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State traditions, policy networks, and governance: Emerging network neutrality co-regulation in Japan and the UK

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Abstract:

This paper investigates how a sub-field of regulatory policy responds to changing circumstances in the 2010s through the case studies of network neutrality regulation, a significant Internet regulation issue, by examining two examples: Japan and the UK. In so doing it reveals how a regulatory regime drawn from a specific political tradition – the preference for self-regulation - has shaped its approaches in response to external challenges and a possible transformation of the regulatory state. Although network neutrality has been a high profile issue attracting much attention among experts in the US and the EU, countries such as the UK and Japan have chosen different approaches that emphasise co-regulation by stakeholders including industry actors. The response of the UK has revealed an evolving process in which co-regulatory Open Internet approaches have changed into more explicit regulation mobilised by the initiatives of the EU but with significant involvement of the British authority. Elsewhere, with a different set of structures, the Japanese approach has preferred co-regulation rather than statutory, without advocating stronger regulatory remedies. What appears is the similarity of two examples that prefer benign approaches to this issue, although they have significantly different political traditions and structures. In pulling the above together, the paper argues that the reluctance of the state to intervene is a key characteristic of both examples, with no strong actors and structures encouraging stringent regulation, paying attention to the status of the UK and Japan as non-dominant countries in the field of the Internet and the significance of state traditions and policy networks.

Introduction

The debate of network neutrality[1] in the communications sector, which is usually regarded as being first discussed by Wu (2003) (Zelnick and Zelnick 2013: 9; Marsden 2017: 29), has the potential to reshape the body of communications policies in spite of its comparatively short history, partly because it addresses a fundamental characteristic of networks that can be traced back to the concept of the medieval British 'common carriage', which means 'essential services should be offered to everyone on the same terms' (Pickard and Berman 2019: 14). Network neutrality debate has become a high-profile issue in particular in the US, where the Democrats as its promoters and the Republicans as its opponents regard it as a symbolic issue of polarised partisan confrontation. In other developed countries, the issue has not been met with extensive politicisation but has attracted relevant practitioners including the government and industry. It is a new regulatory issue that affects the governance of communications networks: administering network neutrality can affect the extent to which communications networks can retain their status as an non-discriminating infrastructure. It is an issue of governance that shapes and directs the communication sector

1 According to Hahn and Wallsten (2006), network neutrality: 'usually means that broadband service providers charge consumers only once for Internet access, don't favo(u)r one content provider over another, and don't charge content providers for sending information over broadband lines to end users'.

as a whole. Even if network neutrality is not always a high-profile political issue, its nature has a significant potential to affect the governance of the communication sector and the country.

Also, because network neutrality regulation is new, it has the potential to reveal how a country can react to the emerging challenge of governance; without a set of previous events shaping the path of policy development, how does a country respond to the emerging challenge? This is a core theme of this paper.

Although a body of literature has highlighted a variety of topics on the US network neutrality debate, this paper turns its attention to other key developed countries: Japan and the UK. They have a fairly developed communications sector that has embraced market competition for a comparatively long time, with a significant population and economies. They are also significantly influenced by the external debates such as that in regional/international organisations and the US as their key political ally and economic partner. Elsewhere, Japan and the UK have significant differences, such as the latter's complicated relationship and interaction with the European Union, let alone their respective political tradition. As the following sections show, the impact of Europe through the negotiation processes with the European Commission and at the BEREC (Body of European Regulators for Electronic Communications) was a factor that reshaped the UK's approach to

network neutrality regulation.

For the benefit of research, this paper sets up a couple of simple questions: how has the state and the regulator responded to the emerging challenge of network neutrality?; and why do they choose their path?

To pursue the above, the next section further contemplates the significance of network neutrality as an issue of regulation and governance. The following two sections study the cases of network neutrality policy in Japan and the UK in turn. The fifth section offers an assessment drawing on the previous two sections. The final section concludes the paper, with suggestions on the limitation of this research and the possible future research.

Network neutrality as a key question of regulation and governance

The nature and transformation of governance is a key topic of debate within social science disciplines, as governance has been transformed in response to a variety of social challenges since the 1970s. In the scholarly efforts addressing this issue, regulation has been a key topic of research, because as a core function of the state it covers changing interaction between the state and society. Regulatory reforms including deregulation and re-regulation have attracted much scholarly attention in the exploration of society and governance.

