report thus concluded, *“given this situation, the possibilities of challenging racist images on the one hand and of developing a diverse, vibrant community culture on the other are close to zero”*.¹⁷

While this described state of affairs is dealing particularly with Europe, the principal conclusions that reporting needs to be responsible and, that dissemination of images controlled by “ethnic minorities” themselves needs to be given more emphasis, is relevant to any situation, or country, and while there has been considerable improvement in recent years¹⁸ there is still an awful lot of progress to be made. Television needs to give a greater visualisation and control to “ethnic minorities” to help make the existence of persons and communities of ethnic groups more normal in the everyday life of plural societies, thus promoting tolerance and acceptance. Helping take minorities out of the ghetto and create a more fair and positive representation should also go towards diminishing the social marginalisation and help break the vicious circle of poor attitudes towards minorities, leading to social exclusion, leading to antisocial behaviour, thus reinforcing negative feelings towards them. Members of minority groups do, moreover need to have a

¹⁷ European Parliament report drawn up on behalf of the Committee of Inquiry into Racism and Xenophobia in 1991 based on the findings of the Committee of Inquiry, rapporteur: Mr Glyn Ford (Luxembourg, Office for Official Publications of the European Communities 1991 p.147. Taken from Biltes *“World Racism Report 1998”* Intermedia 1999.

¹⁸ Especially by journalists themselves. The creation of such an organisation as IMRAX which is *“a European-wide coalition of journalists, editors, publishers, broadcasters and media experts dedicated to raising awareness within media and promoting the highest standards of journalism concerned with reporting on matters of race, tolerance and multiculturalism”*. www.otenet.gr 16/05/2003.

greater involvement in the actual workings of television, in order to best ensure a fair exposé and voice in their portrayal.

1.4 What type of analysis is this study?

This thesis is a comparative analysis of the U.S., and EU. With regard to the EU, the laws and decisions of the Commission and of the Council of Europe will both be referred to, with specific allusions made to EU Member States where relevant. More specifically it is a comparative analysis of how each subject views and treats the issue of “ethnic minorities” on the television. This is done in two parts, moving from the descriptive to the discursive, the “how it is” to “why it is”. The first two chapters will address the specificities of how much actual ownership and control of the television there is by minorities in each unit of discussion and if and how this impacts on presence and portrayal on the television. This is followed then by a more broad examination of facets of the political culture of each entity, specifically the role of racism and how freedom of expression is viewed and treated, in order to get a complete picture of why the question of minorities in the television is thus considered and why current trends exist as they do. A somewhat different chapter, relating to the matter of what is termed the “cultural exception”, will follow this. This issue raises the question of “ethnic minority” participation and representation in the television to another level, with the elucidating of certain global parallels to this topic, which could aid and abet its’ advancement.

A comparison of these two subjects will not however be an issue of clear assessment and evaluation, there are vast differences to be accounted for, not least that one unit is composed of one country while the other is composed of fifteen countries.¹⁹ Moreover in relation to the EU, the historical and socio-cultural backgrounds of immigrant and 'ethnic minority' groups in Europe, their situation and means of self-expression in the national media and the positions

¹⁹ 45 countries when treating the Council of Europe.

adopted by decision-making institutions, structures and individuals with regard to the issue of minority access to broadcasting, naturally differs from country to country. Broadcast policy has, moreover remained largely in the hands of Member States. Each country has therefore a specific situation, and different levels of documentation on the issues relevant to our topic exist in varying degrees. As a result hard data on certain questions, particularly that pertaining to ownership of television stations by “ethnic minorities” proved to be extremely difficult to come by and constitutes an area that requires greater research and greater examination for another time. On the other hand, the U.S. has a long and proficient history of documenting most aspects of its media and broadcast industries, which leads therefore to somewhat different analyses of each subject.

Another fundamental difference to be considered is that the U.S. is a country founded on distinct and diverse nationalities and minority groups. This is part of its history and an innate part of its being. The EU however, as a relatively new and young creation, is in the early stages of treating the issue of immigration and new settlements of peoples from other countries. The result is thus, different stages of the management of this issue and very different attitudes to the question. While it might that one is further along in the evolution of this matter, that is not to say one position is better than the other as the evolutions of both are not the same and hence the situation cannot be so judged.

Although the scenario of all identities being equally free to exist, develop and be represented may currently be more an ideal than a reality, if the countries of the EU and the U.S. are serious in their promotion and implementation of proper functioning democracies, then the issue of allowing and providing access to the facilities of representation must be recognised and, concrete steps must be taken to accomplish this right. Moreover while positive, it is not sufficient that good practices are promoted or that fair and responsible reporting and depiction is enforced on television channels, because this thesis believes that the most accurate portrayal and representation can only come

from "ethnic minorities" themselves, and within genuine democracies, it is moreover, their right to do so. The freedom of expression and the fight against racism are integral elements of authentic democracies and, possess the potential to validate or undermine the democratic structure in place. It is for such reasons, interacting with the right of "ethnic minorities" to receive fair and correct treatment within democratic systems that the access of "ethnic minorities" to the means of self-representation in the media of television must be promoted and protected.

Chapter 2

The presence/absence of “ethnic minorities” in/on the television in the EU.

*“To ensure the development of democratic and tolerant societies which allow the participation of all persons irrespective of racial or ethnic origin, specific action in the field of discrimination based on racial or ethnic origin should go beyond access to employed and self-employed activities and cover areas such as education, social protection including social security and healthcare, social advantages **and access to and supply of goods and services.**”²⁰*

Paragraph 12 of EU Council Directive of 29th June 2000, implementing the principle of equal treatment on the grounds of racial and ethnic origin.

An examination of the broadcasting industry in Europe shows “ethnic minorities” to be underrepresented, both on the screen and in production teams. As with all other citizens with television sets, “ethnic minorities” contribute to the financing of the public broadcasting services of the countries they inhabit by paying broadcasting fees and yet with few exceptions their special interests are not served in return. This constitutes a certain disregarding of portions of European societies and prevents the creation of a pluralistic media thus working against the European aspiration to socially integrate “ethnic minority” groups and to guarantee them equality of access and opportunity. “Ethnic minorities” are also thus at the will of others in their depiction and in the representation of their point of view, which leaves them in a precarious position and in danger of being poorly represented.

²⁰ Emphasis added.

This chapter seeks to chart the role of persons and groups of “ethnic minorities” in and on the television within the EU. In focusing on “ethnic minorities” in and on the television in Europe, the analysis and emphasis is completely different from the equivalent study on the U.S. This is due to many fundamental differences between the two subjects of investigation, as outlined in the introduction, which also impacts greatly on the tools of examination. Although the question of ownership of the medium of television by persons of minority groups in the EU will be addressed, it will be elucidated that while this issue is certainly not irrelevant in the EU, it is certainly less existent as a subject of examination than its American homologue, that is to say that statistics pertaining to the question and an actual breakdown of figures dealing with ownership of television stations by “ethnic minorities” in the EU were extremely difficult to come by. As a consequence of this, the matter of presence in terms of control and access of “ethnic minorities” to the facilities and means of production and depiction in the television will have a greater accent. Finally the topic of portrayal of persons and groups of “ethnic minorities” on the television will be focused upon, as a special area of EU concern, with the correlation between weak levels of control and ownership and poor depiction of minorities on the television omnipresent as a theme.

2.1 The new topic of ownership, access and control: a need for greater awareness.

Some of the reasons that it was so difficult to unearth data relating to ownership of television specifically by “ethnic minorities”, lies with the fact that the EU has, for political reasons, delegated Member States to deal with issues related to minorities, including citizenship. This has led to tremendous variations among the EU countries with respect to matters related to national identification, nationality and citizenship.²¹ *“Any concession to ethnic broadcasting is limited by this context and the very real limitations that it*

²¹ For example Germany and some Eastern European countries continue to define citizenship on the basis of blood and ancestry rather than of choice.

places on full participation”²². It is, moreover to be noted that the monitoring of ownership or access of “ethnic minorities” can lead to a certain amount of controversy and agitation by broadcasters as well as “ethnic minorities” themselves, as people do not like having to put or be put in “ethnic categories”. As a result, statistics on this issue do not tend to exist as new practices concerning best methods of obtaining hard statistical data without damaging ethical practices have yet to be defined.²³ Any of the newer television projects such as the example of MiraMedia, which will be examined at a later point, tend to have been created as a response to this need, with EU institutional help rather than due to a natural process.

Against this, at the beginning of March this year “Beur TV Mediterranee”, an independent minority-owned television channel managed and owned by persons of North African origin, was established in France.²⁴ It follows on from Beur FM, a popular radio station, which has it is estimated approximately 400,000 listeners in France.²⁵ The aims of this television channel are primarily to provide a link to immigrants of all generations between France and the countries of North Africa, and to help “*reverse the discrimination that exists within the French media*”.²⁶ The channel will host a number of diverse shows, ranging from programmes on sport to political debates and promises to be liberal in tone. It will moreover, conduct the majority of its programmes in French, though some may be produced in Arabic. While this station is not the exception in Europe, that such a new television station can emerge is testament to the fact that there is a market for such facilities and emphasises the growth in number, recognition and abilities of “ethnic minorities”. With poor

²² Pradip, T., *Majority Censorship, Minority Broadcasting*, www.right.com p.4, 11/05/2003.

²³ As outlined by Ouaj, J., in *The European Institute for the Media, More Colour in the Media – Research, Recommendations 1999*, p.18.

²⁴ Mouhoubi, S., *Beur TV veut etre une passerelle entre tous les Maghrebins* in *Le Monde* April 04, 2003 www.lemonde.fr 07/04/2003.

²⁵ Kettane, N. *Beur FM Paris Medien und Immigration in Europa*, one of the speeches given at the European Media Conference entitled *Cultural Diversity – Against Racism* organised by Westdeutscher Rundfunk Cologne and the European Monitoring Centre on Racism and Xenophobia, Cologne 1999.

²⁶ Author’s translation from Mouhoubi, S., op. cit., p.2.

statistics relating to further questions of ownership, the question of access of “ethnic minorities” to the television industry, will now be looked at in order to see how representative and influential is their role in the television industry within the EU.

The European network "On Line/ More Colour in the Media" is a growing network of media organisations, which have been working in partnership to improve equal participation of immigrant and "ethnic minorities" in radio and television since 1995. The existence of such a network is proof of the growing awareness within the EU for the need of a greater emphasis on this issue. Funded by the Leonardo Da Vinci Programme of the European Commission, in March 1999, **Jamil Ouaj** of the European Institute for the Media carried out some research relating to employment and access of “ethnic minorities” to the television industry, looking specifically at the situation in Germany, the UK, France, the Netherlands and Finland. Rather than looking at individual programmes and broadcasting structures made by or for immigrants, this report concentrates on the whole group of "ethnic minorities" and their situation in mainstream television from the point of view of employment and professional access. It is thus extremely useful as it gives an indication of how much power and control may be wielded by persons of “ethnic minorities” in the medium of television in some EU countries.

Looking briefly at integration and employment and access of minorities to employment in general in these countries, one sees that in all subject countries, the disadvantaged position of many "ethnic minorities" is increasingly recognised. Policies aimed at helping “ethnic minorities” are however progressively more broadly targeted. While there is a growing trend to develop specific programmes to help battle unemployment, rather than draw on macro-economic and fiscal measures, these programmes are

designed to combat deprivation and exclusion on a larger scale.²⁷ When however, “ethnic minorities” are specified within policies, the focus is inclined towards a combination of social and vocational training, and integration in the labour market, thus there is a clear-cut link between employment and education policies. How, however have they fared in employment in the area of media and specifically television? In an increasingly multicultural Europe are “ethnic minorities” being properly and fairly represented, and more pertinently for this section, do they have access to the necessary facilities, which allows for the essential control or input into their depiction and portrayal on the television?

In carrying out research for the report by More Colour in the Media, it was discovered that except for the UK, none of the subject countries had documented or kept statistical information on the employment of persons of “ethnic minority” groups within the television.²⁸ Many of the stations queried in these other subject countries argued that ethically they did not want to encourage any discrimination by introducing statistics on “ethnic minorities” employed in their companies. This is a similar argument employed by many U.S counterparts. In France, most people involved in the industry regarded the term “minority” as derisive, as France has always claimed to be a country where everything is done to integrate people of foreign origin, rather than to categorise them. It does in fact even have a reservation on Article 27 of the International Covenant on Civil and Political Rights, as it claims to have no persons of minority groups on its territory. All of this contributes to a much more vague estimation of access and thus control and influence of persons of “ethnic minorities” to the television in the EU then is ascertained in the American section of this study. Nonetheless the results are as accurate as can be and are worth examining.

²⁷ See Ouaj, J. *“More Colour in the Media: Access of Ethnic Minorities to the television Industry”* Dusseldorf, European Media Institute March 1999 p.29-33 for more detail on this.

Looking firstly at Germany, based on approximate information provided by certain stations, some statistics could be drawn but in order to elucidate more concrete information, recruitment and personnel managers were contacted and asked to give their expert opinions to help fill the void. Thus the following data was explicated. In Germany there are two main public service stations. The Arbeitsgemeinschaft der Öffentlich-rechtlichen Rundfunkanstalten der Bundesrepublik Deutschland (ARD) is a decentralised body, made up of the regional public broadcasting services in Germany, while the Zweites Deutsches Fernsehen (ZDF) is a centralised broadcasting company. According to **Holznagel** it is these public broadcasters, which play the vital role in promoting diversity and preventing social exclusion of ethnic minorities, as they are not at the mercy of the advertising industry. He does, moreover assert that *“the new alliances and mergers in the multimedia sector, the gatekeeper positions in the field of distribution digital television and the new barriers with regard to access to programming rights are there to remind us that media pluralism will remain a cause for concern even in the digital world. PBS has to counterweight this “concentration of power” and to balance its influence on public opinion.”*²⁹

The regional public broadcasters working under the umbrella of the ARD play a vital role in the German television as they cover the whole German territory. Westdeutscher Rundfunk (WDR), based in Cologne is the largest company in the ARD. According to its report on staff, in 1995 WDR employed 4,613 people as permanent staff of which 138 were counted as "foreigners" of 28 different nationalities, thus rendering a proportion of 3%.³⁰ The report shows, however that 61 of the foreign employees were from member countries of the EU and thus the other 77 from other countries of the world. The WDR did go on to confirm that the proportion of ethnic minorities employed at WDR was not greater than 3%, which is in fact a decrease from 1993, when “ethnic

²⁸ Ibidem p.34.

²⁹ Holznagel, B., *The Mission of Public Sector Broadcasters* in Issue 5, of “International Journal of Communications Law & Policy” Summer 2000 p.3.

³⁰ WDR: personnel dpt. Sozialarbeit, November 1996 p.10 (WDR internal document) in Ouaj, J., op. cit., p.36.

minorities" composed 3.2% of the workforce. This statistic does, however become even less impressive when only those employees from countries, which are regarded as classic source countries of immigration are included. The result shows that the proportion of non-EU employees is a mere 1.7%.³¹

The Hessischer Rundfunk (HR) covering the region of Hessen stated that in 1997 of its' 1,972 employees 75 were non-German, giving a ratio of 3.8%. While almost half of these "foreigners" worked in the editing and programming area, a third of them held posts in administration and catering. If one looks at the statistics, excluding those people whos work is not directly or not at all related to media production, the number of non-German employees at HR falls to 3%. The HR also confirmed that of the 84 people who were currently being trained or doing further training at the station, only 2, that is 2.4% were of an ethnic minority background.³² The Saarlandischer Rundfunk (SR) employs 786 people as permanent staff, of which it stated 33 were non-German. This makes up 4.2%. On closer inspection however, it was discovered that half of the non-Germans were in fact musicians. In the area of production and direction only 4 foreigners were employed and in editing and programming 5 were employed. This means, that the proportion of non-Germans who actually have any real influence, access or control to the television is in fact 1.91% of the total personnel³³.

The second national public broadcaster in Germany, the Zweites Deutsches Fernsehen (ZDF) employed in 1997 a staff of 4,112 people, of which 74 "foreigners" were employed either as permanent staff, or with limited contracts or as trainees. This translates into figure of 1.8%.³⁴ These mentioned results do tend to be representative of the greater findings, which leads to an assumption that only a very small number of personnel in mainstream

³¹ ibidem p.37.

³² Hessischer Rundfunk questionnaire 1997 in ibidem p.37.

³³ ibidem p.38.

³⁴ ZDF: answer of the personnel department to the EIM survey on 1 September 1997 in ibidem p.40.

German television have an ethnic minority background, usually not exceeding 2 or 3%. Moreover in more pertinent areas for influencing content of media ethnic minorities are extremely poorly represented.

