

# Should We Unbundle Free Speech and Press Freedom?

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*Abstract.* This paper presents an account of the ethical and conceptual relationship between free speech and press freedom. Many authors have argued that, despite there being some common ground between them, these two liberties should be treated as properly distinct, both theoretically and practically. The core of the argument, for this “unbundling” approach, is that conflating free speech and press freedom makes it too easy for reasonable democratic regulations on press freedom to be portrayed, by their opponents, as part of a programme of illiberal censorship. While we acknowledge the important grain of truth in that argument, we try to show how the alternative, “unbundling” approach can also be used to undermine or mischaracterise democratically justifiable opposition to media regulations in despotic regimes. In light of the problems on both sides, we defend a contextually-variable account of the relation between these two liberties.

## 1. Introduction

What is the relation between free speech and press freedom?<sup>1</sup> Are they basically the same thing? Is one a sub-class of the other? Or are they fundamentally distinct liberties, united by a shared history, but with differing demands? And how should this relationship be represented in our theoretical terminology? Should we *bundle* free speech and press freedom together? That is, should we talk about them in a way that downplays their differences, portrays them as essentially intertwined liberties, and

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<sup>1</sup> By *press freedom*, we mean to refer to the protections and prerogatives accorded to a wide range of media platforms, including print, broadcast, and online media. Granted, in most jurisdictions, different protections apply to different platforms. But we believe that the core principles governing these platforms are (or should be) similar, owing to the similar democratic functions that all these platforms fulfill.

encourages overlap in the laws and regulations protecting them? Or should we do the opposite, and try to unbundle them?

What makes these questions hard isn't merely that there are areas of similarity and difference between the two liberties. These questions are hard because the similarities and difference both have implications for the integrity of democratic politics. The media has a special role to play in democratic discourse, which comes with special privileges and responsibilities. The protections afforded by norms of press freedom should reflect these privileges and responsibilities. Problems arise if we conceptualise press freedom in a way that ignores this, and which conflates the media's expressive liberties with the ones that ordinary citizens have under the auspices of free speech. This way of framing things makes it too easy for corrupt media companies to abuse their privileges, shirk their responsibilities, and then shield behind the banner of free speech when called to account. If we bundle press freedom and free speech together, it becomes easier to portray legitimate media regulations – regulations which deter practices that are bad for democracy – as dangerously illiberal.

On the other hand, media outlets, particularly in corrupt regimes, are vulnerable to antidemocratic persecution, much the same as ordinary citizens. The affront to democracy that is involved in the arrest of a dissident journalist is similar, in many respects, to the affront that is involved in the arrest of a citizen attending a peaceful political protest. Problems can also arise, therefore, if we downplay the continuities between press freedom and free speech. This unbundling makes it easier for autocratic states that are suppressing media criticism to justify their actions, by claiming that they are simply engaging in media regulation, and that this is something quite distinct from censorship. Even if the motivations for unbundling are reasonable, unbundling may still inadvertently help governments to get away with this antidemocratic sleight of hand. In these contexts, bundling can help us to support the interests of democracy, by framing things in a way that attunes us to the genuine similarities between overreaching media regulation and the censorship of private citizens' opinions.

So, there are reasons to worry about bundling and unbundling alike. However, the worries about bundling have received more attention in recent philosophical work on this topic. This is a reflection of the type of policy debates that have motivated this work, namely, debates in relatively stable democracies, in which governments are looking to impose moderate media regulations with legitimate aims, e.g. limiting media monopolies, or making it easier for people whose privacy has been invaded to seek compensation. When states try to enact these regulations, spokespeople for the corporate media sometimes call this “an attack on freedom of speech”.<sup>2</sup> This is a simple but potentially effective, and potentially pernicious, example of bundling. By

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<sup>2</sup> For examples of this kind of rhetoric in the UK, in relation to the Leveson Inquiry into media ethics in 2011-12, see e.g. Nicholas Watt, “Leveson inquiry has chilling effect on freedom of speech, says Michael Gove”, *The Guardian*, 21<sup>st</sup> February 2012 ([theguardian.com/media/2012/feb/21/leveson-chilling-freedom-speech-gove](http://theguardian.com/media/2012/feb/21/leveson-chilling-freedom-speech-gove)); or, similarly, “Freedom of speech: warts and all”, *Sunday Times*, 6<sup>th</sup> October 2013 ([thetimes.co.uk/article/freedom-of-speech-warts-and-all-pwj7clwtjgz](http://thetimes.co.uk/article/freedom-of-speech-warts-and-all-pwj7clwtjgz)).