As a key public policy tool for practitioners, regulation was extensively employed by the state in regulatory reforms such as privatisation and market liberalisation after the 1980s across the globe. It was highlighted as a major policy tool after the privatisation of incumbent public corporations in key infrastructure sectors such as telecommunications in the 1980s. Regulatory reforms such as market liberalisation and privatisation have been viewed as not only deregulation but also re-regulation; the development of regulatory reforms in the communications sector in particular has been regarded as an example of re-regulation (Vogel 1996, 2018).

As the communications sector has gradually changed its services from those based on the Public Switched Telecommunications Network (PSTN) to those based on the Internet Protocol (IP) since the 1990s, communications policy and regulation must respond to the change. The period after the 1990s saw a gradual emergence of state involvement in the issues of the Internet throughout the world (Freedman 2016: 124).

Although Internet regulation has been a topic of debate for years, it has not always been a subject of stringent regulatory measures or the core part of the regulatory frameworks in the communications sector. Rather, the initial stage of the Internet can be characterised by a mainstream view that highlighted the virtues of the Internet and argued for liberty. The developers of the Internet in the 1990s were engineers and programmers who designed it in

the first place as a series of networks that were intrinsically hostile to outside interference (Freedman 2016). Their reluctance to embrace public policy intervention, let alone regulation, shaped the path of the Internet as a field with strong preference for self-regulation and libertarianism.

With the increasing significance of the Internet within the communication sector and the explicit reluctance of Internet specialists such as engineers to embrace government intervention, the approaches to communication regulation have become more self-regulation based highlighting the cooperation among stakeholders. Indeed, the decline of the PSTN and concomitant rise of the Internet as the key communications infrastructure of the next generation prompted communications regulation to relax: regulation on market entry and service conditions were dismantled and new approaches based on self-regulation and benign encouragement to private firms became a new trend. The initial phase of communications regulation in the twenty-first century concerned debates on human rights and democracy rather than the nature of the communications networks and the sector. Communications regulation tended to respond to emerging social events rather than the challenges resulting from the core characteristics of the Internet, networks, and the sector.

The concern of network neutrality on the fair treatment of the content on communications networks directly addresses the governance of communications networks

by highlighting how key communications operators manage their network in relation to their potential competitors. The dominance of strong private actors within the sector has been a key regulatory challenge since the sector embraced the regulatory reform including privatisation and market liberalisation after the 1980s. Network neutrality regulation probably offers the first opportunity for the regulator to systematically engage with the power of large companies after the rise of IP networks, whereas the previous Internet regulation issues tended to respond to the harm resulting from behaviours and norms such as cybercrime.

Many recognise Wu (2003) as the first commentator who explicitly discusses the concept as a significant policy challenge, although network neutrality was recognised as a significant regulatory issue as early as in 1999 when academics recognised the risk that cable TV companies' closed business model could overtake the Open Internet (Marsden 2017: 29). The following debate of network neutrality in the US exhibits a set of politically polarised events involving the Democrats as a key proponent and the Republicans as the opponents, well documented by a body of literature.

The FCC (Federal Communications Commission) Open Internet Order in 2010 was a significant watershed in the sequence of regulatory development in US net neutrality, with significant opponents of its approach to exclude mobile operators from the scope of the

order (Marsden 2017, Pickard and Berman 2019). The following debate between the proponents and opponents of stronger regulation culminated in the enactment of the 2015 Open Internet Order and the following backlash by the Trump Administration and its FCC chairman Ajit Pai, whose Commission voted to approve the Restoring Internet Freedom Order, which rolls back the net neutrality regulations that were put in place by the FCC in 2015. This role-back has not come without reaction; indeed, California State passed a net neutrality bill that goes further than the FCC's 2015 Open Internet Order (Pickard and Berman 2019: 97).

Extensive politicisation that characterises the US network neutrality debate, however, is not always present in other examples. Indeed, some large economies in the world tend to look to the benefits of self-regulation drawn from consensus rather than the alternative of statutory regulation. As examples of such approaches, this paper explores the cases of Japan and the UK.

These two countries have a significant population size and economy as members of both the OECD and G8 and a developed communications sector including IP networks; they are also under significant political, economic, and technological influence from the US including its network neutrality debate and saw a significant policy development in network neutrality in the 2010s. However, their approach to network neutrality regulation pursues co-

regulation, strikingly different from the US, where partisan debate on network neutrality aims at whether or not statutory network neutrality regulation should be enacted.