With regard the promotion of access and employment of "ethnic minorities" in the television industry in Europe, the United Kingdom is generally considered to be the leader of the pack. With the existence of such bodies as the "Commission for Racial Equality" and the "Equal Opportunities Commission" which work to monitor and legally enforce equal employment practices, the UK has a good history of outlawing discriminatory labour acts. In the UK governments' White Paper on Communications 2000, it did, moreover assert that it would *"retain and strengthen the regional dimension to public service broadcasting, and ensure that public service broadcasting continues to meet the needs of different communities and cultural interests"*.³⁵ Within the broadcast industry, the traditional and on-going commitment to equal opportunity is best exemplified by the British Broadcasting Commission (BBC) with their Department of Equal Opportunities as a clear illustration of this aim. The creation, however of Channel 4 in 1982, which was constructed specifically to reflect the multi-cultural face of the country and serve minority groups of all type was also a very innovative example of this goal and through such initiatives as its' two year training course specifically for ethnic minorities ("Fourfit"), it has shown a dedication to promoting access and control of ethnic minorities of their own images. One need only spend a short amount of time looking at British television in comparison to other European television channels to see that "ethnic minorities" are indisputably much more a part of the visual media. This is, moreover often reflected in the structures of television companies. Is this representation sufficient however?

Looking at the BBC, it is evident, that in terms of programming as well as employment it does seek to reflect the contemporary, multi-cultural British

³⁵ "A New Future for Communications" UK Government proposal for media ownership May 2000 in "main proposals".

society. This is best illustrated with its' publication of an internal document entitled "The BBC's Ethnic Workforce Composition" of 1994, which set targets for the proportion of staff from "ethnic minority" groups in the workforce of each department. Moreover at the managerial and policy-making level the number of "ethnic minorities" seems to be increasing. In 1997/1998 "ethnic minorities" composed 7.4% of management in the London Home Service, while 21.8% of those recruited into the management of the World Service were of "ethnic minorities".³⁶ There is no doubt therefore that when dealing with this issue of minority access to the tools of control to the television media the BBC is a leading institution. Looking at other British television stations, it is unfortunate however that this lead has not always been followed.

Using statistics issued by the Independent Television Commission, the Independent Television Companies (ITV) surveyed were found to have a very low employment of "ethnic minorities", especially in comparison with the BBC. Out of 8,033 personnel employed by the ITV companies and Channel 4, only 298, that is 3.7%, were from "ethnic minorities". Moreover only 14 were found to be in positions of management or authority.³⁷ In the smaller, regional companies spread around the UK the results concluded were also poor in terms of presence and access of "ethnic minorities" to the necessary tools to influence their portrayal. In 1997 at Anglia Television 1.7% of staff were from "ethnic minorities", with only one at board level, while "ethnic minorities" make up 2.6% of the population of this region.³⁸ In a staff of 104, in 1997 Border Television covering the Isle of Man had only one employee of an ethnic minority who was, moreover freelance and worked in a non-management capacity.³⁹ 3.2% of the organisation of Central Television, which covers a large part of the Midlands of the UK, was composed of "ethnic minorities". This was, however a drop from 1995, when 4.2% of the posts were held by

³⁶ BBC Annual Report and Accounts 1997/1998 in Ouaj, J., op. cit., p.46.

³⁷ *ibidem* p.47.

³⁸ Pines, J.- Research Correspondent; country report UK, updated by Ouaj, J. in *ibidem* p.48.

³⁹ *ibidem* p.49.

“ethnic minorities”.⁴⁰ Neither statistic are particularly inspiring when one considers that the town of Birmingham, where Central Television is based has an “ethnic minority” population of 21.5%.⁴¹ Again, these samples are representative of the greater picture of control and access of “ethnic minorities” to the television in the UK, which illustrate that the BBC, though the closest to the ideal, is the exception rather than the rule.

In France, although the public broadcasters affirm “*an obligation to show a diversity of programmes*” including “*programmes on different aspects of cultural life and on the activities of different communities living in France*”,⁴² the fact that so many companies viewed the term “minority” as pejorative, meant finding specific and correct information on the actual access of “ethnic minorities” to the tools of the freedom of expression was extremely difficult. The general attitude was that as France is multicultural in composition, such research is not important or relevant. Other companies, such as Television France 1 (TF1), refused to deal with the question at all, as it was felt it should not even be asked. For this reason, French television and the proportion of ethnic minorities working within it can only be give a very brief overview.

At La Cinquieme, it was considered that a maximum of 10 persons who might be seen as part of an “ethnic minority” worked at the station, which employs 250 people.⁴³ It was suggested that the reason that this figure might be so low is that as a station which aims at being “*very French*”, employees are required to have a certain understanding of French culture and therefore those of an “ethnic minority” background might be at a disadvantage. At France 3, which works as a regional organisation, it was alleged that that many people of Maghrebin origin are employed at the station. In further discussion, however it

⁴⁰ ibidem p.49.

⁴¹ ibidem p.49.

⁴² Frachon, C., Verhaftig, M. “*Televisions D’Europe et Immigration*” Institut National de L’Audiovisuel et Association Dialogue Entre les Cultures 1993 p.161.

⁴³ Ouaj, J., op. cit., p.54.

was unofficially divulged to the researchers of the More Colour in the Media project that an applicant with a Maghrebin name and whose address came from an area of high quantity of Arab and Maghrebin populations might have less chance of being selected.⁴⁴ The manner of recruitment to French television stations is another fundamental obstacle to the entrance and access of “ethnic minorities” to the tools of representation. In both TFI and France 3 and what seems to be the general pattern, regular freelancers, trainees and ex-trainees compose the main backup of people if the station needs to recruit. This means that professional experience is a pre-requisite and the management of France 3 averred that due to the generally bad social and career situation of “ethnic minority” groups, their presence and access to professional audio-visual media was extremely rare.

Finally looking at the situation in the Netherlands, one is again hindered by the fact that, as with most European countries, in the Netherlands, television companies do not record the ethnic background of their staff. Moreover further complications arise when one tries to categorise ethnic minorities, as many of the large populations originally from Indonesia, Surinam and other such former colonies possess Dutch citizenship. Although the overall results elucidated estimated that that only about 2 to 3% of those working in Dutch television are of “ethnic minorities”, while the ethnic composition of the country is approximated at 8.5%,⁴⁵ this is a subject growing strength and awareness about this issue in the Netherlands. Media executives and political institutions and figures have avowed a commitment to encouraging a more representative and multi-cultural media. This is best exemplified with the creation and existence of Stichting Omreop Allochtonen (STOA), a broadcasting foundation created specifically for “ethnic minorities”, recently renamed Mira Media.

⁴⁴ *ibidem* p.56.

⁴⁵ *ibidem* p.59.

Founded in 1986 by the major national immigration organisations as an independent co-operative body, Mira Media aims to realise more ethnic pluralism by promoting the participation of “ethnic minorities” in television and radio. Working in close co-operation with Dutch commercial broadcasting networks, the foundation works to support the participation of “ethnic minorities” in the mainstream media and tangibly does so by organising courses for programme makers and people at many levels of the production hierarchy. It is, moreover partly funded by the EU. Mira Media is not the only organisation of its kind however. Public Broadcasting for a Multicultural Europe (PBME), a non profit organisation was created to defend “ethnic minority” interests in the media and is funded by DG XXII of the European Commission. It aims to promote a greater participation of “ethnic minorities” on the television. It also provides instructions for broadcasters on how to avoid negative and stereotyping of “ethnic minorities” in their broadcasting and endeavours to create quality multi-cultural mainstream television, which helps endorse good relations between ethnic groups and counter racist and xenophobic attitudes. Aside from these two initiatives, there is also the “More Colour in the Media” network, from which much of this section has discerned its information and which acts in a Europe-wide capacity, supporting projects in satellite countries that try to integrate “ethnic minorities” into everyday life through the media.

At this point, the observation should be made that such organisations and initiatives are not an exclusively European phenomenon, and such projects seeking to empower “ethnic minorities” and give them a fair and equal access to the facilities necessary for them to express themselves correctly and appropriately certainly do exist in the U.S.⁴⁶ The difference is however, that in the U.S. while such ventures are non-governmental and receive little attention and credit, in the EU many of these schemes are given significant recognition and are often even well-funded by the institutions of the EU. With the

⁴⁶ Such as Altnet and the NOW Foundation which work largely on line to promote greater access of all types of minority groups to the media.

existence of a document such as Recommendation 1277 of the Council of Europe,⁴⁷ which specifically asserts the necessity of training and genuine access of “ethnic minorities” to the media as well as codes of conduct on how to treat minority issues and break down prejudices, there is clear institutional support of these endeavours. Why this might be will be further addressed at a later point.

2.2 Portrayal and representation of “ethnic minorities” on television.

As a notable area of concern of the EU, the topic of portrayal and representation of “ethnic minorities” on the television of the countries of the EU will now be addressed in a general manner. In researching this part of the study, statistics and analyses of “ethnic minority” presence in regular television shows, sitcoms and dramas, were difficult to discover. According to **Frachon & Verhaftig**, in the majority of fictional programmes on television, when immigrants and “ethnic minorities” are portrayed, they are done so in fugitive-type roles. It is the rare exception when they are placed in soap operas and sitcoms and given a title role.⁴⁸ While this state of affairs may be diminishing, there are no comparative statistics like those to be found in **Entman & Rojecki** on the U.S., where certain figures and trends in portrayal can be elucidated. What can be noted is that “ethnic minorities” in popular television shows in Europe are traditionally a rare phenomenon, with some exceptions.

In the UK for instance such a show as *“Love Thy neighbour”*⁴⁹ was being aired as early as 1972 and series like *“Tandoori nights”*⁵⁰ and *“Desmonds”*⁵¹ which

⁴⁷ Council Of Europe Recommendation 1277 on migrants, ethnic minorities and media 1995.

⁴⁸ Frachon, C., Verhaftig, M., op. cit., p.50.

⁴⁹ *Love Thy Neighbour*” aired in 1972, depicted the relationship between a British and Caribbean family living as neighbours in the UK.

⁵⁰ *“Tandoori nights”* dealt with the workings of an Indian Restaurant in London. It was written by Farrukh Dhondy, during his time as director of multicultural programmes on Channel 4.

⁵¹ *“Desmonds”* was a comedy about an Caribbean barber shop in London and was written by Trix Worrell, who was himself of Caribbean origin.

were written and produced by persons of “ethnic minority” groups, proved to have high popularity ratings. At the European Media Conference entitled Cultural Diversity – Against Racism,⁵² **G.Henke**⁵³ was able to point to a growth in fictional programmes dealing with issues of Germans and foreigners living side by side. These included “Afrika am Rhein” (Africa on the Rhine) dealing with a young African living in Cologne, and “Kahlschlag” (Clear-Out) confronting the issue of right-wing extremism and the Turkish community in Germany. There has however, since 1985 also existed a German soap opera called “Lindenstrasse” which has touched off all taboos in German society including persecution of foreigners and right-wing extremism. 30% of the cast of the show are moreover, of foreign origin playing the parts respectively of a Polish hairdresser, an Italian waiter, a Nigerian fleeing persecution, a Greek landlord, a Vietnamese man looking for voting rights and a Turkish doctor. Even more contrary to the norm the foreigners appearing in the programme often converse with one another in their mother tongue and they are not always portrayed in a politically correct good guy role.

In general, however multicultural shows of such quality are still uncommon and the situation in Italy as described by **J.L. Touadi** at the same conference, where shows dealing with or depicting “ethnic minorities” have to contend with limited and inconvenient broadcast times is more prevalent. In a more comprehensive country investigation, which is relevant to this section, **Malonga**, in her study entitled *“Ethnic Minorities: Which Place and Which Image on French Television?”* considers the social exclusion and identity problems that “ethnic minorities” feel when despite composing a considerable percentage of the population they remain more or less non-existent on the television.

⁵² The European Media Conference entitled Cultural Diversity – Against Racism was organised by Westdeutscher Rundfunk Cologne and the European Monitoring Centre on Racism and Xenophobia, and held in Cologne 1999.

⁵³ A producer from the television station WDR in Cologne.

In her thesis, carried out in 1999, she found that the manner in which “ethnic minorities” were portrayed was “*extremely simplistic and reducing*”.⁵⁴ For the main part, she discovered that minorities visible on screen were almost certainly just background figures. She also concluded that three quarters of “*visible minorities*” came from foreign programmes. She also established that minorities were very rarely shown as ordinary members of French society as their ethnic origins and cultural particularities were constantly referred to. The study also revealed that persons of “ethnic minorities” were “*always considered as a homogeneous entity in which each member is identical*”,⁵⁵ by French television, which tends to treat them all in the same manner, giving the same characteristics to all, and more often than not these are stereotypical characteristics. Finally the study ascertained that “ethnic minorities” when made visible on the screen were often associated with negative incidents, such as crime and poverty. **Malonga** concluded by suggesting that as television indicates how French society views itself in its collective imagination, France must see itself as “white” and not multicultural. Such findings are, however not specific to France and are indeed symptomatic of a greater European treatment of “ethnic minorities” on the television.

Looking at the **European Monitoring Centre on Racism and Xenophobia’s** publication of February 2002 entitled “Racism and Cultural Diversity in the Mass Media”, which is concerned primarily with their representation in current affairs programmes, one can trace common trends in the portrayal of “ethnic minorities” on television in the EU countries. Drawing on the country reports submitted by each EU Member State, it was found that the theme of crime was often linked to “ethnic minorities” and as a result in Austria, Finland, Italy and Portugal generalisations that associate migrants with crime were rampant.⁵⁶ It was also noted by a number of Member States, including Austria and Denmark,

⁵⁴ Malonga, M.F. “Which Place and Which Image on French Television?” Essay submitted as part of the European Workshop, “A Revolution from Below?” London School of Economics, London 26-27 September 2002 p.5.

⁵⁵ *ibidem* p.6.

that reports on migrant crime and domestic crime were treated differently by the media, with crime reports relating to the former being dealt with in a more sensationalist manner.⁵⁷ In Germany it was found that crimes transmitted about foreign suspects or criminals were painted in a more violent and aggressive light. In Denmark, when subjects involved in crime were Danish, only one story was published. However, when minority actors were concerned many follow-up articles were found to be circulated⁵⁸, thus suggesting that news interest was not much interested in the crime as in the ethnic identity of the participants.⁵⁹

Another theme, which negatively singled out “ethnic minorities” were problems dealing with immigration and asylum. For Member States encountering immigration for the first time, such as Austria, Ireland and Finland, language employed likening the arrival of asylum seekers to an onslaught and something comparable to a natural disaster, was commonplace. Spanish television was found to stress the lack of organisational and social and political cohesion of immigrant groups, while Swedish television referred to asylum seekers only in terms of the technical difficulties they posed and the fears expressed by the Swedish police and government.⁶⁰

In addition, another problem documented with the treatment of “ethnic minorities” on television was the complete lack of balance in the reporting on them, that is to say that all the negative images projected were never countered by any positive accounts of immigrants and their cultures. This allows for a dehumanising of people of “ethnic minorities”, as they are viewed only as a problematic feature, with no redeeming or normal human traits. Despite these common negative features, however the EUMC report was able to trace some

⁵⁶ “Racism and Cultural Diversity in the Mass Media: An overview of research and examples of good practice in the EU Member States, 1995-2000”, Vienna, European Monitoring Centre on Racism and Xenophobia (EUMC) 2002 p.43.

⁵⁷ *ibidem* p.43.

⁵⁸ This particular situation relates to print media.

⁵⁹ *ibidem* p.44.

⁶⁰ *ibidem* p.46.

improvements in documenting issues pertaining to “ethnic minorities”. In the UK, reporting on minority issues, especially in the media of television, had improved with “ethnic minorities” receiving news space as sources and claim-makers.⁶¹ In France there was a notable difference in terminology employed with the change of label for illegal immigrants from “clandestin” to the more constructive term of “sans papiers”. A diminishment in sensationalist reporting was identified in Denmark in more recent times, while Greek media had shown an increased awareness and sensitivity, in its coverage drawing more frequently on the comments of “ethnic minority” persons and Non-Governmental Organisations (NGOs).⁶²

Although, therefore, in general there has been a considerable improvement in portrayal of “ethnic minorities” in European television due largely to the notable role anti-racism and anti-discrimination play within EU doctrine and culture, greater inroads can be made in this area if “ethnic minorities” are given a greater part in their own depiction. In the U.S., in the case of “Telemundo”⁶³, a clear link between loss of ownership and control by “ethnic minorities” of the tools of representation and a degeneration in their depiction has been seen. While, in the current political climate this is unlikely to happen within EU countries, in order to promote and establish a functioning freedom of expression and help break the structures that allow the build up of the stereotypical portrayals that re-enforce racist attitudes, it is still necessary to promote greater access to the facilities of expression. How does this compare with its progress as an issue in the United States however? In the next chapter, the equivalent state of affairs will now be examined in order to ascertain if the treatment of this question thus far has been vastly different and if so in what way, with what emphasis and with what motivations?

⁶¹ *ibidem* p.64.

⁶² *ibidem* p.64/65.

⁶³ As will be seen in greater detail in Chapter 3 p.46.

Chapter 3

The presence/absence of “ethnic minorities” in/on the television in the U.S.

“The ownership of broadcast stations by minorities has long been a national policy goal. Diverse and local voices contributing to public discourse is a fundamental element of our democratic society.”

Changes, Challenges, and Charting New Courses: Minority Commercial Broadcast Ownership in the United States Report of the National Telecommunications and Information Administration's (NTIA), January 2001.