not overtly differentiating free speech and press freedom, and conflating media regulation with the censorship of ordinary citizens' opinions, one can cast legitimate democratic policies in an ominous light. This way of depicting things invites us to interpret any new piece of media regulation as a step down the slippery slope to despotism.<sup>3</sup>

In response, defenders of such policies will naturally look to unbundle our two liberties. For example, a media law scholar may write a textbook explicating the differences in their substantive requirements, and objecting to their conflation. Or a government minister may make a statement arguing that their proposed policies actually support free speech, by working against media monopolies. When dealing with these kinds of controversies, one naturally sides with the unbundlers. But we think it is a mistake to extrapolate from this, by adopting an all-purpose anti-bundling stance. What is needed isn't a general (unbundled) theory of the relationship between free speech and press freedom, but rather, a context-sensitive analysis of the threats to democracy that can be camouflaged, or otherwise assisted, by different ways of portraying this relationship.

This isn't just meant to be a call for accuracy or candour, or some related point about the ethics of persuasion. Of course we will object to any deliberately biased account of the relation between press freedom and free speech, which is being used to manipulatively garner support for antidemocratic policy. But this leaves us with the question of what an unbiased account of that relation looks like. There is room for reasonable disagreement here, but one thing that everyone should want to avoid is an account of the relation between free speech and press freedom that obscures some of the political concerns that underpin our interest in press freedom. Critics of bundling will say that this is just what bundling tends to do. There is a grain of truth in this, but we will argue that a hard-line unbundling approach can do the same, in certain political contexts.

## 2. Differences between Free Speech and Press Freedom

In what follows we will assume, *arguendo*, a government-centred analysis of our key concepts. Both rights of free speech and press freedom impose duties upon governments, to refrain from restricting the relevant types of communication. But what are those duties, exactly? Let's start with free speech. On a standard account, this consists of two duties. First there is a duty of *ideological tolerance*. Governments mustn't restrict speech if their motive is to suppress disfavoured views. Speech restrictions

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<sup>3</sup> As well as its usage in arguments from opponents of press regulation, a form of bundling can be found in some press standards codes, including the Editors' Code of Practice used by IPSO, the independent regulator of most of the UK's newspapers and magazines, in its claim that there is "a public interest in freedom of expression itself" (see [ipso.co.uk/editors-code-of-practice/](http://ipso.co.uk/editors-code-of-practice/)). As Phillipson (2013) argues, this creates an impression that in cases where a piece of published news serves no public interest, it still serves the public interest by default, because there is a public interest in free speech *per se*. This effectively treats the media like a generic platform for speaking, rather than a purposive democratic institution.

aimed at harm-prevention are justifiable in principle. Restrictions aimed at suppressing falsehoods, political dissent, or heterodox or irreverent ideas, are not. The second duty pertains to a *higher threshold* of harm. If a government is suppressing speech for the purpose of harm-prevention, the harm whose prevention putatively justifies the restriction must be greater than if the restriction were targeting some non-speech act. Roughly, there is a duty to tolerate harmful speech more than other forms of harmful conduct.<sup>4</sup>

One way to articulate a principle of press freedom is to simply reaffirm these same duties, while identifying a narrower set of regulations to which they apply, i.e. to say: “any regulation of the press must also abide by the *ideological tolerance* and *higher threshold* duties.” But this formulation won’t suffice, because a principle of press freedom is normally understood as incorporating additional duties that don’t figure in a free speech principle. Consider, for example, the duty to respect *anonymity*. Governments must not force journalists to reveal their sources. The point of this is to make it less risky for sources to provide information to the media, and thus easier for the media to report on controversial issues. Governments have no such duties in how they deal with ordinary citizens. For example, suppose your friend knows someone in the diplomatic service, and suppose you hear, via them, that a foreign dignitary is secretly holidaying in your town. If you report this on Twitter, and trigger a national security incident, the government is surely within its rights, for reasons of informational security, to compel you (via lawful means) to divulge your ‘source’.

