

Conceptions of Press Freedom in a Globalising World ¹

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Press freedom emerged, with much debate and agony, in a world of local papers and small publishers that were easily threatened by the power of Church and state. It survives unquestioned in a world of border-crossing communications technologies and media conglomerates. Yet in developed societies the media are now both less threatened by Church and state, and more exposed to concentrated market power. In this new world, the case for press freedom deserves a fresh look. Traditional arguments against censorship—the control of content—may still convince. But how robust are arguments against standards and disciplines for that bear not on content, but on the ways the media work? Is the best conception of press freedom for our world one that accords the media unconditional freedom?

Truth Seeking and Freedom of Expression

The oldest arguments for press freedom claim that it is needed for discovering truth. “Who”, Milton blustered, “ever knew Truth put to the worse, in a free and open encounter?”² The late Bernard Williams pointed out that ‘free and open encounters’ have their problems when the aim is truth. He notes that “...in

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² John Milton, *Areopagitica*, (1644); an electronic text can be found at <http://www.bodley.ox.ac.uk/external/cross/areopagitica.pdf>

institutions that are expressly dedicated to finding out the truth, such as universities, research institutes, and courts of law, speech is not at all unregulated. People cannot come in from outside, speak when they feel like it, make endless irrelevant, or insulting, interventions, and so on; they cannot invoke a right to do so, and no-one thinks that things would go better in the direction of truth if they could.”³ Truth-seeking needs careful process and safeguards; freedom to propose and challenge content, for example, but not freedom to neglect or travesty evidence.

Nor can we plausibly equate press and media freedom with unrestricted freedom of expression. We may agree with John Stuart Mill that *individuals* should have “absolute freedom of opinion and sentiment on all subjects, practical or speculative, scientific, moral, or theological”, and that freedom of expression for individuals is “practically inseparable” from their “liberty of expressing and publishing opinions”.⁴ We may rejoice that freedom of expression for individuals is endorsed by the *Universal Declaration of Human Rights*, by the *European Convention of Human Rights* and in many constitutions.⁵ We may think that even when individuals express themselves inaccurately and obscurely, it is better that they be free to do so (egregious defamation and hate speech apart).

But these considerations do not show that powerful institutions and vested interests should also enjoy unfettered freedom of expression. We don't generally accord such freedom to powerful institutions. The communication of governments, companies, public bodies and universities (for example) is properly constrained by requirements

³ Bernard Williams, *Truth and Truthfulness*, Princeton, 2002, 217.

⁴ John Stuart Mill, *On Liberty* (1859), in *On Liberty and other writings*, ed. Stefan Collini, Cambridge University Press, Cambridge, 1989, 138.

⁵ **Universal Declaration of Human Rights**, Article 19, <http://www.swarb.co.uk/lawb/hmrUnivDecHumRig.html>
European Convention on Human rights Article 10
<http://www.echr.coe.int/Convention/webConvenENG.pdf>

for accountability and disciplined by freedom of information legislation; academic freedom is constrained by practices such as peer review and demands for research integrity. Why then should the businesses that control newspapers or radio and TV channels enjoy unfettered freedom of expression? Why should the powerful media conglomerates controlled by Rupert Murdoch or Silvio Berlusconi have the same freedom of expression as the vulnerable individuals whom conventions and constitutions are designed to protect?

Press Freedom for Democracy

A better argument for press freedom is that citizens in democracies need it. If the press is unfree, citizens may be uninformed and unable to make sound decisions. But the needs of democracy do not and cannot show that the media should enjoy unfettered freedom of expression. Those needs justify press freedom *only* insofar as it is configured to support citizens and democracy. They can justify press freedom that aims at informing citizens accurately and in ways that they can assess, so enabling them to judge for themselves. They cannot justify a press that rejects these aims. A press that did so would be free to misinform citizens, to manipulate public opinion and so to damage democracy.

Accurate reporting is hardly a controversial aim, and is central to press and broadcasting codes. Yet British newspapers and broadcasters that ostensibly work to such codes often publish and broadcast inaccuracies. Some are unintended: working to tight deadlines leads to mistakes. But if inaccuracies are allowed to stand uncorrected once noted, they can no longer be excused as mistakes. Serious commitment to accuracy may not require total accuracy, but it does require prompt and prominent correction of mistakes, and robust disciplines for minimising them.