In this chapter the role of “ethnic minorities” in and on the television in the U.S. is analysed. Naturally, due to different results and conclusions it is not similar to that on the presence of minorities on the television in the EU countries, but due also to very different sources neither is it similar in lay out or presentation. This section looks first at how historically the U.S. has been more aware of the need for the monitoring of minority ownership and control of television stations than its European counterparts. It then examines some of the definitions of ownership and organisation held by those companies and bodies that supervise and aid minority possession of television media. The statistics relating to ownership of television stations will then be examined along with questions as to why they should be so astonishingly low considering the culture in the U.S. of recognising the role minority ownership can have in disseminating diverse opinions and stimulating debate. Finally the actual presence of persons of minority groups on the television screen will be inspected, with a look at how they are portrayed and how this relates to the topic of poor ownership and control of television stations by “ethnic minority” groups.

The "participation" of minorities on the television in the U.S. in terms of presence, visibility and role on the screen, has often seemed infinitely more advanced than its European counterparts. As **Malonga** asserts in her paper *"Ethnic Minorities: Which Place and Which Image on French Television?"*⁶⁴, much of the minority presence displayed on French television has tended to come from foreign, and predominately American television programmes. Without such television shows as "Different Strokes", "The Cosby Show", "The Fresh Prince of Bel Air" and "Miami Vice", for the French public black actors would have been more or less non-existent. If, as would seem to be the case, American television has been to the forefront in the portrayal and representation of people from "ethnic minorities", how has it stood with regard media ownership and control of the television stations by "ethnic minorities"?

3.1 The early recognition of the right of ownership, access and control: an awareness in decline.

Historically, in the U.S., there has been quite a strong recognition of the need to promote minority ownership of broadcast stations as a vital part of guaranteeing a vibrant marketplace of ideas and opinions. As far back as 1912 the "Radio Act" expressed concern at the monopolisation of the airwaves by a consortium of vertically integrated companies, such as General Electric, RCA and Westinghouse. The Communications Act of 1934 then advanced the goal of *"making available, so far as possible, to all people of the United States a rapid, efficient, nation-wide, and world-wide radio communications service"*.⁶⁵ This train of thought was followed in 1946 by the Federal Communications Commission (henceforth the FCC), a product of the 1934 Act, when it published its "Public Service Responsibility of Licensees" report, in which it was asserted that *"it has long been an established policy of broadcasters.... and the Federal Communications Commission that the American system of broadcasting must serve significant minorities among our*

⁶⁴ Malonga, M., op. cit., p.6.

⁶⁵ United States Congress 1934 (emphasis added).

population”⁶⁶. Despite such early good intentions however, it was not until 1949 that the first minority-owned radio station came to be.

The creation of the first minority-owned television station only occurred after the racial unrest of the 1960s and the publication, in 1967 of the “Report of the National Advisory Committee on Civil Disorder” by the Kerner Commission⁶⁷, which strongly criticised the media’s failure to cover or accurately portray the African American community. All these facts coupled with the reality that more than twenty years after the creation of the first minority-owned radio station minorities owned only 10 of the country’s approximately 7500 radio licenses⁶⁸, produced a flurry of activity on the part of the Commission during the 1970s to work to fulfilling its obligations under the 1934 Act and promote greater viewpoint diversity through minority broadcast ownership. This was given impetus in 1973 when the Commission finally awarded the first television construction permit to a minority-owned business for WGPR-TV, Channel 62 in Detroit.

The results of many relevant court cases and, the findings of reports conducted by the FCC during this period concluded that direct Commission action was necessary to promote viewpoint diversity through minority broadcast ownership⁶⁹ and advocated the hypothesis that station ownership by a particular minority group had a propensity to increase programming directed not only to members of that group, but also to other minorities.⁷⁰

⁶⁶ “Public Service Responsibility of Broadcast Licensees” [The Blue Book] (1948) (reprinted in Report on *Minority Ownership in Broadcasting*, Minority Ownership Task Force Report, Federal Communications Commission 1978).

⁶⁷ The Kerner Commission was an initiative of President Lyndon Johnson, created to identify the reasons for the racial disturbances and unrest of the period and to recommend measures to prevent their recurrence.

⁶⁸ Akosua Barthwell Evan, *Are Minority Preferences Necessary? Another Look at the Radio Broadcasting Industry in “8th Yale Law & Policy Review 1990” in Changes, Challenges, and Charting New Courses: Minority Commercial Broadcast Ownership in the United States* Report of the National Telecommunications and Information Administration’s (NTIA) January 2001.

⁶⁹ *Citizens Communication Centre v. FCC* (D.C Circuit Court of Appeals 1971).

⁷⁰ Data collected by the FCC and compiled and published in the Congressional Service Report 21 (June 29 1988) p. 847-848.

Such findings went towards increasing legislative support for minority ownership which culminated in 1978 when under President Carter, the Minority Telecommunications Development Programme (MTDP) was established with the aim of coordinating Federal Government and private industry attempts to increase minority ownership of broadcasting outlets and telecommunications enterprises. The administration of this programme has, since its inception fallen under the auspices of the National Telecommunications and Information Administration (NTIA), which has consistently promoted various recommendations to improve minority broadcast ownership. In one of the earliest petitions to be filed with the FCC in 1978, the NTIA urged the Commission to modify certain licensing rules, policies and procedures in order to encourage greater minority broadcast ownership. In particular the petition recommended that in comparative license hearings, the FCC would award preferences to applicants with minority ownership. It also suggested the expedition of minority application processing, the reduction of financial requirements for minority license applicants, and such schemes as the adoption the National Broadcasters' tax certificate proposal to permit owners selling their stations to minority entrepreneurs to defer capital gains tax.⁷¹

While the FCC did not adopt all these and other such proposals it did recognise that minority participation in broadcast ownership and management had the effect of allowing for more assorted programming. It did moreover determine that diversification of programming and ownership were public interest objectives and as a result certain initiatives were approved. Among them, the Commission vowed to issue tax certificates to broadcasters proposing to sell their stations in the instance where minority ownership was in excess of 50 percent and/or controlling. It also enlarged its distress sale policy to permit licensees to avoid expensive, time-consuming revocation hearings by selling stations to minorities at below market prices before the commencement of any hearings.

⁷¹ Petition for Issurance of Policy Statement or Notice of Inquiry, NTIA, Dept. of Commerce (submitted Jan 31 1978).

The next big measure taken by the FCC, under the ruling of Congress, was the authorisation of a new lottery procedure favouring minority owners.⁷² As a manner of increasing diversification of media ownership, the Commission was sanctioned to give additional notable preference to any applicant controlled by a member or members of a minority group when awarding licenses and permits among competing applicants. While there were challenges to some of the Commission's preferential treatment of minorities, including the sale distress programme, which took place on front of the Supreme Court in 1990, in the case of *Metro Broadcasting, Inc. v. FCC*, 497, U.S. 547 (1990), the Court ruled that the Commission's goal of "*enhancing broadcast diversity*" was an important "*government objective*". It was held that the Commission's use of race-based affirmative action programmes were justified by being of important government interest. The Court also argued that an owner's minority standing had "*specific impact on the presentation of minority images in the local news, in that minority-owned stations tend to devote more news time to topics of minority interest and to avoid racial and ethnic stereotypes in portraying minorities*".⁷³ As a result the Court upheld the FCC preference programmes in conceding that variances may exist between programmes directed by minorities and non-minorities.

Riding high on such a wave of promotion of minority ownership of the broadcast media in the beginning of the 1990s, one would therefore expect some impressive statistics in the area at the beginning of the new millennium. This is not the case however. Before assessing some of these surprising statistics, however, it is important to look a little closer at the issue of defining what is meant by "ownership", "control" and "management". This is of great importance when considering and monitoring effectively this question of the presence of minority persons within television networks. When treating a definition of ownership, it will generally require a demonstration of both equity ownership

⁷² An amended Section 309(i) of the Communications Act, which approved lotteries, stated, "*an additional significant preference shall be granted to any applicant controlled by a member or members of a minority group*".

⁷³ *Metro Broadcasting Inc. v. FCC* United States Supreme Court 1990.

and an overall or large control of the business. In the National Telecommunications Information Agency reports of the 1990s, minority-owned broadcast properties were determined as those in which minorities⁷⁴, such as Blacks, Hispanic Americans, Asian Americans, or Native Americans own more than 50 percent of an entity's stock. In 1994 this definition was broadened to include "voting control in broadcast partnership".⁷⁵ This meant that in a stock corporation "minority control" is defined as minority ownership of greater than 50% of the corporation's voting stock and in a partnership "minority control" is defined as minorities having greater than 50% of the partnership's voting interests.

The definition with which the FCC has consistently worked pushes for minorities to hold both a "substantial" equity interest and to exercise actual control of stations. It is, however recognised that according to different contexts and ownership schemes running at the time, this combination of equity and control may fluctuate. This point is exemplified in the Telecommunications Ownership Diversification Act of 2000⁷⁶, which aims to defer capital gains on sales of telecommunications businesses to those deemed "eligible purchasers". This policy aims to foster diversification and increase the participation in the telecommunications industry by small businesses and those controlled by women and minority groups. In this particular bill "control" of an entity necessitates suitable purchasers to own at least 30% of a corporations stock and more than 50% of the "combined voting power of all classes of stock". The bottom line is however, that the ownership

⁷⁴ A *Statistical Analysis of Minority-Owned Commercial Broadcast Stations licensed in the United States in 1991*, MTDP, NTIA (Oct. 1991); *Compilation by State of Minority-Owned Commercial Broadcast Stations*, MTDP, NTIA (Nov.1992); *Analysis and Compilation by State of Minority-Owned Commercial Broadcast Stations*, MTDP, NTIA (Oct 1993); *Analysis and Compilation of Minority-Owned Commercial Broadcast Stations in the United States*, MTDP, NTIA (Sept.1994); *Minority Commercial Broadcast Ownership in the United States*, MTDP, NTIA (April 1996); *Minority Commercial Broadcast Ownership in the United States*, MTDP, NTIA (Aug. 1998) The 1997 Report titled *Minority Commercial Broadcast Ownership in the United States: A Report of the Minority Telecommunications Development Program*, NTIA (Aug. 1997) did not define minority ownership.

⁷⁵ See MTDP Report 1994.

⁷⁶ A bill introduced by Senators John McCain and Conrad Burns of the Senate Committee on Commerce, Transport and Science.

of broadcast stations by minorities requires if not the majority than a substantial combination of equity ownership and control. As such what is the current status of ownership of minority persons or groups of the broadcast medium of television?

In a study carried out by **D.Rawls** for Alternet⁷⁷, the ownership and control of the broadcast medium by “ethnic minority” groups or individuals would appear to be somewhat in crisis. This author took “minority ownership” to be defined as a media facility in which minorities possess more than 50% of a firms equity interests or stock and/or exercise actual control of the facility, and as such the concluding results were found to be less than positive. Working largely with the 2001 report released by the NTIA, which studied the current standing of media ownership in the U.S., “ethnic minorities” were found to be in possession of 449 of the 11,865 full-powered commercial radio and television stations in the U.S. This amounts to 3.8% of the total. Of these stations 426 were commercial radio stations, which translates into 4% of the total commercial radio ownership. This means that the remaining 23 were commercial television stations, which renders a representation of 1.9% of the country's 1,288 commercial television licences. Such statistics are in sharp contrast to the population figures for the U.S. as a whole in 2001, in which minorities represented nearly a third of the total American people.⁷⁸

In its 2000 analysis of minority ownership of broadcast media in the U.S., the MTDP compared minority commercial radio and full-power television stations to their non-minority complements in the Nielsen Designated Market Areas⁷⁹ (DMAs) in which minority and non-minority stations compete. MTDP justified

⁷⁷ Alternet is a media initiative created by the *Independent Media Institute*. D. Rawls is a research analyst at the Centre for Digital Democracy, www.alternet.org p.2, 20/02/2003.

⁷⁸ NTIA, MTDP Report 2001.

⁷⁹ A.C. Nielsen Company is a media firm that measures U.S. television and radio audiences in local markets and conduct consumer research for stations. Advertisers often use these audience measurements to select stations for their product promotions.

using this approach, as they believed it to provide a more inclusive and true picture of minority broadcasters than comparisons working exclusively against national standards. This is a pertinent point as full-power minority television stations broadcast in only 10% of DMAs in the U.S. and as noted represent only about 1.9% of the television licenses issued in 2000. Of the 23 full power commercial television stations owned by minorities in 2000, African Americans owned 20, Asian Americans owned 2 of them and Hispanic Americans owned only 1. This has shown to be the lowest level of minority full power ownership since MTDP began studying and distributing these reports in 1990. In 1990 minority groups or persons were in possession of 29 full power television stations. This number rose to as high as 38 during 1995 and 1996. Between 1998 and 2000 however minority owners shrank from 16 to 12. While there was a detection of two new Asian-American owned stations, there was a loss of four African-American owned stations and five Hispanic-American stations, which meant an overall decrease of seven stations. Moreover, although revenues for the average minority television station grew 47.8% compared to the 42.3% revenue growth of their average non-minority competitor in the years 1993 to 1999, the average revenues for non-minority owners were almost three times as high during this period.

This drop-off in ownership, which was already quite meagre but just beginning to make a small impact is extremely worrying and renders minorities virtually powerless to present positive images of their communities. How did this perturbing state of affairs come to be? While there are deeper political cultural issues, which have allowed this situation come to pass, these shall be examined in greater detail later on in Chapter 5. For the moment, however, the practical and technical events which have led to these circumstances will be briefly examined before assessing if and how this has affected the presence of minorities on the television and their portrayal.

While many other relevant reasons exist, there is no doubt that the Telecommunications Act of 1996 had a tremendous and integral role to play in weakening minority ownership of television and all broadcast media. Although the broadcast industry's gradual deregulation began with the Seven Station rule⁸⁰, it reached its zenith with this Bill. In narrative responses from minority owners replying to a survey carried out by the MTDP on the effects of the Act, one owner is quoted as saying *"the 1996 Act is a disaster for small and minority broadcasters and operates against the principle of diversity of media ownership"*.⁸¹ The Telecommunications Act saw a significant relaxation of the FCC's ownership rules and resulted in the sharp drop of 14% of minority broadcast owners.⁸² This authorisation of more lenient ownership rules saw a huge amount of media consolidation that allowed for a small number of big businesses to control multiple properties. Many minority owners feel the result was an actual decrease in competition and diversity, as it is practically impossible to compete with huge media conglomerates for listeners, advertisers and on-air talent. This media consolidation also provoked an increase in station prices which has left only the largest and wealthiest able to compete in the market.

The timing of this Act was unfortunate as it followed very shortly after the repeal of the tax certificate scheme in 1995. This program was a small but very effective method of encouraging minority ownership as it gave tax benefits to those who sold their broadcast property to persons belonging to a minority, thus helping make minority owners more attractive and also encouraging investment in minority enterprises. Initially the project was so successful in aiding the growth of ownership diversity that Congress instructed the FCC to consider extending the use of tax certificates to promote opportunities for minorities in competitive markets. The scheme was however

⁸⁰ Seven Station rule came into being in 1954 and permitted a single entity to own seven AM stations, seven FM stations and seven Television stations.

⁸¹ MTDP survey results 2000.

⁸² Part of a speech given by James Winston, Executive Director of the National Association of Black Owned Broadcasters (NABOB) to the FCC 27/02/03 Richmond, Virginia.

retracted in 1995 when instances of misuse were cited. Other factors which continue to dog minority owners are the obstacles they encounter in attempting to obtain advertising and when trying to access capital. Both of these problems find their roots in discrimination. In a study sponsored in 1999 by the FCC on advertising practices, titled "When Being No. 1 Is Not Enough: The Impact of Advertising Practices on Minority-Owned and Minority-Formatted Stations" the report showed that *"anecdotal data collected by the study suggest that in certain instances, the media buying process is guided by ethnic/racial stereotyping, underestimations of disposable income, the desire to control product image, unfounded fears of pilferage etc..."*

This coupled with the ongoing and major issue of the lack of access to necessary financing continues to be a key problem for minority broadcasters. With regard this problem one Hispanic-American broadcaster is quoted as having said *"the lack of access to capital is much more prevalent amongst minorities in my opinion, because the lender institutions do not have enough people who understand our disabilities with enough authority to decide in our favour"*.⁸³ Even Robert Johnson, former owner of Black Entertainment Television (BET) – what was the only black-owned national television cable channel but recently purchased by Viacom/CBS – believes that the future of black cable television ownership is in a desolate state due to this reason. In a London Financial Times article, Johnson declared that blacks must look to white money in order to have a part to play in the corporate world in the US. *"You can't do it as a black-owned business; there isn't that much capital. You have to do it as a white-owned business with black management"*.⁸⁴

In their study carried out on challenges to minority businesses **Yago & Pankrantz** assert that the limited capital that is available to minority business tends to be debt capital but *"access to equity financing has been and*

⁸³ MTDP survey results 2000.

⁸⁴ Rawls, D., op. cit., p.2.

continues to be scarce... Companies that receive equity financing grow sales at a faster rate, hire more employees and have a much greater economic impact than firms that have not received such investment". Furthermore "the fact that equity funds targeting minority businesses account for only about 1 percent or about \$2billion of the private equity market may explain in part the difficulty minority firms confront in obtaining access to such funding".⁸⁵ One final area of persistent trouble for minority ownership, which links up to this difficulty of accessing capital is the lack of broadcasting experience held by many minority broadcasters. Although it has proven difficult to measure a correlation between broadcast industry experience and ownership, the FCC did recognise that a lack of experience can adversely affect minorities ability to acquire financing for purchasing stations as lenders, naturally prefer to give to those they believe most likely to succeed.⁸⁶ The result is, however that flagging opportunities for minorities to gain employment in the television industry goes toward limiting their chances of gaining the necessary experience for acquiring or making them attractive to acquire television stations.