Co-regulation[2] is a concept in which the state actor co-works with private sector counterparts to formulate and implement regulatory frameworks including rules (Ofcom 2008). In the light of the body of governance theory, co-regulation exhibits characteristics compatible with collaborative/interactive governance, mobilised by the policy network (Pierre and Peters 2020: 56–57). Under co-regulation, the state joins the policy-making process and refrains from engaging in explicitly exercising power as a single decision maker. It pursues goals without explicit intervention.

The exploration of two cases of co-regulation reveals an account of how network neutrality has prompted those countries to set up a different type of regulatory approach in response to the same issue, if compared with the US as an internationally illuminated example. In so doing, this paper offers an explanation of how a mode of governance is shaped in response to the emerging policy challenges in a sector of high modernism and

2 According to Leveson (2012: 1739, para. 2.31.):
Co-regulation means any form of self-regulation with some sort of external, independent, incentives, oversight or forms of backstop [including recognition] of a self-regulatory body by Government, law or a statutory regulator; approval of codes by Government or a statutory regulatory; and compulsory membership or funding arrangements.

hyper-innovation (Moran 2003).

The next section first focuses on the Japanese example.

Network neutrality regulation in Japan: does it matter?

The debate of network neutrality regulation in Japan has been mobilised by the development of communications networks and the initiative of the government ministry responsible for the issue: The Ministry of Internal Affairs and Communications (MIC). According to the MIC 2007: 1–5), network neutrality regulation in Japan became a significant policy issue for contemplation prompted by the change from PSTN to IP networks in the communications sector; this transformation led to the emergence of a new form of communication sector composed of four layers: contents, platform, network, and device; the emergence of this system requires networks to treat its contents neutrally.

The MIC's first move to engage in the issue of network neutrality can be observed in its 'Working Group on the Competition Rule in Response to Emerging IP' between 2005 and 2006. This working group probably offered the first explicit engagement in network neutrality that set out two key principles: the equality of network usage and that of cost allocation. Soon after the termination of this Working Group, the MIC set up 'the Working

Group on Network Neutrality' that specialised in network neutrality issues. Its final report reveals two specific policy issues, detailed in Table 1 (MIC 2007).

Table 1: Key points of the Report of the Working Group on Network Neutrality

1. The three principles on network neutrality
   The maximum benefits of consumers require the following principles:
   Principle 1: Consumers are entitled to use IP-based networks flexibly and access the content/application layer freely.
   Principle 2: Consumers are entitled to connect to IP-based networks freely through terminals that comply with technical standards provided by laws and regulations and these terminals may connect to each other flexibly.
   Principle 3: Consumers are entitled to use the communication layer and the platform layer free from discrimination at a reasonable price.

2. Fairness in Network Cost Sharing
   Increasing traffic on networks requires scalable networks, the approaches to packet shaping including the formulation of the guidelines, and the assistance for contents distribution.

3. Fairness in Network Use
   Network interconnection rules and asymmetric regulation need revision.

4. Other points
   The Report calls for the further development of network technologies and new business models, the openness of the incumbent operators' networks, and the response to internationalisation and the changing nature of dominant market power. It also pays attention to consumer protection, the issues on devices, and international implications.

Although the Working Group was significant as the first substantial engagement by the

MIC, its driving force was not necessarily actual disputes in the sector. Rather, it was led by partly ideocratic interests referring to the development of relevant debate in other countries including the US and involved mainly the regulatory ministry, the industry, and specialists such as researchers (Interview with an MIC official, 2021; Interview with a trade association official). The resulting policy package was composed of the benign approach of encouraging the formulation of the packet shaping guidelines by the relevant private sector actors and the revision of the traditional dominant career regulation. The lack of a wide range of relevant stakeholders may be related to the fact that this issue was not extensively debated hitherto. This means the issue of network neutrality was not significantly politicised.

The limited scope of the involved stakeholders in network neutrality reflected the extent to which relevant technologies had been developed (Interview with a trade association official). In other words, the violation of network neutrality did not cause a significant problem in Japan at that time. The development of the communication sector afterwards prompted a network neutrality debate and increasing involvement of stakeholders.