In a similar vein, consider the duty of *information provision*. For the sake of transparency, and the efficient dissemination of information, governments have a duty – embedded in custom, as much as in law – to make information that is of public interest available to the media, with an ease and immediacy that isn’t owed to individual citizens.<sup>5</sup> Granted, citizens still have a right to request information of public interest. But we don’t expect government officials to schedule routine meetings with the public aimed at satisfying such inquiries, whereas we do expect them to hold press conferences, and we regard it as a dereliction of democratic duty to fail in this, or to prevent disfavoured outlets from attending. These information provision duties, which are plausibly an important part of a free press principle, don’t have any natural counterpart which is likewise an important part of a free speech principle. The media needs certain privileges in order to fulfil its democratic function. Your right to free speech entitles you to not be subject to government interference in your

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<sup>4</sup> See Schauer (1982: 7-8) for a canonical explanation of these two free speech-related duties.

<sup>5</sup> Montague (1997) argues that the scope of press freedom should be limited by the interests that underpin the information provision duty. Information about ordinary people, or the private lives of celebrities, are not of public interest in the relevant sense, and shouldn’t be covered by a free press principle. But this argument surely proves too much. In general, the scope of a right to  $\phi$  isn’t restricted to only those instances of  $\phi$ -ing that promote the interests for whose sake the right exists.

thoughts and utterances. It doesn't grant you the privileges of a role which you aren't performing.<sup>6</sup>

In some ways, then, the media has more rights than ordinary speakers. But in at least one respect the media has fewer rights. As long as nothing libellous or fraudulent is being said, private citizens have no enforceable civic duty to be truthful. As a private citizen, if you are inclined – whether due to misunderstanding, mischief, or delusion – you can publicly assert that the Pope is really a Hollywood actor in disguise. As an everyday, non-authoritative speaker, the costs of your falsehoods will tend to be minor, and per the ideological tolerance duty, suppressing them *because* of their falsity is presumptively unjustified. But these *laissez-faire* terms cannot be held the same for the media. After all,

If powerful [press] institutions are allowed to publish, circulate, and promote material without indicating what is known and what is rumour, what is derived from a reputable source and what is invented, what is standard analysis and what is speculation, which sources may be knowledgeable and which are probably not, they damage our public culture and all our lives. (O'Neill 2002: 95)<sup>7</sup>

Because the harms are likely to be greater, we naturally view the press as having a civic duty to be truthful (or to try to be) that goes beyond whatever weak norm of truthfulness applies to ordinary speakers. There's plenty of room for debate about just how exacting the relevant duties of truthfulness should be, and over whether self-regulation or state regulation is the most appropriate way to uphold the duties in question (see e.g. Rowbottom 2018: 270-78). But whatever one says to these points, this is another major difference between press freedom and free speech. The rights pertaining to the former (but not the latter) come packaged with some kind of civic duty of truthfulness.

As well as these substantive differences, there is an underlying tension in how principles of free speech and press freedom serve society's broader cultural interests. Given its role as a government-independent provider of information, the media sets parameters within which other people's speech rights are exercised. In a democracy, we often want public discourse to feature a broad cross-section of views. Free speech helps in this, by preventing government from suppressing disfavoured views. But the media can also suppress disfavoured views, *de facto*, by failing, in a coordinated or patterned way, to offer certain views a platform. In short, the media "is not like any other speaker"; it is "the forum in which competing views play out" (Rowbottom 2018: 13). And if the press is made immune to regulation, under the auspices of press freedom, this can result in a setback to some of the very same interests for

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<sup>6</sup> Barendt (2005: 434-41) offers a helpful account of the duties linked to press freedom, along with the limits and underlying justifications. One difficult intermediate case is that of whistle-blowers, who typically work with journalists to publicise information that is of public interest, but without themselves being formally recognised as media actors (Boot 2019).