Two decisions reached by the U.S. Courts at this time also went towards reducing opportunities for minorities to become involved in ownership of television stations. In the case of *Adarand Constructors v. Pena*⁸⁷ the Supreme Court ruled that strict scrutiny tests would be used to evaluate the constitutionality of government affirmative action programmes and that race-based programmes would have to be *"narrowly tailored measures that further compelling government interests"*.⁸⁸ This verdict more or less overruled that of

⁸⁵ Yago, G., Pankratz, A. "The Minority Business Challenge: Democratizing Capital for Emerging Domestic Markets". Milken Institute and Minority Business Development Agency, U.S Dept of Commerce, Sept 25, 2000 p.15 in *Changes, Challenges, and Charting New Courses: Minority Commercial Broadcast Ownership in the United States* Report of the National Telecommunications and Information Administration's (NTIA) January 2001.

⁸⁶ "Minority Ownership in Broadcasting" Minority Task Force Report, FCC, 17/05/1978 p.11-12.

⁸⁷ U.S Supreme court verdict 1995.

⁸⁸ *ibidem*

the Metro Broadcasting case⁸⁹. The judgment reached by the D.C Circuit Court of Appeals in the Lutheran Church-Missouri Synod v. FCC⁹⁰ questioned the federal government's power to provide for race-based programmes which aimed at increasing minority employment, and went on to prohibit employment discrimination on the basis of race, colour, national origin and gender. If, therefore the state of ownership and control of the television media by "ethnic minorities" is currently in a state of flux, how have all these events, progressive and retrogressive, impacted on the actual presence of persons of minority groups on the television?

3.2 Portrayal and representation of "ethnic minorities" on the television.

The ownership and control of the television waves is intrinsically bound up with the presence and portrayal of persons on the television. According to the "Now Foundation"⁹¹, in a report titled "Affirmative Action in the Broadcasting Industry", racial and "ethnic minority" groups currently make up 15.7 percent of prime-time television drama casts and 18 percent of television and radio journalists⁹² and yet they make up 29 percent of the country's population.⁹³ Moreover, the same report estimates that by 2050, the U.S. population will be 47% composed of people of colour. At the current pace, that means minority representation would be only 26 percent in TV news.⁹⁴ The harsh fact is, however that unless there is a certain amount of control or influence within the television stations by persons of "ethnic minorities", increasing the presence of racial groups is going to be an up-hill struggle and promoting fair and true depiction is going to be even more problematic. In recent years, the lack of available resources has meant that several minority-owned media companies have had to sell or merge with mainstream media companies. These have

⁸⁹ See p.37.

⁹⁰ D.C Circuit Court 1998.

⁹¹ An American NGO subtitled "National Organisation for Women".

⁹² Factfile of report "Affirmative Action in the Broadcasting Industry" carried out by NOW Foundation www.nowfoundation.org 14/03/2003.

⁹³ Executive summary of MTDP report 2000.

⁹⁴ NOW Foundation, op. cit., p.1

included the sale of Amistad Press to Harper-Collins in 1999; the decision in October 2000 by Essence Communications to form a joint venture with Time Inc; the purchase of Africana.com, an Internet portal that provides information on the history, culture and present-day situation of Africa and its Diaspora by Time Warner in September 2000 and most lately the procurement of BET by Viacom/CBS and Telemundo by GE/NBC in 2002.⁹⁵

Each of these events has led to protests by minority consumers, debating and condemning the poor manner in which minorities have traditionally been depicted by mainstream media and communicating the need for minority owned and controlled television and media. These fears are not moreover without foundation. Although NBC since acquiring Telemundo alleges to “talk the talk” of the Hispanic community, at the end of 2002 the network was in the process of creating a series that will centre on the lives of a family of Mexican drug dealers. In a move away from more serious discussions, it is furthermore attempting to lighten the tone of Telemundo with the development of such a show as “The Roof” which will focus on hip-hop dance and music interviews. Likewise with the takeover of BET has come the termination of many awareness-raising type programmes directed at African-Americans such as “Teen Summit” and “BET Tonight”.⁹⁶

In his book entitled “Primetime Blues: African Americans on Network Television”, **D. Bogle** looks at how television has reflected society’s attitude towards African-Americans and also propagated such attitudes. In the book each decade is given a subtitle: The 1950s: Scraps; The 1960s: Social Symbols; The 1970s: Jokesters; The 1980s: Superstars; The 1990s: Free-for-alls. Bogle uses these subtitles to illustrate each decade’s historical events and how they build upon stereotypical expectations, restricting continuously the African-American’s full humanity. He asserts that regardless of the

⁹⁵ Rawls, D., op. cit., p.2.

⁹⁶ ibidem p.2/3

television programme, whether sitcom, police show, lawyer, the Black person remains overly projected as a stereotype and unknown as a real person.

In a truly in-depth and insightful account of how the mass media treat racial differences, which adds credence to the argument of **Bogle, Entman & Rojecki** present some astounding statistics. These authors studied a wide spectrum of television shows, films, news and advertisements to come up with some startling observations. Despite the fact that television commercials now show many African-Americans and seem to shun stereotypes, on close analysis hidden patterns of differentiation do emerge. For instance in advertisements Blacks do not touch Whites, but unlike Whites they rarely even touch each other. The result, the authors assert is the subtle conveyance of Black skin as taboo.⁹⁷ Working with some hard numbers one can see a clear hierarchy of racial preference embedded within casting adverts. Of 105 commercials examined for autos or trucks, they comprised of 100 percent white cast. Of the 74 commercials for perfumes, those in the ads were 98 percent White. Finally the 47 commercials surveyed dealing with jewellery or cosmetics were found to be 100 percent White cast.⁹⁸ Network news was also found to “ghettoise” Blacks. Increasingly African Americans appear mostly in crime, sports and entertainment stories.⁹⁹ Rarely are Blacks shown to be making an important contribution to the business of the Nation. In sampling network news shows results demonstrated such statistics, as the number of sound bites on foreign affairs uttered by Whites was 99 as opposed to 1 uttered by a Black person. The number of sound bites on economics opined by Whites and Blacks stood at 86 to 1. The total sound bites on electoral politics expressed by Whites and Blacks was 79 to 0, while the

⁹⁷ Entman, R., Rojecki, A. *"The Black Image in the White Mind. Media and Race in America"*. Chicago University Press 2000 p.164.

⁹⁸ *ibidem* p.166.

⁹⁹ *ibidem* p.64.

number of sound bites voiced by Whites on crime was 149 to 24 spoken by Blacks.¹⁰⁰

Conclusions of the writers also showed that Black defendants are treated differently on local television news from their White counterparts. For example the mug shot of an accused is four times more likely to appear in a local television report when the defendant is Black than when White.¹⁰¹ The accused is furthermore, two times more likely to be shown being physically restrained on local television when Black than if White.¹⁰² Finally the name of the charged is two times **less** likely to be shown on the screen in a local television report when the defendant is Black rather than White. This is important according to **Entman & Rojecki** because *“the presence of the accused’s name provides a sense of his or her individual identity. It’s absence may suggest that individual identity does not matter, that the accused is part of a single, undifferentiated group of violent offenders: just another Black criminal”*.¹⁰³

Another interesting piece of information to be elucidated by **Entman & Rojecki** is that “telegenic” or those figures the media chooses to expose to the public are not necessarily the most representative. In a survey from 1994 statistics showed that 40 percent of Black adults stated that Jesse Jackson represents Black people “very well” while only 11 percent stated that Louis Farrakhan represents Black people “very well”. Moreover the percentage of Black adults stating they had “never heard of” Jesse Jackson was 0 percent, while 22 percent of Black adults said they had “never heard of” Louis Farrakhan. Despite these figures, stories about or sound bites from Jesse Jackson on ABC World News in the year 1994 totalled 13 while stories about

¹⁰⁰ ibidem p.65.

¹⁰¹ ibidem p.82

¹⁰² ibidem p.83

¹⁰³ ibidem p.82

or sound bites from Louis Farrakhan in the same year on ABC World News came to 25.¹⁰⁴ Such astounding data illustrates clearly how television likes to focus on the figures it finds more interesting or polemical rather than those who are more responsible and legitimate. This does, however create a warped image in the public's minds of opinions of the Black community and thus an unfair picture of minority attitudes and mind-sets.

The situation in the U.S. is, therefore clearly not ideal. Despite a comprehensive history of recognition of this need for greater control of the television by persons of "ethnic minorities" and for a more just depiction on the television, it is unfortunate that it still remains in such a dissatisfactory condition. As an issue that has received attention and has been acknowledged as an area of concern, it continues to be dealt with in an inconsistent manner and in more recent times in a detrimental manner to the cause. Why is it however, that trends regarding the ownership, control and representation of "ethnic minorities" in and on the media of television seem to be going in opposite directions in the U.S. and EU? While the U.S. has been much more aware of the need and duty to promote and protect diversity on the television as a manner of disseminating a plurality of views as much as helping break discriminatory attitudes, it has in more recent years allowed certain barriers to the equal freedom of expression be erected. In the EU, this is a topic of much more actuality, where the importance of a proportionate and fair depiction of "ethnic minorities" on the television is recognised as an important tool in the fight against racist stances and a necessary feature of functioning democracies. This study will now look at certain facets of each subjects' political culture in order to understand better why these antithetical developments are occurring.

¹⁰⁴ Ibidem p.127

Chapter 4

Why there is a growing emphasis on the representation of “ethnic minorities” in/on the television in the EU.

*“Considering that a pluralist and genuinely democratic society should not only respect the ethnic, cultural, linguistic and religious identity of each person belonging to a (national) minority, **but also create appropriate conditions enabling them to express, preserve and develop this identity.**”¹⁰⁵*

Part of the Preamble to the Council of Europe Framework Convention for the Protection of National Minorities.

Adopted at Strasbourg on 1st February 1995.

In this chapter, some of the reasons as to why there is a growing understanding of the need for “ethnic minority” access and representation in the media of television in the EU is analysed. First the significant attention minority issues and those of racism receive within the EU will be acknowledged. Then the question of how the EU treats and sees the freedom of expression will be examined. While no concrete policy or firmly based tradition of how freedom of expression is viewed definitely exists yet, it is my belief that a certain leaning towards the positive treatment of this right can be discerned. This will be looked at in relation to a recent case before the European Court of Human Rights. The suggestion that EU attitudes with regard to broadcast policy have at times, and where possible tended to be interventionist and regulatory, which could be said to signify a positive approach, will also be put forward, with the argument that such strategies favour the promotion of greater access of “ethnic minorities” to the facilities of television and thus a greater realisation of the freedom of expression in truly functioning democracies.

¹⁰⁵ Emphasis on words added.

4.1 Overview of the treatment of issues pertaining to “ethnic minorities” and racism in the EU.

The respect for human rights is a fundamental value of the European Union and permeates all its actions and accords. While traditionally it is the body of the Council of Europe which has played a leading role in the promotion and recognition of human rights, more recent years have seen the enactment of certain pieces of EU legislation relating to their protection and thus a true commitment on the part of the EU to the principles of democracy and human rights. With increased immigration into Europe in the last few decades and especially in more recent times, the EU has had to face a whole array of new challenges from these influxes. While ethnic diversity is not a completely new phenomenon in Europe, especially not in former colony-owning countries, the rate and volume with which immigration has been occurring is remarkable and there are those peripheral countries, such as Finland and Ireland, for which multiculturalism is a new experience.

There is however, an understanding within the EU that persons belonging to ethnic, linguistic or religious minorities often face increased risk of human rights violations. It is moreover, accepted that promotion and protection of minority rights correlates closely and positively with ensuring stability and security.¹⁰⁶ Ethnic intolerance and the lack of protection of the rights of minorities breed violent conflict and can contribute to an increased number of refugees and to a huge amount of human suffering. It is for such reasons that the protection of minority rights and attempts to stifle and end racist attitudes lie at the core of the EU project. The EU has, moreover as a result, endorsed several measures to deal with these potential threats to the functioning democratic order.

¹⁰⁶ See quotation in Introduction made by UN Secretary-General in the report “An Agenda for Peace” UN Document A/47/277 – S/24111, 17 June 1992, paragraph 18 in Alfredsson, G., op. cit., p.8-28.

With the signature of Article 13 as part of the Treaty of Amsterdam in 1997, which was then substantiated by Council Directive 2000/43/EC¹⁰⁷ the general principle of non-discrimination was, for the first time introduced into the EU Treaty. This article provides a platform for comprehensive anti-discrimination policies, legislative or otherwise and it also confers explicit and specific power on the Council of the European Union to combat a wide range of discrimination. Prior to the Treaty of Amsterdam, the EU had only prohibited discrimination on grounds of nationality and had enforced equal pay and access to work for men and women doing equivalent work. Article 13 however, takes a much broader human rights approach to non-discrimination. It reads *“Without prejudice to the other provisions of this Treaty and within the limits of the powers conferred by it upon the Community, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation”*.

While this article exemplifies the genuine willingness of the EU to act against discrimination in all its shapes and forms, further initiatives of the EU, have illustrated the unambiguous resolve to work for minority rights and against racism. These have included the creation of the Charter for Regional or Minority Languages and the founding of the European Monitoring Centre on Racism and Xenophobia in Vienna. The creation of the European Network Against Racism in 1998 as a product of the European Year Against Racism 1997 was also a positive step, while more specifically for this subject in April 2000, the European Commission against Racism and Intolerance (ECRI), published a report *“Examples of Good Practice to Fight Against Racism and Intolerance in the European Media”*.¹⁰⁸ While it might be argued that the EU could and should do more in this area or that some of their greater economic, labour or immigration policies impact negatively on these aims thus illustrating a certain

¹⁰⁷ Full title of Directive is Council Directive of 29th June 2000, implementing the principle of equal treatment between persons irrespective of racial or ethnic origin. 2000/43/EC JOCE L. 180/22 20 VI 00.

¹⁰⁸ The report is available on <http://www.ecri.coe.int> and shows positive practice in the medium of radio and on initiative of NGOs, but for some countries also in mainstream TV and press.

contradiction, there is no doubt that issues pertaining to minorities and anti-racism are very much on the agenda.

Despite the existence of these afore-mentioned pieces of legislation as well as numerous others, such as the International Covenant on the Elimination of All Forms of Racial Discrimination, the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, all which aim to give equal enjoyment of rights to minorities, there have nonetheless been suggestions within EU circles for the enactment of “*special measures*” for minorities. Special measures are intended to place minorities as well as their members, in a position equal to the State’s majority population. “*Special measures do not constitute privileges*”¹⁰⁹. Like the principle of non-discrimination they are based on the rule of equal rights and aim to work against historical and continued discrimination against minorities so that equal enjoyment of rights can be realised. Special measures, which include such propositions as allowing minorities use their own languages, run their own schools, also consist of permitting participation in the political and economic affairs of the State inhabited. With regard the theory of special measures, the State must, however not only allow but also fund and support such activities on a proportional basis to the services provided for the majority population.

As a credible, well-supported, well-documented theory,¹¹⁰ the existence of such

¹⁰⁹ Alfredsson, G., op. cit., 16.

¹¹⁰ As promoted by Szajer, J., in *Unity in Diversity*. Proposal for the representation of national and ethnic minorities in the institutional system of the European Union, Committee of National and Ethnic Minorities <http://www.europa.eu.int> 14/04/2003. Also in 1989 the Human Rights Committee observed in its General Comment No.18 that “equality” does not necessarily mean identical treatment. In certain instances, groups may be treated differently for purposes legitimate under the Covenant, such as achieving equal rights. See UN Document CCPR/C/21/Rev.1/Add.1, with reference to Paragraphs 7, 8 and 13. Also see Article 2.4 of the International Convention on the Elimination of Racial Discrimination part of which reads “*Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination...*”

a doctrine is very positive for the promotion of greater minority presence in the media, with which seems it seems to fit comfortably as a natural facet. It is clear, therefore that issues pertaining to “ethnic minorities” and racism are very contemporary and recognised topics in the EU, constantly under scrutiny and currently in development. They are, moreover questions, which reach right to the higher echelons of power within the EU, hence the amount of hard law and well-funded institutions emerging on the issues. Furthermore with the existence of such a principle as that of special measures, the question of greater representation on and in the workings of television in the EU by “ethnic minorities” seems to have a firm and relevant basis. The fact that these concerns receive so much attention all helps, in part, to explain why there is a growing emphasis on the issue of representation of “ethnic minorities” in and on the television in the EU.

4.2 The view and treatment of the freedom of expression within the EU.

At the heart of the difference between the EU and the U.S. and their contrasting treatment of the issue of ethnic diversity in and on the television lies the fact that each unit sees and treats freedom of expression in very different manners. These different perspectives do naturally spill over and greatly influence broadcast policy. Due to the case of *VgT Verein Gegen Tierfabriken v. Suisse* of 28th June 2001, and the existence of certain elements of regulation of broadcasting within the EU, both of which shall be examined later, I believe an inclination towards the positive treatment of this right to be present in the EU, and this constitutes a fundamental reason for the growing emphasis on representation of “ethnic minorities” in and on the television in the EU. What is meant by this idea of “positive freedom” however?