After the two Working Groups offered initial approaches to network neutrality, Japan's communications sector saw few explicit moves for a decade, except for a couple of technical efforts, including the formulation of the 2008 guidelines of a packet shaping operation

standard by four trade associations engaging in Internet related services[3]. However, in this period the related structures including relevant communication technologies changed. They include the rise of broadband services and smartphone devices and the increasing volume of content services products; the introduction of 5 G mobile services is expected to further exacerbate this trend (MIC 2018).

The second substantial review by the MIC was undertaken between 2018 and 2019 at the Study Group on Network Neutrality. It came with the development of communications technologies and services, including the rise of mobile communications services, the emergence of new large IT companies such as Google, Apple, Facebook, and Amazon (GAFA), and the development of communications network technologies (Interview with an MIC officials, 2020; Interview with an MIC official, 2021; Interview with a trade association official, 2020; Interview with a consumer group official, 2021).

The outcome of the second review highlighted the three key issues: packet shaping, priority control, and zero-rating[4]. The review recommended revising the 2008 Guidelines on

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3 The Guidelines on Packet Shaping Operation Standard were formulated by Japan Internet Providers Association (JAIPA), Telecommunications Carriers Association (TCA), Telecom Services Association (TELESA), and Japan Cable and Telecommunications Association (JCTA) in 2008. The Guidelines were revised in 2019 in response to the Interim Report of the Study Group on Network Neutrality at the MIC.

4 A zero-rating allows Internet Service Providers (ISPs) an exemption of certain websites or

Packet Shaping Operation Standard, set out to further deliberate the issue of priority control, and declared the formulation of interpretation guidelines regarding zero-rating and sponsored data (see Study Group on Network Neutrality (2019) for more details).

After the completion of the Interim Report of the Study Group on Network Neutrality in 2019, the MIC launched the Working Group on Network Neutrality on 9 June 2020, which is deliberating related technical issues such as how telecommunications network operators (carriers) have implemented packet sharing and provided zero-rating services, how consistent they have been with the related guidelines, and how much their behaviour has affected telecommunications markets and users (MIC 2020).

The MIC's second review significantly differs from its first review in terms of its involvement of stakeholders and their awareness of the significance of network neutrality. The approach to the first review can be regarded as ideocratic rather than bottom-up, with the policy challenges recognised by not a wide range of the public but a group of limited specialists including the regulatory ministry, relevant private firms, and researchers. Elsewhere, the second review between 2018 and 2019 involved a wider range of stakeholders including not only the regulator, Internet Service Providers (ISPs),

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applications from counting towards users' data charges (Pickard and Berman 2019: 97).

telecommunications network operators (carriers), and specialist researchers but also consumer groups and content providers.

However, the development of the issue has not attracted political attention. Indeed, network neutrality, let alone regulatory measures related to it, has not seen significant involvement of party politicians hitherto. The case of network neutrality in Japan offers an example of an emerging regulatory issue where policy-making is dominated by co-regulation mobilised by relevant specialist stakeholders, keeping politicisation at arm's length.

The British regulatory tradition and Open Internet

The regulatory tradition of the UK can be characterised by a mixture of the traditional mode dominated by self-regulation by sectoral elites and the comparatively new mode mobilised by high modernity and hyper-innovation (Moran 2003). The trial to replace the traditional regulation mobilised by 'club world' with the new administrative approach that seeks to avoid discretion and manipulation in favour of democratic transparency and accountability inevitably contradicted the existing force aiming to maximize discretion and preserve as much of the old club culture as possible and resulted in political instability and fiasco (Moran 2003, 2009). Others emphasise the impact of the entrenched British political tradition, which

can be summarised as ‘Westminster and Whitehall know best’ (Fitzpatrick 2016: 210), that the development of British regulation such as privatisation has been strategic processes that maintain the status quo by the capitalist state that serves the interests of political and economic elites (Fitzpatrick 2016: 95–136). The case of network neutrality regulation in the UK reveals the extent to which preference for co-regulation, which reminds one of the traditional British regulation of the club world, has dominated the process of policy-making and implementation on the issue of high modernity and hyper-innovation. The findings of this paper concur with Fitzpatrick (2016) by revealing the impact of the traditional British regulation on network neutrality. At the same time, the paper casts doubt on the uniqueness of the British political tradition in regulation; if other examples exhibit a similar pattern to their British counterpart, one can argue that it is a characteristic of the modern regulatory state rather than the British one.