<sup>7</sup> Fox (2013) argues that the press shouldn't just have a moderate duty of truthfulness, e.g. not recklessly publishing falsehoods, but a more demanding duty of Rawlsian public reason, i.e. framing discussions of questions about justice with reference to values that reasonable actors can all endorse.

whose sake we protect ordinary citizens' speech against the state. When only a narrow range of viewpoints are being accommodated, then, as Judith Lichtenberg says

The press, once thought of as an antidote to established power, is more likely to reinforce it, because access to the press... is distributed as unequally as are other forms of power. (Lichtenberg 1987: 330-31)

Rowbottom makes roughly the same point, in a slightly different way.

The communicative power of the mass media means that it is a gatekeeper that decides which ideas will most likely be... high on the political agenda. A media organisation might decide not to carry stories that promote certain viewpoints... In such a case, the decision of the media can undermine free speech in so far as it stops important views being heard. (Rowbottom 2018: 13)

Where does that leave us? In summary, (i) the duties connected to press freedom are different in substance from those connected to free speech, and (ii) there is a tension in the way that these two sets of duties serve a society's collective interest in viewpoint diversity. Why do these differences obtain? Ostensibly, because the interests that underpin the duties of a free press are narrower than – and more integrally tied to the functioning of democratic institutions than – the interests that underpin a right to free speech. If representative legislatures and democratically-elected executives are to succeed, in governing on behalf of the citizenry at large, then the citizenry must be well-informed, particularly about the actions of government and other powerful bodies, and it needs to be represented with a broad cross-section of viewpoints, on readily-accessible platforms. Press freedom is geared towards the fulfilment of these distinct functions, and so its demands differ from the broader demands of free speech.

Naturally, this account of the differences between free speech and press freedom is contestable. In his argument for coercive regulations on print media, Wragg (2020) argues that the media doesn't have distinct democratic roles and duties, and therefore that there shouldn't be a fundamental difference between the expressive rights of media actors and ordinary citizens. Wragg comes to this view because he sees no direct way to justify an assignment of special duties to the media. But we think the right line of reasoning is less direct. In most democratic societies, the media has in fact come to occupy the position of being a key guardian of democratic integrity. Even if its overall performance in this role is wanting, still, it is because the media occupies this role that we are justified in assigning special role-related responsibilities to it. By analogy, we don't justify the duties enshrined in competition law by appealing to each company's independently-justified duty to not behave monopolistically. Rather, we ascribe these duties to companies because we have a certain idea of how companies must behave, if they are to adequately fulfil the functional role they have come to play in our society (e.g. allocating goods). For better or worse, we rely on the media to facilitate democracy, in a way that we do not rely on private

citizens. And our reliance upon the media, in this regard, means that its communicative rights differ in substance from the individual citizen's right to free speech.<sup>8</sup>

### 3. Arguments for Bundling

If free speech and press freedom are indeed distinct liberties, then haven't we already settled the questions that we raised at the outset? Shouldn't the differences between these two liberties be mirrored in how we conceptualise them? And thus, haven't we already shown that unbundling is the right approach?

No. Although there are real differences between free speech and press freedom, we might yet hold that, when it comes to the issues of justice that surround press freedom, there are other factors in play, in light of which we have more reason to highlight the similarities between our two liberties. Several arguments can be made in this direction; we will consider three here.

#### 3.1 Demarcation Problems

One reason to unbundle free speech and press freedom is to make it easier for governments to implement policies that are tailored to the challenges of media regulation. If our two liberties are bundled, then our starting point for media regulation is institutionalising the state's free speech-based duties of non-interference, i.e. the *ideological tolerance* and *higher threshold* duties. We then have to combine these negative duties with the state's positive obligations to support the media, e.g. as per the *information provision* duty. And then, whether via self-regulation or state regulation, the media's duty to not espouse blatant lies and misinformation must be upheld. Regulatory policy around the media becomes a complicated balancing act, combining a hands-off, *laissez faire* ethos, with certain forms of hands-on government support. If the task of media regulation is instead approached as one that is entirely separate from the implementation of free speech-based duties – if it is approached as a set of free-standing policy problems – then this balancing act may be easier to carry out.