There exists two conceptions of freedom: negative freedom, “freedom from” and positive freedom, “freedom to”. Looking briefly at **Isaiah Berlin’s** essay “Two Concepts of Liberty”, a clearer understanding of what these two

freedoms mean can be elucidated. Berlin defines negative freedom as *"the area within which the subject..... is left to do or be what he is able to do or be, without interference by other persons"*.¹¹¹ Positive freedom, on the other hand is *"the source of control or interference that can determine someone to do, or be, this rather than that"*.¹¹² The two conceptions are however interdependent, in that the negative freedom of one, or some, may or may not be diminished or extended by the exercise of positive freedom by another, or others, or vice versa: There are moreover potential dangers attached to both conceptions in that the well-intentioned exercise of positive freedom by a group may become despotic, while the exercise of negative freedom could harm the capacity to exercise positive freedom. These potential dangers should however, not be allowed devalue either conception, as each, when applied correctly, in the appropriate situation will permit the realisation of true freedom.

While Article 10 of the European Convention on Human Rights enshrines important aspects of negative freedom, such *"as freedom to hold opinions and receive and impart information and ideas **without** interference by public authority and regardless of frontiers"*,¹¹³ certain policies within the broadcast arena have tended towards a more positive approach and with regard legal standpoint, while a sufficient jurisprudence has not yet been built up by the European Court of Human Rights to say for certain that this is a preferred route, the case of *VgT Verein Gegen Tierfabriken v. Suisse* of 28th June 2001 is certainly worth noting as an interesting possible precedent for the future. This case might furthermore go on to be considered a landmark case as it represents a clear predilection for the positive treatment of the right to access the freedom of expression and the horizontal application of the right.

In this case of *VgT Verein Gegen Tierfabriken v. Suisse* of 28th June 2001, the

¹¹¹ Berlin, I. "Two Concepts of Liberty", Oxford, Clarendon Press 1958.

¹¹² *ibidem*

¹¹³ Emphasis on word added.

issue revolved around the refusal of Swiss public broadcast television to show an advert produced by an animal protection organisation, which aimed at responding to a promotional campaign currently being aired by the meat industry. The animal rights organisation claimed they should have the right to use the same vehicle as the meat companies to promote their viewpoint in the public domain. The question being asked was whether article 10 includes the right of access in terms of having equal access of all views to the facilities necessary to best disseminate these views, even if this means having to take positive steps to create this level playing field? With regard the facts of the case, in 1994 the claimant (VgT) wanted to show an advert on Swiss television comparing the pork industry to concentration camps in an attempt to persuade the public to cut down on their consumption of meat. The Swiss advertising authority, invoking Swiss broadcast law, which prohibits advertising of a political nature on Swiss television, rejected the advertisement suggesting that the organisation in question change their advert or try to promote their campaign in the print media. According to Swiss law the print media allows for such adverts, which are deemed political in character. The advert would therefore, be published. Furthermore as plurality of the media is a goal legislated for in Swiss law, in using this media it would validate the necessity of the print media. However as the campaign of the meat industry was deemed to be purely commercial in content and aim, it was not considered by the advertising authority to be comparable to the advert of the VgT and thus would continue to be aired on public broadcast television.

As a result, in July 1994 the applicant did therefore, bring the case to the European Court of Human Rights claiming a violation of article 10 and of being a victim of discriminatory treatment, thus violating article 14 of the Convention also. In examining the case the Court affirmed the positive obligations of the State under article 10 and emphasised the continuing evolution of the States' responsibilities under this article. It did, however find that under domestic Swiss law the prohibition of the advertisement due to its political content was legitimate, *"considering the facts, the political discourse*

of the claimant association renders it the object of proscription".¹¹⁴ On the other hand however, the Court considered whether the ban was proportionate or not. Under the terms of article 10, limitations can only be placed on freedom of expression "*as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary*". If this is found to be the case however, the measures enacted must be deemed proportionate.

While the ban was clearly prescribed by law and while this prohibition of political propaganda was recognised as serving a legitimate aim largely due to its attempt to prevent powerful financial groups from gaining too much influence in the public sphere, whether the ban was proportionate and necessary was the crux issue. For the Court the freedom of expression is considered *one of the most essential facets of a functioning democracy and a natural condition for the development of individuals*.¹¹⁵ Based on these ideas the Court is vigilant about ensuring a plurality of views exist in the public domain and in order to stimulate debates of public interest. As a result practically all opinions are considered worthy and necessary in a democratic society. Under the auspices of this argument the Court thus upheld the claim of VgT. According to the Court, considering the aim of VgT as purely an attempt to participate in public debate about the protection and treatment of animals and due to the fact that VgT were not a financial group, and thus not in a position to abuse their access to the public airwaves, the Court decreed that the ban had been unnecessary.

¹¹⁴ Author's translation. European Court of Human Rights, case of VgT Verein Gegen Tierfabriken v. Suisse of 28th June 2001

¹¹⁵ As seen in European Court of Human Rights decisions in Thomas v. Luxembourg, 44, 29th March (2001), and Lingens v. Austria, 41, 8th July (1986).

While other routes of expression existed for the VgT to express their point of view the Court held that the only way the organisation could reach the whole audience of the Swiss public was by gaining access to the national television channel. The Court concluded that the claimant had the right to address itself to the entire Swiss public in the same conditions, by the same media as its adversary. The events and outcome of this case are particularly interesting and relevant for our subject as they illustrate an acknowledgement of the obligation to promote the equality of access to the facilities necessary to ensure the fair and equal freedom of expression of all views. It shows an understanding that freedom of speech and expression and representation means *“the freedom to communicate effectively to a mass audience, which nowadays entails access to the mass media”*.¹¹⁶ This positive view of the freedom of expression, whereby it is deemed that inherent to the right is the equal right to access the facilities necessary to do so, requires the initiation of positive measures. The notion of certain steps being taken or certain regulations being enacted in order to affect a certain outcome is not however a completely novel idea to broadcast policy in the EU or its Member States. It is as a result of this openness to and pre-existing acceptance of the need to sometimes intervene in the world of audiovisual policy, that such an issue as that of the need to push for and promote greater access of “ethnic minorities” in the media can gain more credence.

4.3 The inclination towards interventionism in broadcast policy.

In a brief look at one of the broader legal foundations for the promotion of diversity in EU broadcast policy, since the 1970s, it can be seen that plurality of the media has emerged as an important value of EU Competition law. In the Treaty of Rome there are a number of articles which deal with regulation of competition so as to forbid any *“prevention, restriction or distortion of competition within the common market...”*¹¹⁷ For example Article 37 aims at

¹¹⁶ Barendt, E. *Broadcasting Law. A Comparative Study*, Oxford, Clarendon Press, 1993 p.145

¹¹⁷ Article 85 of the Treaty of Rome in Barendt, E., op. cit., p.140.

preventing state monopolies from discriminating with regard to the marketing of goods between nationals of member states, while Article 90 prohibits the enactment of any provisions concerning public undertakings, which may act in a contrary manner to the non-discrimination and competition policies of the Treaty of Rome. Furthermore in a number of cases, the issue of the compatibility of a broadcasting monopoly with Community law has been raised. The result of such cases as the Sacchi case,¹¹⁸ dealing with the then monopoly of RAI in Italy and the Elliniki Radiophonia Tileorassi¹¹⁹ in Greece is that a public broadcasting monopoly is not as such contrary to Community law. Conduct of the monopoly is however, subject to competition law and must be in conformity with such EU principles as the freedom of goods and services.

In a significant ruling in 1991, the Commission illustrated that it would interfere in agreements if the diversity of the media was thought to be at risk. In the Screensport case¹²⁰, a consortium of members of the European Broadcasting Union (the Eurosport Consortium) entered into some accords with Sky Television that would allow Sky Television the exclusive showing on its satellite sports channel, Eurosport, of sports programmes produced or purchased by consortium members. However Screensport, another company offering a sports channel satellite service, challenged this deal. The Commission found that as the agreement prevented competition between Sky and the Eurosport Consortium and the opportunity for viewers to hear a diversity of broadcast views, while also denying Screensport's chances to compete with Sky for the transmission of sports events, it could not be permitted. The result is, that there exists a stable basis for the protection and promotion of a multiplicity of views in the broadcast arena. *"Member states may not apply their own national competition legislation to mergers with a Community dimension."*¹²¹ *But they may take appropriate measures to protect*

¹¹⁸ Sacchi v. Italy, European Court of Justice, 409, 1974.

¹¹⁹ Elliniki Radiophonia Tileorassi, v. Greece, European Court of Justice, 2925, 1991.

¹²⁰ Commission decision of 19 February 1991 OJ L 63/32.

¹²¹ Merger Regulation, Article 21(2).

*certain legitimate interests, other than those taken into account by the Regulation, provided the measures are compatible with Community law.*¹²²
*'Plurality of the media' is one of those interests. In this case, Community law has explicitly recognised the importance of this value to competition law.*¹²³

With regard then, the question of promoting a greater access to the facilities of television to work with this commitment to diversity, looking at some of the Member States, there has, in a general manner been certain courses of action taken. For instance in Germany, broadcasting is interpreted as a constitutional value, requiring in some circumstances positive provision by the legislature. This right to access has by and large related to election broadcasts, and as of yet the Constitutional Court has never recognised a right of individual or group access.¹²⁴ The issue of access has, however at least been acknowledged and touched upon. In Italy, following the ruling of the Constitutional Court in 1974, it was held that the monopoly of the television channel RAI could only be justified on certain conditions. The result is that RAI is required to reserve a certain amount of transmission time for the parties and groups represented in Parliament, trade unions and political and cultural associations, ethnic, linguistic and religious organisations, and other socially relevant groups which request access. At least 5% of television time must be reserved for access and RAI is obliged to provide free technical assistance.¹²⁵ In Great Britain it is mandated that terrestrial television broadcasters must fill 25% of programmes with independent productions.¹²⁶ Moreover in a very recent controversy in the U.K. the House of Lords threatened to *"kill the government's sweeping communications bill, which would let Rupert Murdoch's News Corporation - already master of 37% of Britain's newspaper circulation - buy Channel 5."*¹²⁷

¹²² ibidem, Article 21(3).

¹²³ Barendt, E., op. cit., p.143.

¹²⁴ ibidem, 1993 p.149.

¹²⁵ ibidem, p.155.

¹²⁶ Koenen, A., Schmid, H., Woldt, R. *The Situation of Independent Television Producers in Great Britain, France and the Netherlands*, Report Commissioned by the State Broadcasting Authority (LfR), North Rhine-Westphalia, Dusseldorf, European Institute for the Media p.3.

¹²⁷ Time Magazine 30/06/2003 p.18.

Prior to a vote, lords clambered to add a "Murdoch clause" to the bill, ensuring that the U.K. retains a "plurality of media owners". A victory was indeed obtained, when on 1st July 2003 the government agreed to a new plurality test to ensure there is real choice and diversity in the U.K.'s media, allowing the new regulator, Ofcom recommend takeovers be blocked *"in the public interest"* - even if they would not create a monopoly. Lord Puttnam, who had a leading role in promoting the test said that *"for the first time this delivers the concept of the 'public voice'".*¹²⁸

Such policies reflect in a broad manner how the question of access to the facilities of television as a requisite component to the equality of liberty of expression and thus the enforcement of a more fair democracy has already been recognised. Moreover while such policies clearly illustrate the enactment of positive measures to ensure a certain freedom of expression for certain groups, they are also inherently interventionist. The positive treatment of the freedom of expression innately requires some amount of regulation and interference and implies the correction of some sort of imbalance. In more recent times the focus has often been on redressing the imbalance between majority popular culture and the need to foster the local and regional diversity of all the peoples inhabiting European countries. It is this existing pattern of interference and regulation, with a competition policy in favour of diversity, which is encouraging for the notion of obtaining greater access to the facilities of television for persons of "ethnic minorities".

The topic of the protection of the European audiovisual space from external and more often specifically American forces has long been characterised by a certain amount of instruction and involvement by both particular Member States and the EU institutions themselves. The feeling as to why is well

¹²⁸ BBC News World Edition Online 01/07/2003.

articulated by **M. Ferguson** when she writes¹²⁹ *"Left exclusively to market forces in media systems overshadowed by American products, it is fair to say that without support for distinctive cultural industries most... would not realise to the extent they do their complex, multi-faceted identities"*.¹³⁰ In a Europe of so many specific and deep-rooted nationalities, identities and cultures, it is no wonder that many mechanisms have been put in place to foster this plurality of traditions.

While this issue will be looked at in a global context a little later on, the internal struggle within the EU countries to maintain, protect and promote their own heritage provides a pertinent backdrop to the fostering of diversity and promotion of greater representation for newer "ethnic minorities" in the production of television and on the television screen: The *"fear "* as **Blumler** puts it *"of Western Europe, is that the advent of commercial television will shift the emphasis from a principled to a pragmatic pluralism, yielding only that amount and those forms of diversity that are likely to pay"*¹³¹ means that a more positive form of the freedom of expression has permeated much of European audiovisual policy for the last number of decades. In accordance with the EU television directive 97/361 EC of the European Parliament, 1997¹³², European broadcasters are obliged to set aside at least 10% of broadcasting time for independent productions in certain programme categories, especially fiction. The EU Directive "Television Without Frontiers", which is also a product of the earlier version of directive 97/361 EC¹³³ and the

¹²⁹ In this situation Ferguson is talking about the Canadian population but the author feels the comment is equally applicable to the European situation.

¹³⁰ Ferguson, M. *Television, Identity and Diversity in the United States and Canada* in Aldridge, M., Hewitt, N. (eds) "Controlling Broadcasting. Access policy in North America and Europe", Fulbright Papers Vol. 13 Manchester, Manchester University Press, 1994 p.174.

¹³¹ Blumler, J. 1992 in Negrine, R. *The Media and Public Interest. The Question of Access and Control* in Aldridge, M., Hewitt, N. (eds) "Controlling Broadcasting. Access policy in North America and Europe", Fulbright Papers Vol. 13 Manchester, Manchester University Press, 1994 p.58.

¹³² Directive 97/361 EC of the European Parliament and of the Council of the 30 June 1997 amending Council Directive 89/552/EEEC on the co-ordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of TV broadcasting activities of 3 October 1989.

¹³³ See above footnote.

Council of Europe Convention on Transfrontier Television adopted in May 1989, also exemplify this trend well.

Although according to **J. Michael**, there is *“no doubt that the regulation of European broadcasting during the last decade, notably through the EC’s “Television Without Frontiers Directive” and the Council of Europe’s Convention on Transfrontier Television has significantly extended “negative freedom” in broadcasting. Viewers have access to more services, broadcasters have more access to programme rights and to establishing service, and producers have better access to markets for the sale of programmes than before”*¹³⁴, it can also be asserted that certain positive diktats are intrinsically regulatory and pave the way for potential similar proclamations regarding the right of access of “ethnic minorities” to the facilities of television to express and portray themselves in their own way.

Since before the inception of the European Union the Council of Europe has been a primary body in pushing for a *“free”, “independent”* and *“pluralistic”* media.¹³⁵ This illustrates an acknowledgement for the need of a diversity of views on the airwaves. Since Recommendation R(94)13 the issues of the scope of media and cross-ownership, the regulatory responses of Member States and the implications for media plurality and diversity of opinion have been of prominent Council concern.¹³⁶ It was, however with the Convention on Transfrontier Television 1989, which was complemented by the EC Directive “Television Without Frontiers” and amended with an additional Protocol in 1998 that a legal framework enforcing a plurality of views on EU Member States televisions was established. The Convention and Directive aimed to put in place an international framework for unhindered transfrontier circulation

¹³⁴ Michael, J. in Collins, R. *Two Types of Freedom: broadcasting organisation and policy on both sides of the Atlantic* in Aldridge, M., Hewitt, N. (eds) “Controlling Broadcasting. Access policy in North America and Europe”, Fulbright Papers Vol. 13 Manchester, Manchester University Press, 1994 p.194

¹³⁵ See Directorate of Human Rights, Council of Europe Activities in the media field. DH-MM/94/1.

of television programming services with some minimum rules such as the protection of certain individual rights. More importantly, however for the purpose of this research under what is termed "*Cultural Objectives*", falls the obligation of ensuring a multiplicity of opinions on adherent countries televisions, where it is stated "*wherever practicable and by appropriate means, that broadcasters of transfrontier programme services reserve a majority proportion of their transmission time for European works*".¹³⁷ This, **D'Haenens & Saeys**, believe "*symbolises European fears that the expansion of television channels would inevitably lead to the importation and transmission of US produced programs*". In essence, what it definitely means however is that eventually 51% of shows on European television must be of European production.