The debate of network neutrality in the UK came with the dissemination of broadband services. It has been mobilised by the regulator Office of Communications (Ofcom), the industry including the Broadband Stakeholders Group (BSG)[5] and trade associations such as

5 The BSG is the UK Government’s leading advisory group on broadband, whose network includes telecoms operators, manufacturers, investors, ISPs, mobile network operators, broadcasters, new media companies, content producers and rights holders, as well as central and local government,

techUK, and others such as academics and consumer groups. Although the impact of non-industry actors in society was limited, the confrontation between key industry actors was significant (Interview with a BBC official, 2020). Indeed, the absence of grassroots actors characterised the European response to the network neutrality debate including the UK's (Powell and Cooper 2011), and this trend has not seen a significant change hitherto, except for occasional side-shows (e.g. Consumer Focus 2012). The author of this article contacted a couple of key UK consumer groups and failed to obtain an interview account, partly because of their lack of interest and knowledge on this issue. Among those involved, Ofcom has played a key role in shaping the course of action, with its reserved approach to explicit intervention and statutory regulation. Elsewhere, Sir Tim Berners-Lee (TBL), a key World Wide Web architect, has exercised significant influence over the course of the debate as the key peer of Internet specialists (Marsden 2017: 159–184). Therefore, the UK net neutrality debate can be characterised by the significant influence of business and technological elites,

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devolved administrations, Ofcom and others. It provides a neutral forum for organisations across the converging broadband value-chain to discuss and resolve key policy, regulatory and commercial issues, with the ultimate aim of helping to create a strong and competitive UK knowledge economy. It was established in 2001 by then Minister for E-Commerce and Competitiveness Stephen Timms, and since 2006 has focused on next generation broadband issues. (BSG 2021)

the explicit coordination by Ofcom, and the absence of a significant impact by the government ministry, party politicians, and non-industry actors in society such as consumer groups.

Like its Japanese counterpart, the UK's approach explicitly embraces the concept of co-regulation as key, with an approach cautious and modest rather than ambitious. Although throttling in the UK communications network was witnessed by BT as early as 2001, the regulator did not explicitly acknowledge network neutrality as a challenge of their own until 2006 (Marsden 2017: 160). For Ofcom (2006: 4), network neutrality issues: 'may or may not emerge in the future'. This tendency was retained with the incoming Cameron Government's significant resource reduction for Ofcom and the impact of the News International Phone Hacking Scandal, which resulted in the transfer of the responsibilities for the ICT sector from the Department for Business to the Department for Culture in early 2011. The UK's stance on network neutrality in this period can be revealed by Ofcom (2011: 26), for example:

> We recognise that any regulatory intervention in this area must be based on careful consideration of the risks of unintended consequences and, as discussed above, we recognise that the market is dynamic. Our current view is that we should be able to rely on the operation of market forces to address the issue of blocking.

This stance has shaped the path to a co-regulation approach, in which a set of guidelines

by the BSG in Table 2 administered the 'Open Internet[6]':

Table 2: Open Internet Guidelines issued by the BSG

July 2012	Open Internet Code of Practice: 25 Jul 2012 (The first and original)
May 2013	Open Internet Code of Practice: 25 Jul 2012 (Minor amendments and clarifications)
November 2014	Open Internet Code of Practice: 25 Jul 2012 (Amended)
November 2015	Review of the Open Internet Codes: 16 November2015 (Independent review by *Wissenschaftliches Institut für Infrastruktur und Kommunikationsdienste (WIK) GmbH*)
June 2016	Open Internet Code of Practice: 8 June 2016 (The revision in response to Regulation (EU) 2015/2120)

According to BSG (2016), the key points of the latest version of the guidelines 'Open Internet Code of Practice: 8 June 2016', are:

> The new Code continues to preserve the concept of an Open Internet – one in which users can access all lawful content without providers discriminating on the basis of commercial rivalry. It also ensures that traffic management practices employed by communication providers to manage their network are compliant with the new EU Regulation. In addition, the signatories to the Code will maintain the transparency that they already have in place around these practices by ensuring that these are communicated to the user effectively. The Code also clarifies the context in which some innovative services, which may become more prevalent as the Internet of Things becomes a reality,

6 Open Internet is the term preferred by many in the communications sector as an alternative term to network neutrality. According to Hooper (2015): 'The term "Open Internet" is one that the digital minister, Ed Vaizey and I agreed some years ago was a better term for the UK than the American term – net neutrality'.

could be provided alongside the Open Internet.