However, there is also a parallel argument to be made in favour of bundling. If we want to articulate a set of liberties and prerogatives specific to the media, then we have to legally define a range of media-specific categories. For instance, we have to demarcate a boundary between news organisations and propaganda groups, so that we have a non-ad hoc way of deciding which organisations do and don't get admitted to state press conferences, or get to protect the anonymity of their sources. And

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<sup>8</sup> The general understanding of communicative rights and liberties, that underpins our remarks here, is one on which each token communicative right / liberty is defined, in both its scope of application, and in the demands that apply within that scope, by the instrumental purposes whose attainment putatively justifies the recognition of the relevant right. For a defence of that approach to free speech that general methodological approach to free speech theory, see Simpson (2016).

this is not straightforward. *News organisations* are not a natural kind, and it isn't easy to say precisely what makes journalism distinct from other modes of information provision, like blogging, podcasting, or pamphleteering. Granted, there is something to be said for muddling through and doing our best with such classifications. The EU's definition of journalism, for example, tries to work through these kinds of demarcation problems (see Brimblecombe and Phillipson 2018). But given the rapid pace of change in online media, it's hard to feel optimistic about regulation keeping up.

If there is no principled way to resolve such problems of categorisation, then the norms and policies regulating the media are likely to be arbitrary, and prone to misapplication. Schauer (2005) cites this as one of the reasons why the US Supreme Court has been loath to unbundle press freedom, for the purposes of First Amendment doctrine. The general idea is that if the state assimilates press regulation with the protection of free speech, it can spare itself the burden of resolving such ambiguities. It's hard to tell when (if ever) Tweeting equals journalism. If Tweeting is merely another form of speech, then at least we will have some answer to the question of how the law can and cannot deal with it.

So, here is one argument for bundling press freedom and free speech together. If we unbundle them, our policies face a series of demarcation problems, which will make the policies more liable to abuse or misapplication.

But is this argument for bundling a particularly *compelling* one? Not really. This is because the demarcation problems we have identified are bound to arise in some form, irrespective of whether we bundle or unbundle. Suppose we try to sidestep the demarcation problem, e.g. by claiming that for the purposes of our communicative regulations, broadcast media is just another form of protected speech. In this case our policy will be that falsehoods uttered on the evening news are treated the same as falsehoods published on a personal website. But we cannot realistically imagine that people who are harmed by falsehoods on the news will be content with this. This means we will have to start carving out exceptions and caveats, for the application of generic free speech protections in media regulation contexts. And thus we will again have to try to sharpen the blurry lines that divide media organisations from ordinary speakers. Setting all definitional quandaries aside, we clearly have compelling reasons to treat the media and ordinary speakers differently in at least some areas of law and policy. And therefore we have to address the demarcation problems identified above, regardless of whether our conceptual framework categorises press freedom and free speech in a way that emphasises or downplays their differences.

### 3.2 *Liberal Neutrality*

Recall from earlier one key democracy-based argument against bundling. A *laissez-faire* media environment allows media empires to acquire a democratically unhealthy



level of power and influence, and bundling supports this, by deterring (e.g. portraying as illiberal) the kind of regulation that is required to rein in these empires. So if you care about democracy, it's best to unbundle.

One might worry that this argument violates the ideal of liberal neutrality, i.e. the ideal which says we cannot justify policy by invoking values that reasonable people may reject. Perhaps, then, there is some justification for bundling, to be found in seeing the illiberal nature of this argument against bundling?

But how does this argument infringe against liberal neutrality? Assume *arguendo* that no reasonable people reject democratic ideals, as long as those ideals are cashed out in an appropriately 'thin' way. Still, one may think that the democracy-based argument against bundling is premised on thicker democratic ideals, which are liable to reasonable disagreement. What drives this argument, after all, are things like the Murdoch empire's role in Trump's election in 2016, or in the UK's Brexit referendum. These situations didn't involve cancelled elections, or people literally being forced to consume state propaganda. No-one was made to watch *Fox News*, or read *The Sun* newspaper, and those who did still had access to other sources. People in these episodes consumed the media they wanted to, and then voted in large numbers. The results might not have been the ones many of us hoped for, but if we declare them democratically illegitimate, this makes us fair-weather friends to our supposed principles. Democratic rights protect good and bad choices alike, including choices about media consumption. Interfering with these choices to try to make them 'better' and 'wiser' might thus be seen as an illicitly perfectionistic form of social engineering.