As is apparent here, while this signifies a liberalisation of the market, it is the liberalisation of an internal market and while it shows an understanding for the need to see other perspectives, it promotes a diversity of specifically European views. The result is meditated liberalisation of a European market, coupled with deliberated protectionism against the global market. The point to note however, is that the EU system is much more content to impose or certainly encourage the putting in place of quotas or similar incentives, to ensure the airing of a multiplicity of views. While it currently favours specifically European views, the fact that it is willing to intervene at all and to take positive measures to correct imbalances or give a greater opportunity of expression to certain voices means that in this environment, the right of "ethnic minorities" to produce and promote and express themselves is much more likely.

¹³⁶ D'Haenens, L., Saeys, F. *Media Dynamics and Regulatory Concerns in the Digital Age*, in "The European Journal of Communication Research" vol. 1, 1997, p.46.

¹³⁷ Council of Europe, *Council of Europe Activities in the Media Field*. D.G of Human Rights, Strasbourg Council of Europe Publishing, 2000, p.26.

This is in sharp contrast to the situation currently in place in the U.S., where the possibilities for “ethnic minorities” to control and portray their image as they choose and thus advance democracy and help fight racist attitudes is in a very precarious state of affairs. With broadcasting and communications being looked at and approached nearly entirely as an economic right, with little recognition of the civil and cultural aspects inherent in these areas, the current state of broadcast policy in the U.S. does little for the promotion of access “ethnic minorities” to broadcast facilities and less still for the advancement and legitimation of its democracy.

Chapter 5

Why the representation of “ethnic minorities” is in decline in/on the television in the U.S.

“You might call it the “McDonaldization” of the American media. McDonald’s spends a lot trying to give the people what they want. They only put products out after expensive field-testing. Every product is analysed to satisfy the greatest number of people, even if the local community may have its own unique tastes. Don’t get me wrong, I like McDonald’s, and eat there sometimes. But I don’t eat there every day. And even if I did, I know it wouldn’t be very healthy”.

Remarks by FCC Commissioner Jonathan S. Adelstein before the Media Institute May 20, 2003 *“Big Macs and Big Media: The Decision to Supersize”*

The representation of “ethnic minorities” in the media of television and, the question of their greater access to the necessary broadcast facilities, in the name of freedom of expression is in decline in the U.S. In this chapter some explanations as to why that might be will be examined. The generally small amount of attention given to issues pertaining to racism and “ethnic minorities” in the political arena in the U.S. will be noted, but the considerable debate over affirmative action programmes, under the banner of which seems to fall such issues will be explored. The clear preference for a negative approach to the freedom of expression in the U.S. will then be inspected, with at look at some case law as proof to the fact. Finally, the tradition of liberalisation of broadcast policy in the U.S. will be observed. The main consequence of this tradition means that media now rests in the hands of the few, who do not tend to be “ethnic minorities” due to persistent inequalities, institutionally and in the market. This liberalisation relating very closely to a negative interpretation of the freedom of expression does, moreover have an extremely harmful impact on the access and representation of “ethnic minorities in television” in the U.S.

5.1 Affirmative Action as a meeting point for discussion on the treatment and view of issues pertaining to “ethnic minority” and racism.

In one of his final addresses to Congress, entitled “The Unfinished Work of Building One America”, before handing over the Presidency to G.W. Bush, Bill Clinton lamented the reality that *“racial equality has been our nations constant struggle predating the nations founding by a century and a half. And racial equality is still our constant struggle”*.¹³⁸ Although during his Presidency, with his Initiative on Race and push for such pieces of legislation as the Local Law Enforcement Act, which would outlaw hate crimes based on race in any jurisdiction¹³⁹, Clinton did acknowledge some of the persistent challenges facing “ethnic minorities” and the ongoing battle against racism. Such issues have not, however been as far up the agenda of the current Bush administration. As with most political systems, in the U.S., depending on which political party is in power at the time, the focus of attentions can be extremely different.

The U.S. was founded by immigrants often as sources of cheap labour, and has developed an increasingly polyethnic, multiracial culture. The history of recognition, by the political and legislative powers, of the plight of “ethnic minorities” and the malevolent forces of racism did not really begin however, until the birth of the Civil Rights movement, in the 1960s. The Civil Rights Act 1964 is a landmark piece of legislation, which prohibited employment discrimination by large employers (over 15 employees), whether or not they had government contracts and created the Equal Employment Opportunity Commission. Prior to this, however, in 1961 President J.K Kennedy’s Executive Order (E.O) 10925 had used what would become known as “affirmative action” for the first time, when he instructed federal contractors to *“take affirmative action to ensure that applicants are treated equally without regard to race,*

¹³⁸ President William J. Clinton’s *Message to Congress: The Unfinished Work of Building One America*, January 15, 2001. The White House at www.firstgov.com p.1, 26/05/2003.

¹³⁹ Prior to that hate crimes could only be prosecuted if the act took place on federal property, for example in a school yard but not in the street outside the school.

colour, religion, sex or national origin".¹⁴⁰ It can be seen therefore that while in the EU there is only now the dawning of the notion of "special measures"¹⁴¹ to help create a level playing field in society for "ethnic minorities", the American version of this, "affirmative action" is very much in place. It is, however today, also very much under the hammer, resting in a very controversial position. This does not necessarily suggest a decline in interest in issues pertaining to "ethnic minorities", again it could illustrate how much further along the chain of evolution the U.S. are in treating minority concerns but it is worth looking at the arguments relating to affirmative action as a way of understanding current U.S. attitudes towards the treatment of racism, "ethnic minorities" and the promotion of access to certain rudiments in society for "ethnic minorities", for as **Entman & Rojecki** assert *"arguably affirmative action was the site of ideological battle over race in America for the last quarter of the twentieth century and..... is the battleground in which the causes, moral status and remedies (i.e. the frames) for the status of African Americans in the United States were most directly engaged"*.¹⁴²

It was E.O 11246 of President L. Johnson that legally set in place the programme of affirmative action requiring all government contractors and subcontractors to take affirmative action to expand job opportunities to minorities. It also saw the establishment of the Office of Federal Contract Compliance in the Department of Labour to administer the order. Since that time, affirmative action has had a chequered history. Initially in such cases as the Regents of the University of California v. Bakke, 438 U.S. 912 (1978), and United Steel Workers of America, AFL-CIO v. Weber, 444 U.S. 889 (1979), the U.S Supreme Court upheld the use of race as one factor in choosing candidates for admission into university and for employment. However since the Reagan era it has come under increasing pressure, with its implementation facing increasingly stricter guidelines. In Adarand Constructors Inc. v. Pena,

¹⁴⁰ *The History of Affirmative Action Policies* www.inmotionmagazine.com p.1, 07/03/2003.

¹⁴¹ See chapter 4.1 p.37.

¹⁴² Entman, R., Rojecki, A., op.cit., p.107.

513 U.S. 1012 (1994) the Supreme Court held that affirmative action programmes just about remain constitutional when narrowly tailored to accomplish a “compelling government interest” such as remedying discrimination. In 1995 the Regents of the University of California voted to end affirmative action programmes at all University of California campuses and this was followed a year later by California’s Proposition 209, which abolished all public sector affirmative action programmes in the state in employment, education and contracting. This was despite a recently released report issued by the bipartisan Glass Ceiling Commission documenting the endurance of barriers that deny women and minorities access to decision-making positions, and recommending that *“corporate America use affirmative action as a tool ensuring that all qualified individuals have equal access and opportunity to compete based on ability and merit”*.¹⁴³

In *Texas v. Hopwood*, 518 U.S. 1033 (1996), the U.S. Court of Appeals for the Fifth Circuit ruled against the University of Texas, deciding that its law school’s policy of considering race in the admissions process was a violation of the Constitution’s equal protection guarantee. Such cases, especially with regard affirmative action programmes in university admittance, have become commonplace since these initial cases and two major judgments regarding the University of Michigan’s use of affirmative action programmes in employment and student admissions have just been made in U.S Supreme Court.¹⁴⁴ In what were cited as the U.S. Supreme Court’s *“most significant and wide-ranging affirmative action rulings in a generation”*¹⁴⁵ and against much expectation and even the opinion of the White House, affirmative action was upheld in principle as a way to promote racial diversity at public universities. Its use in practice is however to be limited, with the Court restating its opposition to racial quotas in undergraduate policy. This small triumph for affirmative action occurred in what

¹⁴³ In Motion magazine, op. cit., p.2.

¹⁴⁴ These are *Grutter v. Bollinger*, No. 02-241 (employment in law school) and *Gratz v. Bollinger*, No. 02-516 (undergraduate school) Decisions reached 23rd June 2003.

¹⁴⁵ Crawford Greenburg, J. *Affirmative Action affirmed* in the Chicago Tribune (online) <http://www.chicagotribune.com> 24/06/2003.

seemed to be a very hostile environment towards affirmative action. As will now be shown, however such commentators as **Goldfield** and **Entman & Rojecki** believe, that public opinion has been manipulated in this way and the fact that affirmative action still resides in such a tenuous position is they believe, an extremely negative state of affairs.

The main arguments against affirmative action programmes are that they constitute a form of reverse discrimination, victimising white males, and that they violate the ideals of equal treatment and selection by merit. **Goldfield** argues, however that while *“white males may face stiffer competition for a smaller number of jobs or even partial exclusion because of minority quotas,....the idea that even the most extreme of such cases are the same as (or even similar to) the complete historic exclusion of “ethnic minorities” from many jobs, housing and educational opportunities, or to the historic indignities and threats of white supremacy, is a forced metaphor at best”*.¹⁴⁶ With regard the notion that affirmative action programmes violate the ideals of equality, many analysts, including **Goldfield** and **Entman & Rojecki** point to the important role alumni relationships, parental wealth, geographic diversity, and connections and donations have played in helping some Whites to gain admission over other Whites (and Blacks) into universities. According to **Entman & Rojecki**, the media have moreover been instrumental in sewing disaccord about the programme,¹⁴⁷ with television networks and newsmagazines framing *“affirmative action not merely as a site of clashing interests but as specifically a Black-White fissure”*¹⁴⁸. Regardless of all the arguments for or against however, in a societal system that was created by a dominant class to favour this class, and as remedy to this imbalance, affirmative action programmes have by and large been effective. The United States Commission on Civil Rights did moreover, bring out a report in the beginning of this year documenting the failure of percentage plans, which had

¹⁴⁶ Goldfield, M. *The Colour of Politics, Race and the Mainsprings of American Politics*, New York, The New Press, 1997, p.340.

¹⁴⁷ For more on this and for some compelling statistics on the matter see Chapter 7 Entman, R., Rojecki, A., op.cit.

¹⁴⁸ ibidem p.120.

been adopted by many universities in favour of affirmative action programmes, as a replacement. For example since the ban on the use of affirmative action in admissions in the University of California went into effect in 1998, UC Berkeley has had a 61% drop in admission of students of ethnic minority origin and UCLA has had a 36% decline.¹⁴⁹

All of this leads to the obvious conclusion that issues of race and the promotion of persons of “ethnic minorities” to equal and comparable positions as the majority population, through such measures as affirmative action programmes remain extremely contentious in American society. This does not bode well for the promotion of greater access of “ethnic minorities” to the facilities of television as an integral facet to the freedom of expression, and despite the recent Michigan judgement, as can be seen in the case of Lutheran Church–Missouri Synod v. FCC (1998) this trend of anti-affirmative action has spilled over into employment in the broadcast sector. As previously alluded to in Chapter 3¹⁵⁰, in this case the FCC’s affirmative action requirements relating to outreach and employee recruitment by broadcasters was struck down. Furthermore the D.C Court of Appeals found that making stations compare their employees’ racial and ethnic profiles with the community’s relevant work pool profile creates pressure for employers “*to hire with an eye toward meeting the numerical target*”¹⁵¹ and thus results in individuals being granted a preference because of their race. The Court said that this violated the equal protection clause of the Fifth Amendment. In this general climate of endorsement of equal treatment of all, even if the playing field is fundamentally and absolutely imbalanced, the promotion of specific programmes to encourage the right of access of “ethnic minorities” to express themselves and control the depiction of their image is on very shaky territory.

¹⁴⁹ In Motion Magazine, op. cit., p.3.

¹⁵⁰ Chapter 3, p.45.

¹⁵¹ NOW Foundation, op. cit., p.1.

5.2 The view and treatment of the freedom of expression within the U.S.

While the attitude of the EU towards the freedom of expression has in Chapter 4.2 been suggested to tend towards a positive outlook, the U.S. position is much more certainly of the negative approach. The 1st Amendment of U.S. Constitution states, *“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances”*. Although this clause is quite minimalist and imprecise, the belief in the non-interference by state powers into any form of expression is well established. In the arena of broadcast policy the relaxation of laws of entry into the market and of expansion within the market correlates with this negative, no barriers approach to the freedom of expression, which, as will be seen later, promotes a market view of this right and impacts strongly against the access of “ethnic minorities” to the tools of representation in the media of television.

This negative view of the freedom of expression was not always so entrenched but two cases in the 1970s elucidated results illustrating that the right of access¹⁵² was not to be given high priority or recognition and emphasising that any interference or attempts of regulation by state powers, no matter what the purpose, was not going to be acceptable. In the case of *Colombia Broadcasting System (henceforth CBS) v. Democratic National Committee*, 412, US, 94 (1973), the broadcasting company refused the Democrat Party and a business group campaigning for peace in Vietnam advertising time to comment on contemporary political issues. The FCC upheld the refusal by CBS but the case then went to the DC Circuit Court of Appeals.

¹⁵² It has been argued that broadcasting freedom entails the recognition of rights of access. This, in turn suggests that the public is entitled to hear the range of opinions held by different groups, so that it can make sensible choices on political and social issues. This means such a range of opinions should be granted and ensured access to the relevant media to so inform the media.

At this stage advocates of the constitutional right of access could take comfort in prior decisions of the Supreme Court and aspects of the Fairness Doctrine (repealed in 1987). In the case of *Associated Press v. U.S.*, 326, U.S. 1 20 (1945) the Court had rejected the argument that the press were immune to antitrust laws by virtue of the First Amendment when it judged that *“the Amendment rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public, that a free press is a condition of a free society. Freedom of the press from government interference under the First Amendment does not sanction repression of that freedom by private interests”*.¹⁵³ Such a statement recognises the importance of the accessing of all views to the media and thus the public, with the potential for private interests to erect barriers to access being identified and condemned.

In the decision on the *Red Lion Broadcasting Co. Inc. v. FCC* 395 U.S. 367 (1969) case the Supreme Court had upheld aspects of the FCC Fairness Doctrine under which the Commission used to require licensees to devote a reasonable proportion of broadcasting time to coverage of public issues and to treat each side of a controversy fairly. The Court had emphasised in *Red Lion*, that in view of the special influential characteristics of broadcasting, licensees did not enjoy absolute freedom of speech under the First Amendment. It was considered that licensee’s rights should be measured in conjunction with the interests of the listeners, viewers and people who would like to broadcast. It meant that the FCC could compel a licensee *“to share his frequency with others”*¹⁵⁴ and require the provision of a right to reply to a personal attack. In the CBS case however, while the D.C District Court ruled that a refusal to show certain short pre-paid editorial advertisements infringed the First Amendment, especially as CBS and all other broadcasters took commercial advertisements, based largely on the belief that there should be no interference whatsoever with the broadcasters freedom to design the content of their programmes, the

¹⁵³ *Associated Press v. U.S.*, 326, U.S. 1 20 (1945) www.epic.org/free-speech p.2, 25/05/2003.

¹⁵⁴ *Barendt, E., op.cit.*, p.147.

Supreme Court refused to take this step of upholding a constitutional right of access.

A year later this opinion was further enforced and established in the case of *Miami Herald Publishing Co. v. Tornillo*, 418, U.S, 214, (1974), which also addressed the question of access to the media and its viability or not. While such arguments as those espoused in the case of *Associated Press v. U.S.*, 326, U.S. 1 20 (1945) were found to be valid it was acknowledged that at each point the implementation of a remedy such as the enforceable right of access necessarily calls for some mechanism, either governmental or consensual. It was, however felt that if a remedy was put into effect by governmental coercion, this was at once seen to imply a confrontation with the express provisions of the First Amendment. In the case of *Miami Herald Publishing Co. v. Tornillo*, 418, U.S, 214, (1974), it was this complete antipathy to any form of State regulation that won out.

In this case, the appellant newspaper, the Miami Herald, had refused to print the appellee's, John Tornillo, replies to editorials critical of the appellee's candidacy for state office. The appellee thus brought a suit to the Florida Circuit Court seeking injunctive and declaratory relief and damages based on Florida's "*right of reply*" statute, which grants a political candidate a right to equal space to answer criticism and attacks on his record made by a newspaper. The statute also made it a misdemeanour for a newspaper not to comply. The Circuit Court, did however find the statute to be unconstitutional, deeming it an infringement on the freedom of the press and a method of stifling expression and as a result it dismissed the case. The appellee and supporting advocates of the enforceable right to access to the press argued vigorously however, that the government had an obligation to ensure that a wide variety of views reach the public, and hence took this argument to the Florida Supreme Court. The Florida Supreme Court then reversed the original finding of the Circuit Court,

adjudicating that the statute was not unconstitutional and that *"free speech was enhanced not abridged by it "*.¹⁵⁵

The case was therefore, finally brought before the U.S. Supreme Court, which once again reversed the decision and concluded that the *"right of reply"* was unconstitutional. As part of the Florida statute editors were told that they should publish what "reason" told them. While the Florida Circuit Court had deemed this too vague to enforce, the U.S. Supreme Court agreed and pronounced that any compulsion to publish that *which "reason tells them should or should not be published"* to be unconstitutional. It was asserted that while a responsible press is a desirable goal, press responsibility is not mandated by the Constitution and cannot be legislated. Furthermore the appellee's argument that the Florida Statute did not amount to a restriction on the appellants right to speak and that it did rather prevent the appellant from saying whatever it wanted, was still regarded as an issue of compelling the editor to publish that which *"reason tells them should not be published"*. This was seen to act as a regulation, which constitutes a governmental restraint on publishing.