Elsewhere, the network neutrality debate in the European Union (EU) significantly affected the policy-making and implementation in the UK as a member state. Although the EU's initial approach to network neutrality in the early 2010s was not significantly different from that of the UK, the change of its stance aiming at more explicit approaches resulted in the formulation of the EU Regulation on Open Internet Access (Regulation (EU) 2015/2120); following its adaptation on 25 November 2015 by the European Parliament and the Council, EU rules were applied as of 30 April 2016 (Marsden 2017: 14–17; Ofcom 2019: 1; European Commission 2021). In response to the reference by the European Commission and other European bodies, the BEREC issued 'BEREC Guidelines on the Implementation by National Regulators of European Net Neutrality Rules' on 30 August 2015 (BEREC 2016).

The approach of the UK Government and Ofcom was to offer their view in the process of formulating the EU laws and BEREC Regulation (Marsden 2017: 181; Interview with an Ofcom Official, 2020). In July 2015 Minister for Culture, Communications and Creative Industries Ed Vaizey reported to Parliament that given the nature of the new network neutrality European regulation as principle based and service/technology neutral and its provision that ensures an Open Internet across Europe where all legal traffic is treated equally and to end the unfair blocking of rival services, the regulation fully met the wider criteria in the UK Government's

negotiating position (Marsden 2017: 181).

The introduction of European regulation prompted not only the publication of the revised BSG guidelines 'Open Internet Code of Practice: 8 June 2016' but also Ofcom to set up the implementation programme in 2017, which specifically illuminates the two following issues (Ofcom 2019: 1; bold in original):

- The commercial practice of **'zero-rating'** data traffic, where data used for specific applications, or types of applications, is not counted toward a user's data allowance; and
- **Traffic management practices**, where ISPs implement measures to optimise their network.

Ofcom as a National Regulatory Authority (NRA) has also issued an annual monitoring report to the European Commission and the BEREC since 2017 (Ofcom 2020).

If this sequence of UK network neutrality policy development is reviewed, what appears is the embedded tradition of co/self-regulation in network neutrality and its response to the external influence by the European Commission. Some argue that the existence of strong service-level competition has led the UK to choose this path (Interview with a BSG official, 2020). Others highlight the UK's superior position to engage in network neutrality issues when compared to its European counterparts; in simpler terms, the UK has been 'better than

the others… more ruled… [the UK did not] really need to do anything because we have [the UK had] Open Internet Code of Practice' (Interview with a trade association official, 2020).

Assessment of the cases

Network neutrality regulation in Japan has been led by the regulatory ministry (MIC), with the gradual increase of stakeholders prompted by the development of the sector, including those related to technologies and services. With no significant involvement of party politicians in the debate, network neutrality in Japan has been led by sectoral elites, with the impact of external actors as an ideocratic factor rather than a direct influence. What is unusual is the secrecy of communications has been a significant normative concept that has contributed to the debate (Interview with a trade association official, 2020).

The UK example reveals a different pattern of network neutrality policy development, in which state actors have opposed the introduction of stringent approaches such as statutory regulation and pursued co/self-regulation, in which industry actors play a key role in formulating the rules for network neutrality. The impact of the European Commission as an external actor significantly affected the UK network neutrality policy by changing the co-regulatory approaches to those of statutory regulation based on the EU Regulation on Open

Internet Access (Regulation (EU) 2015/2120); the negotiation process to formulate this regulation allowed the UK to successfully set the regulation in line with its policy line (Marsden 2017). From the viewpoint of the UK industry community, the UK's efforts on network neutrality were advanced to the extent that no substantial change was required in its domestic network neutrality measures (Interview with a trade association official, 2020). If one refers to the development of the British regulatory tradition by Moran (2009: 2), what appears is the re-emergence of the traditional pattern of the British regulation in the form of co-regulation in a sector of high modernity and hyper-innovation, with skilful response to the European influence that resulted in titular changes to its guidelines as the core co-regulatory policy tool.