Broadcasters often do better by accuracy, since their licences often require them to meet Public Service Broadcasting standards. Yet even in public service broadcasting, commitments to accuracy and other public service standards sometimes slip; and commitment to quite elementary standards applied to those in public life—such as declarations of interests and systems for avoiding conflicts of interest—are often absent or disregarded.

And accuracy is not enough. If the media are to support democracy they must also communicate in ways which their audiences can assess. Unless readers, listeners and viewers can judge media claims for themselves, they will not be able to tell truth from rumour, to distinguish the credible from the flaky, or to judge where to place and where to refuse trust. Serious communication offers its audiences context and clues, evidence and qualifications, thereby enabling them to judge the accuracy of the claims they encounter.

Self-Regulation or Statutory Regulation?

These standards are hardly alien. Both broadcasters and newspapers broadly accept that reporting should be accurate; the more reflective also accept that accuracy without assessability sets too low a standard. Yet large parts of the British media, including many newspapers, have not pursued these commitments with any vigour. Since 1991 the newspapers have accepted a minimal degree of self-regulation provided by the *Press Complaints Commission*.⁶ Their approach to self-regulation comes into play only where there is a complaint; it does little for individuals who shun publicity; it does not correct inaccuracies where there is no complaint. Even when a complaint is 'resolved' in favour of a complainant, little may change.

⁶ For the UK Press Complaints Commission and its code and procedures see <http://www.pcc.org.uk/cop/history.html>

Self-regulation need not be trivial. A self-regulating media *could* use many of the routines and disciplines that other powerful institutions deploy (and in some cases are required to deploy) to achieve a degree of openness and accountability. Some parts of the media use some of them; most do not. Self-regulating newspapers and broadcasters *could* distinguish reporting from commentary; they *could* do more fact checking; they *could* develop robust procedures for checking and challenging reliance on ‘unattributable sources’; they *could* correct inaccuracies prominently, systematically and independently. They *could* require owners, editors, programme makers, commentators and reporters to disclose their interests, and especially their financial interests; they *could* publish those declarations; they *could* debar reporting and commentary by those with a declared interest in a matter. They *could* develop independently administered, professionally assisted ‘rights of reply’ that were guaranteed the same prominence as the claims or comments to which they respond. They *could* routinely publish details of payments made to obtain ‘stories’; they *could* sanction journalists who accept payments, bribes or favours to cover, or not cover, certain topics, or to cover them with a certain slant; they *could* routinely publish the names of those sanctioned; they *could* put an end to ‘cheque-book journalism’. They *could* lobby as hard for legal protection of rights to individual privacy as they did for freedom of information (both are part of human rights conventions; arguably institutionalising one without the other has undermined an intended balance).

If Self-Regulation Fails?

Are these standards realistic? Clearly they can be met. Some publications, some editors, some programmes and some journalists meet many of them. So there is no intrinsic reason to think that they are unachievable. Nevertheless, they may be unrealistic. There is little appetite for securing these standards more generally—even in parts of the media that are rather keen on accountability for others.

If this reluctance persists, statutory regulation would be possible. Improved self-regulation looks preferable to statutory regulation. But if it remains unobtainable, these arguments show that statutory regulation that sets requirements on media process (rather than on media content) in order to support accuracy and assessability need *not* be an unacceptable intrusion into journalistic professionalism, editorial independence or freedom of the press. At present, the problem in the UK lies not with self-regulation as such, but with inadequate, indeed token, self-regulation. Abuses of press freedom are not the 'price of democracy'. They damage democracy. At some point, persistent abuse creates the case for statutory regulation, or for a mixture of statutory and self regulation. . If press freedom is best justified by the extent to which it safeguards and promotes diverse, intelligible, honest and assessable communication, thereby supporting democracy and citizenship, measures needed to ensure that the media actually serve those purposes are can be justified.

These conclusions raise questions for citizens as well as for the media. Should we fear that any change in current conceptions of press freedom will lead back to censorship or excessive secrecy? Or should we fear that if we do not act to protect public culture and civility, we will see further damage to democratic debate and to democracy? Should we even fear that if media power remains unaccountable it will (if things go badly) ultimately threaten individual freedom of expression? Why do we not take steps to stop powerful institutions arrogating individual rights to freedom of expression? Are we so fearful of statutory regulation, and of the powerful interests that argue against any but token self regulation, that we will acquiesce in increasing domination of the media by commercial interests? These questions are not idle.