The Supreme Court also held that a newspaper should not have to proceed to infinite expansion of its column space to accommodate replies that a government agency determines or a statute commands that the readers should have available. The Court also declared that because of the statute controversial subject matter would be avoided, which would have the effect of blunting political coverage. Based on the conclusions drawn from the case of *The New York Times Co. v. Sullivan*, 3, 76, U.S at 279 (1966) the Court agreed that a government-enforced right of access inescapably *"dampens the vigour and limits the variety of public debate"*.¹⁵⁶ The overall verdict was therefore that the Florida statute was seen as an intrusion into the function of editors and that

¹⁵⁵ *Miami Herald Publishing Co. v. Tornillo*, 418, U.S, 214, (1974).

¹⁵⁶ *The New York Times Co. v. Sullivan*, 3, 76, U.S at 279 (1966).

government regulation of press cannot be exercised consistent with First Amendment guarantees of the freedom of the press.

These cases adhering to a negative, non-interventionist form of freedom of expression, which do not see the right of access to the facilities of broadcasting as a prerequisite to the right have very much set the tone for the attitude to broadcast policy in the U.S. in recent decades. In the U.S. Public Broadcasting Service averages only about 4% of television audience¹⁵⁷ and given U.S. broadcasters vociferous commitment to the First Amendment, any content guidelines suggested to private sector are interpreted as infringing their constitutional press rights. As **M. Ferguson** puts it *“at the group level, especially in the U.S., FCC guidelines about showing for example a percentage of Hispanic or Asian-American programming would be laughed at or sued as contravening press freedom”*.¹⁵⁸

This negative treatment of the right to expression might not in itself be totally harmful to the promotion of “ethnic minorities” and their access to the facilities of the media but coupled with a huge amount of liberalisation in the area of broadcast policy especially since the mid-1990s, the current standing of the media in the U.S. as a platform for a plurality of views and information is in a very precarious state. According to **G. Murdoch** the three key prerequisites for ensuring proper representation in the media are firstly, that the company in question is relatively independent of, both state, government and major corporate interests to ensure the field of representation is not overtaken by either official discourse or commercial speech. Secondly there needs to be a system to ensure accountability and participation and finally it must be universally accessible.¹⁵⁹ With intense liberalisation in broadcast policy in the U.S. in recent years, on inspection it can be asserted that the very large majority of media in the U.S. is not characterised by any of these provisions.

¹⁵⁷ Ferguson, M. in Aldridge, M., Hewitt, N. (eds) op. cit., p.178.

¹⁵⁸ *ibidem* p.183.

Some of the principal events, which have led to this state of affairs, whereby opportunities for the participation of “ethnic minorities” in the television and in their own portrayal as part of the fight against racism and promotion of democracy have become so limited, will therefore now be examined.

5.3 The deregulatory nature of U.S. broadcast policy.

Just as a positive conception of the freedom of expression links up well with a certain amount of regulation of broadcast policy, as seen in Chapter 4.3, the negative approach works well in tandem with a laissez-faire attitude to the market and industry of broadcasting. This liberalisation of the laws of broadcasting has been occurring in the U.S. since the 1970s, heralding in an era of conglomeration of media ownership. This is the process whereby media firms begin to have major holdings in two or more distinct sectors of the media, such as broadcasting, book publishing and music production. For example, in 1983 in his book “*The Media Monopoly*”, **Ben Bagdikian** shocked his readers by recording that only some fifty media conglomerates dominated the American mass media. In a more recent edition however, published in 1997, he put the figure at about ten,¹⁶⁰ while in 2000 the figure was found to stand at 6.¹⁶¹ A look at Viacom, for instance might help to consider what this means. Viacom owns Paramount Pictures, Spelling Entertainment, VH1 cable network, Schuster and Schuster book publishers, MTV cable network, Nickelodean cable network, Showtime cable network, TV Land cable network, the UPN network, eighteen U.S. television stations, the Blockbuster video rental chain, five theme parks, retail shops and an enormous movie theatre empire outside of America.¹⁶² What is more it is Disney, Time Warner and News Corp who are considered to be the main players!

¹⁵⁹ Murdoch, G. *Corporate Dynamics and broadcasting futures*. in Aldridge, M., Hewitt, N. (eds) op. cit., p.6.

¹⁶⁰ McChesney, R.W *Rich Media, Poor Democracy. Communication Politics in Dubious Times*, Urbana and Chicago, University of Illinois Press, 1999 p.19..

¹⁶¹ Speech of FCC Commissioner J. Adelstein “Big Macs and Big Media: The Decision to Supersize”, before the Media Institute, May 20, 2003.

¹⁶² McChesney, R.W., op., cit., p.20.

This trend in media concentration was, however greatly accelerated by the introduction of the Telecommunications Act 1996. The main premise of this Act, which was previously referred to in Chapter 3.1, was to eliminate restrictions on firms moving into other communication area – for example, phone companies moving into cable television and vice versa – and then to eliminate as many regulations as possible on these firms' behaviour. Proponents of the Telecommunications Act promised that deregulation would lead to genuine market competition, the result being much better service and lower prices. Market forces would serve the consumer where regulation had failed. **Collins** suggests however that, *“market theory is basically flawed because it presumes that society is constituted of basically equal individuals who are able to enter and leave markets on equal terms”*.¹⁶³ More specifically, according to **McChesney** *“the notion that the bill had something to do with encouraging actual competition was of course a public relations ploy designed to mask the nature of capitalism and conceal how those markets actually work. Had this bill been established to structure competitive industries, the corporate communication lobbyists who pushed for the bill – and who, it is rumoured actually wrote portions of it – would have never let it see the light of day. There may well be some increased competition as a result of the law in some markets; but the end result will certainly be tightly controlled oligopolistic markets”*.¹⁶⁴

The Telecommunications Act has generally been regarded by many as having struck a huge blow to the principals of competition, localism and diversity, those principles which are supposed to form cornerstones of American broadcast policy. *“The urge to merger”*, the Wall Street Journal noted in its 1998 evaluation of the Telecommunication Act, *“has overwhelmed the compulsion to compete”*,¹⁶⁵ and the with more than \$2 billion in radio transactions taking place in the first month after the act, this is a point well

¹⁶³ Collins, R. in Aldridge, M., Hewitt, N., (eds) op. cit., p.187.

¹⁶⁴ McChesney, R.W., op. cit., p.74.

¹⁶⁵ Gruley, B., Simons, J., Wilkie, J.R., “Is This Really What Congress Had In Mind With The Telecom Act ?” Wall Street Journal May 12 1998 p. A1 in McChesney, R.W., op. cit., p.75.

made.¹⁶⁶ The fact is, however that minority-owned businesses cannot compete in this environment. Due to some of the persistent structural obstacles described in Chapter 3, “ethnic minorities” and their portrayal are increasingly at the mercies of these giant commercial enterprises and these companies are primarily interested in broadcasting that which will sell. In presenting their findings on the continued racial stereotyping and marginalizing which occurs on American television, **Entman & Rojecki** assert *“we believe that most of this racial categorising and schematising is driven by market considerations and professional norms, not executives’ own racial animosity or racism. The racial prototypes and invidious comparisons constructed by news organisations are less the product of conscious racial distinctions and more the indirect result of economics shaping journalistic practices. At least on television, the market discourages serious, complicated reporting and promotes mayhem and fluff. This means more attention to crime without context, poverty without explanation, and less attention to the complicated histories and institutional practices that privilege Whites and burden Blacks”*.¹⁶⁷

While academics like McChesney feel that there needs to be the repeal of the Telecommunications Act, especially with the growth and future expansion of the internet and digital communications¹⁶⁸, this looks increasingly unlikely. Despite the announcement of Chairman Powell of the FCC on 19th May 2003, proclaiming his intention to form a Federal Advisory Committee *“to assist the agency in formulating new ways to create opportunities for minorities and women in the communication sector”*,¹⁶⁹ this lies very much in the shadow of the current saga surrounding the new FCC ownership rules, which were adopted on 2nd June 2003 and then in an unprecedented step, subsequently repealed just over two weeks later. These regulations allowed a further liberalisation of media ownership rules. According to the new FCC regulations

¹⁶⁶ Speech of FCC Commissioner J. Adelstein, *op. cit.*

¹⁶⁷ Entman, R., Rojecki, A., *op cit.*, in the preface.

¹⁶⁸ For more on this look at McChesney, R.W., *op. cit.*, p.313.

¹⁶⁹ Public Notice of the FCC, released May 19, 2003.

companies could now own any combination of newspapers and television and radio stations in the same city and any one company could control TV stations reaching nearly half of U.S. homes, with a raising of the limit of ownership from 35% to 45%.¹⁷⁰ The major networks spoke in favour of eliminating any limit, with FCC Chairman Michael Powell and the two other Republican Commissioners also supporting an easing of regulations and the permitting of individual companies to hold a greater stake in local and national media markets. The new limits also meant that only 2.3% of the American population receive full diversity protection.¹⁷¹ In contrast the markets where all remaining cross-media protections have been entirely lifted represented 72.58% of the population.¹⁷²

Consumer groups vociferously challenged such proposals, claiming they would further hurt competition and stifle diversity, while a host of others, including over 150 Members of Congress, organisations from nearly every political stripe, from the National Rifle Association to the National Organisation for Women demanded caution and expressed doubt about the wisdom of greater consolidation. The FCC's two Democratic Commissioners, Michael Copps and Jonathan Adelstein had also requested a delay on the proceeding in order to ensure greater public debate on the issue. Having conducted a series of media ownership hearings in the U.S., Commissioner Adelstein in a presentation the Media Institute suggested that the proposals did little to serve the public interest and that the American people were not in favour of them. He also emphasized the principle of diversity, *saying "the scarcity of the public's airwaves is the very reason it's up to the FCC to ensure a diversity of owners and viewpoints. But they (the people) won't always find a diversity of viewpoints in their media unless we do our jobs"*.¹⁷³ He further stated "we

¹⁷⁰ Press Release of FCC *FCC Sets Limits on Media Concentration*, 2/06/2003.

¹⁷¹ The new rules means that an increased number of the population will get the vast bulk of their information, be it through television, the radio or newspaper all from the same source. For example, in smaller markets, under the new rules one entity could own the cable company, the dominant television station, the dominant newspaper and multiple radio stations. This means the inhabitants of such a town receive no diversity of views.

¹⁷² Press Release *Statement of Commissioner J. Adelstein Dissenting*, 2/06/2003.

¹⁷³ Speech of FCC Commissioner Adelstein, J., op. cit. p.3.

must reaffirm that the public interest is served by promoting all three of the basic principles that form the foundation of the American broadcasting system: localism, diversity and competition – not just competition alone".¹⁷⁴ Despite his claims and findings, and the huge amount of public opposition, on 2nd June the new ownership rules were passed, further impairing opportunities for diverse, minority and local self expression and heralding in what was termed *"by far the most dramatic weakening of our media ownership rules this country has ever seen."*¹⁷⁵

The drama did not end here however, as due largely to massive public pressure, on 19th June the Committee on Commerce, Science and Transportation approved the "Preservation of Localism, Program Diversity and Competition in Television Broadcast Service Act 2003". The Bill restores the 35% national audience reach limit for broadcast television station ownership by establishing a statutory limit that supercedes the FCC's June 2nd, 2003 decision to raise the limit from 35% to 45% of the national audience share. Furthermore an amendment by Senator McCain clarified that the FCC can re-regulate as well as deregulate media ownership. The debating continues, however with another Media Ownership Hearing due to be held in the forthcoming months.

As can be seen therefore, issues relating to "ethnic minorities" and their advancement in society and questions responding to broadcasting rights and how they interact with the civil and political rights of audiences are currently extremely hot and contemporary topics in the U.S. Had it been that the FCC ownership rules had been applied, and had it been that affirmative action was struck down with no appropriate replacement, the situation for "ethnic minorities" and the question of their right to access the facilities of television, thus fulfilling their right to freedom of expression, would have looked close to

¹⁷⁴ ibidem p.3.

¹⁷⁵ Press Release "Statement of Commissioner J. Adelstein Dissenting" 2/16/2003.

hopeless. The “democracy” that would have allowed such a situation to exist would, moreover have looked to be in dire need of repair. The approval therefore, of the "Preservation of Localism, Program Diversity and Competition in Television Broadcast Service Act 2003", which restores the 35% national audience reach limit for broadcast television station ownership is clearly thus an extremely significant step. While it does not impact directly on “ethnic minorities” and the question of facilitating their access to broadcasting, it does at least leave a glimmer of hope for the promotion of this argument. It does moreover, reaffirm and reawaken the principle and necessity of diversity in television. The overall result is therefore, that while a less than exemplary democratic media structure continues to exist in the U.S. with access to broadcast facilities in the name of the right to self representation and expression for “ethnic minorities” remaining in quite a negative position, solace can at least be taken from the fact that had the FCC rules been applied, the chances of such an issue ever been recognised or examined would have been non-existent.

Chapter 6

The "Cultural Exception"

"It must be acknowledged that those cultural goods and services (books, music, multimedia games, films and audiovisual) are different from other goods and services, and deserve different and/or exceptional treatment that sets them apart from standardised mass consumption. Obviously this requires a differential treatment in international trade agreements and possibly effective strong regulatory frameworks to redefine cultural policies focusing on the promotion and development of cultural industries".¹⁷⁶

UNESCO Questions and Answers on
Culture, trade and globalisation.

In focusing for a moment on the notion of the "cultural exception" this chapter aims to demonstrate how the question of "ethnic minorities" and their right to access the facilities of the broadcast media exists as the micro of a much more global issue, that which is known as the "cultural exception". While the argument for the need and right of "ethnic minorities" to have access to the facilities of television in order to fulfil the right to expression and help combat racism thus validating the democracy in place is still the key proposition of this thesis, by looking at the "cultural exception" it is acknowledged that there is a similar situation occurring on the world stage. It is therefore, worth looking at and examining this matter so that lessons may be learnt in how to promote the advancement of the subject of this thesis and how to avoid certain pitfalls. Looking at this question of the "cultural exception" can moreover, help in elucidating whether this topic of the right of "ethnic minorities" to access the tools of television as an element of their right to freedom of expression has a solid future or not.

¹⁷⁶ *Culture, trade and globalisation; Questions and Answers*. UNESCO (United Nations Educational, Scientific, and Cultural Organisation) website www.unesco.org/culture/trade/industries Question no. 18 "What do we understand by cultural diversity?" 15/05/2003.

6.1 The Cultural Exception: Background and Explanations

On a theoretical level the "cultural exception" pertains to the notion that in an ever and rapidly globalising environment, all nations are becoming minorities. It is bound up with the suggestion that there is one dominant culture taking over and subsuming distinct national cultural identities because as **M. Price** articulates *"Globalisation can mean, and here I am dangerously guilty of tautology, anything that weakens the given national identity or set of national identities that buttresses the sovereignty, strength or capacity of the state.... Globalisation may occur when, regardless of the technical capability of the state or the flexibility of international norms, the actual images within the state are largely external"*.¹⁷⁷ As a doctrine (as the "cultural exception" does not have any legal standing, nor does it exist as such in any agreement or treaty), it first appeared in EU discussions and is based on the principle that culture is not like any other merchandise because it goes beyond the commercial. As such it has been given special or exceptional status in the World Trade Organisation (henceforth WTO) discussions. Before elucidating further on the subject, it is necessary therefore for this legal commercial framework to be explained.

The General Agreement on Tariffs and Trade (now under the structure of the WTO) was created in the after-war period as part of a move away from the economic policies of nationalism and protectionism, which had dominated the first half of the twentieth century, and as a move towards economic cooperation based on international law. The agreement focuses on the liberalisation of trade in goods, which is negotiated in groups of talks called "rounds". The belief is that by providing for secure access to markets through such a principle as "Most Favoured Nation",¹⁷⁸ (henceforth MFN) and progressive liberalisation, growth and development is stimulated. It is true moreover, that the competition generated by market liberalisation has had many benefits, such as consumer savings, faster innovation and greater efficiency of services. It was however, in

¹⁷⁷ Price, M. *Sovereignty, Privatization and Globalization: Diversity of Context*, Article from www.Right.com p.3 13/05/2003.

the Uruguay Round 1986, with the negotiation of the General Agreement on Tariffs and Services (GATS) that the notion of a parallel movement of multilateral liberalisation of services was advanced and it was here that the concept of the "cultural exception" first came into being, for as to quote French President **Jacques Chirac** *"culture cannot give way to commerce"*.¹⁷⁹

During the final negotiations of the Uruguay Round, some countries expressed concern that the imposition of the GATT principles, in particular MFN on goods and services as well as on copyright protected products would challenge their cultural specificity in favour of their commercial aspects. This fear is based on the fact, that very often cultural industries, and particularly the film and audiovisual industry, need and receive certain aids and subventions to continue to exist. These supports are generally facilitated by public bodies, which see the preservation of domestic cultural industries as a priority concern. The truth of the matter is that *"if subject only to commercial considerations, many local cultural industries would be quickly replaced by those with greater financial muscle due to their multinational presence and monopoly position"*.¹⁸⁰ The prolonged and fiery debates that surrounded this issue resulted in an understanding whereby with regard film and audiovisual goods, not all GATT rules were applied. This agreement is the "cultural exception".