Although there is something worth taking seriously in this analysis, we think it ultimately errs in its portrayal of the press as just another institution in the free market. Much as we can't have a functioning democracy with a corrupted judiciary, nor can we have one with a corrupted press sector. This gives democratic states a prerogative to establish institutional practices in these areas that secure the relevant ends. This isn't a partisan vision of our democratic ideals, it's just a minimal requirement of democratic viability. The media's role is complicated by the fact that, unlike the justice system, it typically works better if it is largely carried out by private actors, rather than government employees. But its integrity is as essential to democracy as the judiciary's. Voters need information, and the press provides it, and this information must be of a reasonably high quality, as opposed to lies, misleading half-truths, or rank bullshit. Systematically misinformative media outlets, even when they are freely consumed by the public, should not be seen as simply a regrettable outcome of free market forces, like a supermarket chain putting local shops out of business. They are a malfunctioning element in our democratic machinery, similar to a corrupt judiciary.

In sum, the negatives of a *laissez faire* media regulatory environment – the ones invoked in a democracy-based complaint about bundling – are ones that should be recognised by any reasonable, thin account of our democratic ideals. Therefore, the democracy-based complaint about bundling does not infringe liberal neutrality.

And so there isn't any general justification for bundling, to be found in trying to ascribe an illiberal character to this argument against bundling.

### 3.3 *Corruption and Abuse*

The third argument for bundling is one that we find more persuasive. The gist of the argument is that if we treat press freedom as something distinct from a general principle of free speech, we thereby remove some of the constraints on governments' regulatory powers, in relation to the media, and thus we make it more likely that those powers will be abused in ways that are damaging to democracy. To get a more vivid sense of the worry here, imagine that an aspiring despot promised to stamp out fake news in the progressive media, arguing that the media cannot hide behind the banner of free speech, and must be held to account when it fails to fulfil its democratic role properly. This reasoning has a similar shape to what we find in criticisms of bundling, from authors like Rowbottom and Lichtenberg. And yet in this case the reasoning looks sinister. Our aspiring despot isn't *actually* going to combat misinformation and create a more responsible media sector. He is going to use the law to silence his critics. Unbundling press freedom and free speech aids this anti-democratic agenda.<sup>9</sup>

The idea behind this argument is not (or at least, it need to be) that we should mistrust governments as such, the way hard-line libertarians do. The argument is about the state's relationship to the media specifically. Like the argument for unbundling, it appeals to the media's unique role in democracy, but it reaches the opposite conclusion: press-specific government regulation is antithetical to the press's function as a *government-independent* source of information. A healthy media culture should disseminate information without government spin, foster debate among diverging viewpoints, including those critical of the government, and hold the government to account when there is mismanagement or corruption. An argument for unbundling emphasises threats to the democratic integrity of the press from within the free market. But this is just one threat among others. Yes, media moguls can use a lack of regulation to gain undue influence. But governments can, and in many countries do, use regulation to do the same, and they can achieve more pervasive influence than even the wealthiest media companies. Bundling helps to protect the press from this kind of government interference, by likening attempts to regulate the press with other forms of censorship, and thus marshalling democratic opposition to those attempts.

We believe this argument presents a genuine worry for any uncompromising defence of unbundling. When governments use press regulation to silence critics and

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<sup>9</sup> The example is based on President Trump's (unfulfilled) campaign promise to change libel laws to make it easier to sue "purposely negative and horrible and false articles", and the examples he cited ("hit pieces" in *The New York Times* and *Washington Post*) suggest his goal was to silence his critics. Trump was unlikely to succeed, given the Supreme Court's general aversion to any press regulation; see [nytimes.com/2016/11/14/business/media/can-libel-laws-be-changed-under-trump.html](https://www.nytimes.com/2016/11/14/business/media/can-libel-laws-be-changed-under-trump.html).

control information, the continuities with suppression of free speech *are* more important than the differences, and it seems right, in this scenario, that unbundling press freedom and free speech has more costs than benefits.

#### 4. The Media, the State, and the Balance of Power

Does this mean we now have a decisive theoretical justification for bundling, and against unbundling? No. Just as we shouldn't ignore threats to a healthy media that come from government actors, equally, we shouldn't ignore threats that come from media companies. Both of these present genuine dangers to a democratically viable media culture. Clearly, without measures to prevent it, misinformation and powerful media monopolies are liable to lead to unreliable information and antidemocratic disparities in political influence. Equally, governments with too much control over the media are liable to use this to silence their critics and spread propaganda. Neither should be acceptable to someone who cares about the media's role in democracy.