If these two cases are compared, what appears is the strong preference for the approaches in which the state actors such as the government ministry and the NRA play the role of a monitor rather than an intervener in the emerging sub-sector of Internet services. In the emerging sector that has no strongly embedded regulatory approach, the state has discretion to set up the framework of governance. Both Japan and the UK have chosen the path of setting up a framework of co-regulation. This selection contrasts the choice of other examples, e.g. the US, the Netherlands, Slovenia, and Austria, where the formulation of statutory regulation was selected (Interview with an Ofcom official, 2020; Marsden 2017).

Interviewees highlight the rapidly changing nature of the relevant technologies in the communications sectors and the development of both the technologies and services as key factors shaping the framework of network neutrality. These points obviously look significant, but the author of the paper also highlights the existing structures of self-regulation in both countries.

The rise of self-regulation in Japan's political economy after the 1990s is reported as a new mode of governance in response to the challenge of governance and the resulting decline of the traditional bureaucratic approaches (Schaede 2000). With regulatory reforms including privatisation and market liberalisation since the 1980s and the gradual impact of neo-liberalism and New Public Management since 1990, the Japanese state and its political elites have shown significant preference for benign state intervention in relation to industrial actors. The resulting co-regulation drawn from the consensus among political and economic elites depends upon a set of depoliticised processes that involves the policy networks of specialists explicitly monitored by civil servants. That could imply a future possibility of politicisation, given the close relationship between civil servants and party politicians in Japan (see Mogaki 2019, for example).

Elsewhere, although the impact of the New Right was more explicit and distinctive in the UK than Japan, the response of the former to the challenge of network neutrality exhibits the

extent to which the regulatory approach of the British political tradition that pursues the interests of political and economic elites in the form of self-regulation affected policy-making processes in a sector that can be regarded as an example of high modernity and hyper-innovation. The explicit intention of party politicians and the government department to pursue co-regulation rather than more interventionist approaches means that the group of political and economic elites collectively selected the policy direction of keeping politics and the government at arm's length. At the same time, like the Japanese case, the nature of involved stakeholders sets the direction of specific measures.

In pulling the above together, the cases of Japan and the UK have divulged the examples in which the state chose the embedded approaches in an emerging policy issue by setting up the frameworks of co-regulation. The state tradition and the selected policy networks seem key in shaping the path of network neutrality policy development in both cases. The paper argues that without significant contingent factors such as a crisis, the state turns to the approaches that correspond to the existing political tradition in response to a new regulatory challenge and are shaped by the policy networks whose specific characteristics are determined by the selection of stakeholders.

Conclusion

The case studies of network neutrality in Japan and the UK reveal how a sector of high modernity and hyper-innovation responds to a new policy challenge, referring to the state tradition, involved stakeholders, and external influences. The research result reveals the significance of existing structures in regulation and an explicit preference of sectoral elites for co-regulation. Emerging regulatory challenges prompted the state and elites in the sector to set up a framework that corresponded to the structures such as political traditions and existing policy networks rather than the influence of agency when no contingent factor such as a crisis affected political arenas; as a result, a new mode of governance emerged in the sub-sector of communications network neutrality.

This topic obviously requires further research. For example, the paper offers only a vague explanation of why network neutrality regulation in both countries has avoided politicisation, which has characterised both Japanese and British regulation. The current research did not identify a party politician who can offer an account specifically for network neutrality, partly because the issue is considered specific with no political implication. Perhaps, the issue can be considered with a broader scope; for instance, if the research examines the nature of the policy regarding the Internet, party politicians may better respond to enquiries to provide an account. Also, regarding the UK, the significance of the responsible government department

(Department of Culture, Media & Sport), which exhibited few substantial engagements in network neutrality, requires further scrutiny. Research with a broader scope can reveal their role and impact in policy-making and implementation.

The research can also pay attention to examples of a different state tradition. Whereas Japan and the UK happen to have a similar approach to communications network neutrality, others such as the US and the Netherlands have responded differently. Exploring these cases will offer an account of how a state introduces a different set of regulatory measures on the issue.

The examination of network neutrality offers a clue to understanding the nature of regulation in a country under a specific mode of governance by revealing the significance of political traditions and policy networks in shaping a new mode of governance. Although this paper offers an account that will allow further contemplation, its generalisability and specificity of the issue deserve further attention, together with the long-term transformation of governance factors.

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