While actual tangible elements of the audiovisual such as television sets and videos continue to be regulated in the same way as general merchandise, it was due to what was deemed the "sensitive" nature and special characteristics of the contents of cultural industries, that European Member States did not offer to liberalise services in some cultural sub-sectors and applied a series of MFN

¹⁷⁸ "MFN" means that every time a member state improves the benefits that it gives to one trading partner, it has to give the same "best treatment" to all other WTO members so that they remain equal.

¹⁷⁹ Spoken at a conference on cultural diversity organised by the Committee for Cultural Diversity, Paris 2nd February-4th February 2003.

¹⁸⁰ *Culture, trade and globalisation; Questions and Answers*. UNESCO website www.unesco.org/culture/trade/industries

Question no.16 "What do we usually understand by "cultural exception" 15/05/2003.

exceptions to the agreement, five of them in the field of audiovisual. Television is an extremely influential and powerful tool in the dissemination of information, imagery and identity. By refusing to adhere to certain commitments at the GATS, the cultural exception is an attempt at saying “no” to the globalising process, which aided largely by the flooding of the audiovisual market with generic and often American programmes,¹⁸¹ promotes a world in which all inhabitants eat the same food, wear the same clothes, listen to the same music and which thus erodes national identities. In addition to offering entertainment, cultural products and services such as films, TV programmes, books, music and so on are ideological items which embody social values and messages, and therefore hold powerful sway over entire social systems. It is for such a reason that borderless information and the entertainment media are increasingly being seen not as positive forces for integration but as divisive instruments, which threaten national and cultural identities and sovereignties.

While the "cultural exception" is originally a French idea, an extension of “l’exception française”, as it is the European Community, which negotiates at the WTO talks, due largely to French influence the cultural exception has become a European matter. In the Nice Treaty, under French pressure it was agreed that when common commercial policies, which includes cultural and audiovisual services are being discussed, there has to be unanimity. The EU has, moreover a specific approach to cultural identity. There is in EC treaty a specific provision, Article 1.51, which specifies that matters relating to culture lie with the Members States and EU institutions have to take account of culture within an overall policy approach. The balance between different public policy objectives, like the internal market trade rules and free trade services on one hand and cultural interests on the other, is well covered in the EC treaty.

¹⁸¹ According to Riding, A., American productions regularly account for 85% of movie audiences worldwide. Riding, A. *Filmmakers Seek Protection From US Dominance*, New York Times, February 5th 2003.

In 1993, in the Uruguay Round it was very much the French defending the notion of the "cultural exception" but since then there is a wider international consensus on the need to allow governments to take measures to promote cultural diversity. Canada, for instance has also long defended this idea and obtained such an exception from the U.S. in 1988.¹⁸² South Korea and some countries of South America are also increasingly supporting the notion

Exceptions to the MFN rule mean that EU policies to support the audiovisual sector, such as quotas and financial aid and the existence of such Programmes as MEDIA and Eurimages, both of which encourage the development of the European audiovisual (and without which such films as "No Man's Land" by Danis Tanovics or "Le Fabuleux Destin d'Amélie Poulain" would never have been made) and the Directive "Television Without Frontiers" are allowed. This is not uncontroversial, however as technically *"under the supranational governance structure, anti-concentration competition policies to ensure information diversity, cultural policy to ensure pluralism in cultural expression may be invalidated as trade barriers; and can be contested on the grounds that they act to constrain international trade through a set of interventionist, non-commercial public interest requirements imposed on the communications industries, whether in infrastructure or content.... Similarly, policies that lead democratic societies to determine a need for direct or indirect "subsidies" because of issues that concern the common welfare or the general interest, ranging from universal service to programming requirements for educational or cultural content, maybe rendered illegitimate under the supranational governance structure"*¹⁸³

This view is moreover, in keeping with the U.S. position. The negotiating powers in the U.S. believe the entertainment industry is clearly commercial and therefore naturally a part of GATS. The entertainment industry is of great

¹⁸² In the "Canada-U.S. Free Trade Agreement".

importance economically to the U.S. It is their second biggest export (after airplanes), not only in terms of machines and programmes but also due to the amount of merchandising they now generate from films.¹⁸⁴ The U.S. has said that it recognises cultural diversity as a legitimate policy principle but it feels that GATS can deal properly with this concern to preserve cultural diversity. According to **V. Wiedemann** however, if one looks closely, what the U.S. seems to be saying in fact is that *“cultural diversity should be preserved for traditional media but that new technologies are a different matter. It would seem as though the United States hoped that in the medium- and long-term the old broadcasting technologies will disappear and that electronic and audio-visual media will become part of new technologies thus solving the problem”*.¹⁸⁵

The development of new technologies and “virtual goods” does indeed demand many questions. Purchasing software on a physical CD-ROM or downloading it from the internet produces the same result which leads many to argue that the trade of virtual goods should fall within GATT rather than GATS. Under GATT, however Member States do not have the same power to decide on the degree of market openness, which they have under GATS. The main instrument they have is tariffs but it may be extremely difficult to impose tariffs on material, which is electronically downloaded over the internet. With digital television viewers can record audiovisual programmes (and the relevant software applications) on their digital decoders. As with personal video recorders, digital decoders will have an in-built hard-disk memory. *“The question is, therefore what will be the difference between the reception of an audiovisual programme and the downloading of software? Will broadcasters thus be like suppliers of virtual goods, equivalent to Microsoft? In this*

¹⁸³ Venturelli, S. “Liberalising the European Media. Politics, Regulation and the Public Sphere”, Oxford, Clarendon Press 1998 p.13.

¹⁸⁴ Regourd, S. “L’Exception Culturelle”, Paris, Presses Universitaires de France, 2002 p.17.

¹⁸⁵ Wiedemann, V. for the Council of Europe www.coe.int 02/06/2003.

situation, how will it be possible to maintain the principle that audiovisual content cannot simply be treated as a commercial commodity?"¹⁸⁶

6.2 What is the current standing and future of this issue?

The Doha cycle of negotiations is currently taking place, and is due to finish in January 2005. Concerning the position of Canada, no commitments for the liberalisation of audiovisual services will be made under the GATS as long as there is no international instrument to protect cultural diversity outside the WTO framework. Once commitments are made under the GATS by a given government, there is a possibility that it will lose its ability to take future measures in the cultural sector not only to promote cultural diversity but also to respond to future developments in that sector. In February 2003 the United States requested a standstill, that is no expansion of the "cultural exception", a move that would in practice bring new Internet-related audiovisual actions into the negotiations. The notion however, aiming at preserving flexibility is very important not only to Canada but also to Member States of the EU hence their desire to offer nothing in this area in the hope of keeping the entire audiovisual sector off the table. While the Presidium of the new EU Convention refused the Spanish suggestion of including a clause about the "cultural exception" in the new European Constitution to be, d'Estaing¹⁸⁷ has instead proposed that culture remain outside the competence of the Community and that all future commercial agreements relating to the cultural domain should necessitate ratification by Member States. The stance and wish to take the audiovisual sector out of the equation altogether is however, the preferred route and was also backed up by a gathering that took place in Paris, in February 2003 when 35 countries met to campaign for preservation of the "cultural exception" and to promote the adoption of a global convention on cultural diversity by UNESCO as a way to remove culture from the WTO.

¹⁸⁶ Wagner, M.A *Cultural Diversity and GATS*, a speech given at the seminar on Cultural Media Diversity organised by the German UNESCO Commission in Cologne, 27th June 2001.

UNESCO has since the inception of this debate been the obvious body to treat the matter. It has recognised the difficulty of the “cultural exception” in trying to reconcile cultural and economic objectives. There is currently a lack of global standards for cultural diversity. However some important preparatory work has been done by the Council of Europe, which led to its December 2000 Declaration on Cultural Diversity, which recognised *“that the development of new information technologies, globalisation and evolving multilateral trade policies have an impact on cultural diversity”*.¹⁸⁸ Moreover on 2nd November 2001, UNESCO adopted its Universal Declaration on Cultural Diversity, which although not legally binding, will certainly be of great use in defining a common global understanding of cultural diversity.

This Declaration illustrates the change in the terminology of the debate in recent times with the notion of “cultural diversity” being proposed rather than the “cultural exception”, which is viewed as too narrow and negative and too eurocentric. *“Just as policies of biodiversity preservation are needed to guarantee the protection of natural ecosystems and the diversity of species, only adequate cultural policies can ensure the preservation of the creative diversity against the risks of a single homogenising culture.”*¹⁸⁹

As can be seen in this statement, the UNESCO Universal Declaration on Cultural Diversity puts the notion of cultural diversity on a par with other important concepts such as biodiversity, and sustainable development. The process which led to the Declaration involved very close co-operation with the Council of Europe and was based very much on consensus, with all UNESCO members subscribing to the text and no reservations being made by any country. It is now possible to build on this consensus and move towards the creation of a legally binding international instrument. The question is whether

¹⁸⁷ President of the Presidium of the European Convention Valéry Giscard d'Estaing.

¹⁸⁸ Preamble of Council of Europe Declaration on Cultural Diversity www.coe.int 06/06/2003

¹⁸⁹ Culture, trade and globalisation; Questions and Answers. Question 18, UNESCO op. cit.

the United States, the largest WTO trading nation and not a member of UNESCO will become party to such an instrument.

This issue of the “cultural exception”, now increasingly known as “cultural diversity” is all bound up with quotas, financial aid and special mechanisms to promote domestic national audiovisual products, among other cultural industries, and their access to markets. It is about ensuring the freedom of expression of national producers, writers, actors and all those involved in cultural domestic production. It is about ensuring that the multiplicity of diverse cultural voices and views do not get gobbled up in a global environment, where competition becomes synonymous with monopoly and uniformity. As such it is clearly an extension of the promotion of the right of “ethnic minorities” to be represented and have their voice heard at EU level and national level in the U.S. If, at a global level and at the highest political echelons, the argument for the right to protect and promote a multiplicity of diverse cultural voices is being recognised and hotly debated, surely this gives sound credibility to the rights of “ethnic minorities” to access to the facilities necessary for a fair and equal expression, especially if in doing so they could play a vital role in combating racism and promoting true democracies.

Conclusion

“The television is increasingly the place where the nation invents itself. If you’re not there you don’t exist. We may not be invisible but we are insignificant in our presence.”

Trevor Philips. Former Head of Current Affairs, London Weekend Television¹⁹⁰

In other words, since television has increasingly become a central outlet for national identification and an important site for the expression of national identity, then the presence or absence of minorities on television screens indicates the extent to which the nation has become representative of the many occupant nationalities residing within its territories. For “ethnic minorities”, as with individuals, or all other distinct groups in society, being seen, heard and connected through the media is a validation of identity and the affirmation of legitimacy. As has been elucidated, however “ethnic minorities”, both sides of the Atlantic, still face many barriers in trying to affirm, control and promote their identities.

The central premise of this thesis is that there needs to be a greater, genuine promotion of ownership and access to the facilities of television by “ethnic minorities”. In doing so, the freedom of expression would be more truly and fairly applied, thus authenticating the democracy in place, and positive steps would be taken to help combat and diminish stereotypes that often build up in the media and re-enforce racist attitudes.

¹⁹⁰ Trevor Philips is one of the few Black executives in British broadcasting. Citation from Philips, T., *UKTV: A Place in the Sun?* p.13-21 in Frachon, C., and Verhaftig, M., (Eds) “European Television: Immigrants and Ethnic Minorities”, Luton, University of Luton Press, 1995, p.14. (Jim Allen is current head of Current Affairs at the television channel)

With regard to the EU, an improvement in awareness of this issue has been discerned. The EU is very conscious of issues pertaining to “ethnic minorities” and has been seen to support and fund certain initiatives in this area, while also enforcing good journalism practices. As has been noted, it has moreover shown a certain predisposition towards a positive treatment of the right of the freedom of expression. For the sake of this thesis, this is most pertinently exemplified in the European Court of Human Rights judgement in the case of *VgT Verein Gegen Tierfabriken v. Suisse* of 28th June 2001.¹⁹¹ This leaning towards a positive view of the freedom of expression, which working with a willingness to intervene in broadcast policy when deemed necessary, goes towards correcting structural imbalances. While this has not led to any clear policy or commitment stating specifically the right of “ethnic minorities” to access the broadcast television facilities necessary to allow their full and fair self-expression, the partial funding of such projects as *MiraMedia* and *More Colour in the Media*, which promote this idea, is testament to a real acknowledgement of this issue.

While such developments within the EU are laudable, broadcast policy still remains in the firm grip of the Member States. Debates in the 1990s relating to media concentration concluded with Member States retaining the right to issue national media laws relating to limits on media ownership, both within sectors and on cross-ownership. This has meant that, while most countries in Western Europe have made provisions for minority broadcasting, there is tremendous variation in the quality of these provisions, which has meant that *“all too often minority broadcasting has been plagued by bad scheduling and funding cuts leading to its inevitable ghettoisation”*.¹⁹²

In treating the situation and attitude towards this issue in the U.S., it is clear

¹⁹¹ For more on this case see chapter p.54-57.

¹⁹² *Minorities and Television*, www.wacc.org.uk 10/06/2003. (WAAC stands for “Work, Activities, Co-Ordination and Collaboration.” It is a Christian Human Rights Agency working for peace, justice and dignity)

that aside from the clearly contentious position of particular programmes concerning the advancement of “ethnic minorities”, the market has taken over on this question and *“market based broadcasting regime will undersupply programmes to groups with little economic power such as migrants and ethnic and linguistic minorities”*¹⁹³. It must be acknowledged, however that many of the barriers facing “ethnic minorities” in owning and accessing the facilities of the television in the U.S., are obstacles that impede practically everyone except the extremely wealthy. The image of thousands of different groups and races and minorities currently lie in the hands of the very few in the U.S., thus it is tremendously difficult to fight stereotypes and to promote a diversity of programming because as **Entman & Rojecki** have noted,¹⁹⁴ it is that which is deemed to pay that receives the air space. There does however, seem to be a backlash occurring against this near monopolisation of the media markets in the U.S. With the recent repeal of some of the new FCC broadcasting legislation, which had been introduced at the beginning of June 2003, there is clearly an increasing mobilisation and growing awareness of the need to keep the airwaves open to allow access of a multitude of views. This current event is a small but momentous step against the hyper-commercialisation of the U.S. media market and a triumph for the principle of diversity, which against all expectation gives a little hope to the argument that “ethnic minorities” should be given access to the broadcast industry to fulfil their right to self-expression and promote a more plural and true democracy.

The “cultural exception”, which exists as close universal parallel to the subject of this thesis, embodying the idea that in a globalising world all nationalities are becoming minorities, has clearly so far been a notion of much greater importance in the EU than in the U.S. and the stance each has taken on the matter has been relatively illustrative of their attitudes concerning the presence of “ethnic minorities” in the media. While the position of the EU is tending towards the promotion of the “cultural exception”, with certain Member

¹⁹³ Collins, R., in Aldridge, M., Hewitt, N., op. cit., p.190.

¹⁹⁴ See Chapter 5.3, p.74.

States more or less in favour of the theory, the attitude of the U.S. has thus far been a clear-cut rejection of the hypothesis. Noting, however the huge mobilisation that has taken place in the U.S. in the name of protecting democracy and diversity, a less adamant stance is not impossible. Furthermore acceptance of this issue of “cultural exception” on a global scale could indeed filter down to greater recognition of the rights of “ethnic minorities” to control and express their images as they choose in the name of cultural rights and the freedom of expression as it is clearly a very similar subject just on a different scale.

Finally, it is to be recognised that many of the difficulties encountered by “ethnic minorities” trying to access the media, are the same, institutional problems they face when trying to enter any area of employment. The crucial point is, however that media as such a potent, influential force is a place where culture and economics collide and as such exists as a unique arena. While there is a need for proportionate and fair representation of “ethnic minorities” in broadcasting, both on commercial and public channels, it needs to be complemented by independent minority media, not just to help realise the freedom of expression, confirm the democracy in place and help break prejudices and stereotypes but also because *“the struggle to achieve equity in the media industries for “ethnic minority” persons and communities is an assertion of the communication rights of all persons: media democratisation cannot be pursued within a media ‘apartheid’. The aim must be one of a richer vision for all.”*¹⁹⁵

¹⁹⁵ Husband, C., (Ed.) *A Richer Vision: The Development of Ethnic Minority Media in Western Democracies*, Paris/London, UNESCO/John Libbey, 1994, p.16 in Pradip, T., “Majority Censorship, Minority Broadcasting”, <http://www.right.com> 11/05/2003.

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