This kind of two-sided account of the relation between press freedom and free speech stands as a corrective to much of the recent philosophical literature on this topic. As noted above, the tendency in current work on the relation between free speech and press freedom is to unbundle, and this reflects the fact that this work is largely addressed to political contexts in which the pertinent threat to democratic integrity is not state suppression of the media, but rather, the media having excessive power over government. Consider the following remarks, for example, on the 2011-12 Leveson Inquiry into unethical practices in the UK print media, which was convened in the wake of scandals around phone hacking by journalists working for Murdoch-owned newspapers.

The press largely defines freedom of expression as being constituted by the absence of statutory regulation. As has been all too evident... the slightest suggestion that the press should be subject to regulation, even by a regulator independent of the state, is mercilessly distorted and caricatured by newspapers as being tantamount to threatening to impose on them the conditions under which newspapers exist in Zimbabwe, Syria, or Hungary. In this view of freedom of expression, it is the interests of the press, not of its readers nor of the subjects of its coverage, which are fundamental. (Petley 2012: 532)

That may all be broadly correct, as a summary of how corporate media barons in the UK think of press freedom. But the UK is just one legal-political context – one in which the corporate media is unusually powerful. And hence it doesn't yet follow that we should, as Petley recommends, “rethink the whole notion of press freedom” in a way that downplays the press's rights and instead focuses on its obligations (Ibid: 532). Petley's mention of authoritarian regimes is suggestive, because in those kinds of regimes, emphasis on the press's obligations is often a pretext for quashing reporting or debate that is contrary to the government's interests. Spokespeople for

the media in illiberal societies may have good pro-democracy reasons for trying to conflate free speech and press freedom, and characterising both in terms of the absence of statutory regulation.

In a similar vein, consider Lichtenberg's criticism of the claim that media self-regulation is preferable to government regulation, given the conflict of interest that comes with a government regulating its own critics. The reason to prefer government regulation, despite this, "is not that we can trust government more than opponents of regulation believe, but that we can trust others less" (1987: 353). In other words, governments may not be trustworthy press regulators, but the media are even less trustworthy, in carrying out self-regulation.

The problem is that Lichtenberg wants this insight to undermine the idea that free speech and press freedom are closely-linked liberties. As with Petley's line of reasoning, above, her analysis doesn't seem to acknowledge, or to betray any real worries about, how much variation exists across different political regimes, in the relative trustworthiness of press and government. Under certain regimes, media actors are surely much *more* trustworthy than the state, in self-regulating their duties of e.g. truthfulness, or even-handedness. It would seem almost ludicrous to tell the hundreds of journalists abducted by government forces in the Syrian civil war,<sup>10</sup> or to tell Hungarian journalists facing persecution by an increasingly autocratic regime,<sup>11</sup> that state regulation of the media is more reliable (and less prone to corruption) than media self-regulation, in ensuring that the media properly carries out its democratic responsibilities.

The lesson here is simply that there are no universal, cross-cultural, and trans-historical principles about the democratic benefits of empowering governments to regulate the media. In relatively fragile or developing democracies, a more *laissez faire* regulatory regime will sometimes be beneficial, in enabling media organisations to amass enough power to generate genuine democratic accountability for governments. In democracies with a well-established culture of independent corporate news media, the media may have too much power, and stricter regulation will be needed to get democracy back on track. Different histories and corporate environments can leave otherwise politically similar countries with different media landscapes, and thus different regulatory predicaments. Empowering the media, relative to the state, furthers democratic ideals in some cases, and not in others. Everything depends on how the balance of power and influence sits between the two, in a given political context.

We still have good reason to challenge the bundling of free speech and press freedom when it is used in patently manipulative ways, to mischaracterise the purpose of democratically responsible press regulation. Our point is that we shouldn't insist on

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<sup>10</sup> See [ifex.org/the-devastating-toll-of-syrias-uprising-on-journalists](http://ifex.org/the-devastating-toll-of-syrias-uprising-on-journalists).

<sup>11</sup> See [rferl.org/a/hungary-journalists-police-probe-journalists-data-collection-orban/30918683.html](http://rferl.org/a/hungary-journalists-police-probe-journalists-data-collection-orban/30918683.html).

unbundling the two freedoms, and downplaying their continuities, as a general theoretical stance. The conceptual taxonomies that are most congenial to our argumentative purposes, in countries where democratic ideals are under siege from powerful media companies, are not necessarily well-suited to articulating how democracy is preserved in countries where state actors are undermining democratic norms. If we feel tempted to say something universal about the relation between free speech and press freedom, we should simply check that impulse. Universalised claims about this relationship are all too likely to overgeneralise from the political conditions of one society.

## 5. Conclusion

Should we unbundle free speech and press freedom? In some circumstances – when they are being bundled in a way that undermines sensible and democratically legitimate media regulation – yes, at least to the point of noting that there are differences in the exact purposes, scopes, and demands of these two liberties. But should we unbundle them as a matter of general principle? We have argued against that approach. In certain political contexts, e.g. in countries where the government is exerting autocratic control over public discourse, the similarities between press freedom and free speech matter more, from a democratic perspective, than the differences. In these contexts, bundling the two liberties together helps to subvert certain kinds of antidemocratic rationalisations that governments can use to defend their attacks upon press freedom.

Our claim is not that there is nothing general to say about the nature or significance of press freedom in a democracy. From a pro-democracy perspective, what is crucial – and what remains crucial across different political contexts and different historical moments – is that the media has neither too much nor too little power, relative to the government. When bundling achieves its intended effect, it empowers the media (relative to the state), by highlighting how government regulation of the media can be a smokescreen for antidemocratic suppression of dissent, and thus helping to marshal effective opposition to such regulation. But there is no all-purpose, across-the-board answer to the question of whether friends of democracy should welcome this.

The more general and basic theoretical task, in the vicinity, is to specify the necessary ingredients of a democratically legitimate media system. A detailed account of the press's democratic function gives us a yardstick against which to measure a given country's media, and one that will work across a variety of political contexts. It also allows us to assess media regulation with reference to its democratically appropriate aims. Such assessments are liable to controversy, naturally, but they provide a better focal point, for debates about the limits of press freedom, than parallel debates about whether or not it is apt to portray regulation of the press as being akin to the censorship of private citizens.

## References

- Barendt, Eric (2005), *Freedom of Speech*, 2<sup>nd</sup> Edition (Oxford: Oxford University Press).
- Boot, Eric R. (2019), "Leaks and the limits of press freedom", *Ethical Theory and Moral Practice* 22 (2): 483-500.
- Brimblecombe, Fiona, and Gavin Phillipson (2018), "Regaining digital privacy? The new 'right to be forgotten' and online expression", *Canadian Journal of Comparative and Contemporary Law* 4 (1): 1-66.
- Fox, Carl (2013), "Public reason, objectivity, and journalism in liberal democratic societies", *Res Publica* 19 (3): 257-73.
- Lichtenberg, Judith (1987), "Foundation and limits of freedom of the press", *Philosophy & Public Affairs* 16 (4): 329-55.
- Montague, Phillip (1997), "Government, the press, and the people's right to know", *Journal of Social Philosophy* 28 (2): 68-78.
- O'Neill, Onora (2002), *A Question of Trust: The BBC Reith Lectures 2002* (Cambridge: Cambridge University Press).
- Petley, Julian (2012), "The Leveson Inquiry: journalism ethics and press freedom", *Journalism* 13 (4): 529-38.
- Phillipson, Gavin (2013), "Leveson, the public interest, and press freedom", *Journal of Media Law* 5 (2): 220-40.
- Rowbottom, Jacob (2018), *Media Law* (Oxford: Hart Publishing).
- Schauer, Frederick (1982), *Free Speech: A Philosophical Inquiry* (Cambridge: Cambridge University Press).
- (2005), "Towards an Institutional First Amendment", *Minnesota Law Review* 89: 1256-1279.
- Simpson, Robert Mark (2016), "Defining 'Speech': subtraction, addition, and division", *Canadian Journal of Law and Jurisprudence* 29 (2): 457-94.
- Wragg, Paul (2020) *A Free and Regulated Press* (Oxford: Hart Publishing).