

## Public issues in media: regulation, accountability and the freedom of the press

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I must first of all apologise to you for flouting the spirit of the digital age by engaging in such a nineteenth century mode of communication. I would love to have prepared a multi-media presentation, embellished with bells and whistles, but such a task is beyond my powers. I would also like to make it clear that, except where the context indicates otherwise, I use “press” and “media” as synonyms. I have had printer’s ink in my veins for many years.

When we discuss the role of civil society in defending media freedom, the first thing to recognise is that the media landscape has changed almost out of recognition in the past decade or decade and a half. The issues connected with media freedom have therefore changed also, and have become in some senses more complex.

This is partly because power structures have also changed. Before 1989, one could discern a very rough division in Europe between societies imbued with the old socialist model and the societies of a democratic or liberal democratic aspect. In the former, the freedom of the press was constrained primarily by political factors; in the latter, it was constrained largely by economic factors, and to a certain extent by legal factors.

In the new Europe, the media landscape is a kaleidoscope of forces, in which the power and accountability – of the media as well as of everything else - have become more diffuse. The complexity of the situation can be illustrated by the spectrum of the debate. In the United Kingdom, Baroness Honora O’Neill, an Oxford philosopher, argues that the issue today is not the necessary freedom of the press, but the necessary freedom from the press and its unregulated and unaccountable power. In some of the more recent members of the EU, on the other hand, media professionals find themselves still navigating uncertainly between a rampant capitalist

ethic which threatens professional practice and media freedom in its own way, and State power that is slow to accept any more than token limitations on its desire to control or at least influence the organs of public opinion.

The current economic situation in the EU and elsewhere, as well as the rise of new, web-based digital media have posed serious problems for the continuation of the classic economic model for the traditional media, and also, of course, for governments.

All these factors should be of real concern for civil society, which of course is a major beneficiary of media freedom.

One of the problems, in my view, is that the proponents of media freedom, among whom I count myself, have sometimes failed to take sufficiently into account the fact that right across the public sphere, governments, civil society generally, and individual citizens, are becoming increasingly sceptical of any profession which claims unrestricted rights. The legal profession and the medical profession are only the two most obvious areas where professionals increasingly recognize that their public credibility depends on their adoption of standards of professional practices, and on the creation and implementation of transparent and enforceable ways of ensuring that they meet these professional standards adequately.

Why should media professionals be in any less accountable than doctors or lawyers or other professionals? My thesis, broadly speaking, is that there is a vital correlation between freedom and accountability, and that this applies to the media as much as to any other profession. Media that insist on freedom without accountability will suffer from diminishing credibility and authority. This will, in turn, weaken the negotiating power of those who seek to defend media freedom against its many enemies, public and private.

But how is accountability best engineered?

There are, it seems to me, three potential options for any system of media accountability. The first is for direct accountability to government. This was the old Soviet model, but the

disappearance of the Soviet system after 1989 does not mean that elements of it have not survived, even within the EU. One of the reasons for this is that media freedom was not made part of the *acquis communautaire*, and that the competence of the EU commission in media matters is effectively limited to a narrow range of issues that do not include media freedom. This, to my mind, is unfortunate. I am aware that there are viewpoints within the present Commission and perhaps even the Council that would seek to extend the EU competence in these matters, but we would be wise not to hold our breath while we wait for positive developments in this field.

Another reason is that, for political as well as technical reasons, the broadcast media continue to be much more narrowly controlled by States than the print media. Although the technical arguments for such control – the need to licence broadcasters to use a particular segment of the broadcasting spectrum – have been weakened by the emergence of the internet, they are still a powerful lever, especially in public service broadcasting. All things considered, therefore, it is unwise to look to government for a positive response on the issue of press freedom.

The problem about governmental attempts to set up systems of media accountability is that this will inevitably, and accurately, be seen as a reversion to the ‘bad old days’. While this is perennially seen as dangerous by the media, it should be remembered that governments will always have the possibility of attracting public support for policies aimed at controlling media – many people are dissatisfied with the media, although for widely differing and sometimes contradictory reasons – for as long as there does not seem to be any alternative.

The second is the option of self-regulation, as it is sometimes described. This is common across the EU and indeed in some non-EU countries, where the media have often collectively created structures both to defend press freedom and to provide an element of accountability. Many of the organizations and structures so created have in turn set up the AIPCE – the Alliance of Independent Press Councils of Europe.

Two things might be said about the AIPCE. The first is that it is an alliance, not an association. It does not adopt policy positions, or have a party line. It is primarily a forum for the exchange of views and experiences. The second is that many of its member organizations, even though they

are constitutionally independent of the media organizations that have set them up and largely fund them, do not always have majority representation from civil society. A common model is a associates civil society membership, in varying proportions, with membership drawn from other sectors, notable journalists and media owners or managers.

This model is a considerable advance on State regulation; and, despite the presence of media representatives, many of these organizations have demonstrated an admirable independence of their founders and funders, and have contributed substantially to the defence of press freedom as well as to the development of best professional practice. However, all such organisations – no matter how sound the principles on which they operate and how independent their decisions may be – are at least potentially open to the criticism that can be leveled at all self-regulatory systems. This is that they can sometimes be accused, however unfairly, of acting not in the interests of civil society but in the interests of their funding and member.

A variation of this model involves the appointment, by media organisations, of internal ‘ombudsmen’, who enjoy a measure of independence from their parent organizations, and with varying powers to raise ethical issues and to determine questions of professional practice. It is worth noting that this model is most common in major media organizations in the USA, where the media are perhaps more free than in any other country in the world.

This model is important in that it provides evidence of a recognition, by some of the most powerful media in the world, that press freedom is not, of itself, a guarantee of press quality, or of a guarantee that the interests of civil society will always be best served by a media that is accountable to nothing except the market. However, the value of this sort of structure, at the end of the day, depends entirely on the quality of the individuals appointed and the degree of freedom and independence conferred upon them by the media organizations that appoint them.

The third model is that of independent regulation. This is a model which, like self-regulation, is committed not only to the freedom of the press, but also to its accountability. The principal potential difference between independent regulation and self-regulation, however, is that, in independent regulatory systems, civil society is not only the beneficiary, but can become a vital

contributor to the power, authority, and credibility of the media at every level.

This can be achieved by ensuring that any structure set up to achieve the twin, related objectives of defending media freedom and ensuring media accountability has, as its major component, civil society representation. I will talk about the mechanics of achieving this later, and they are not simple, but at this point what I want to emphasise is a principle. This principle is that the most secure guarantee of the freedom, the independence, and therefore the authority, of the press is public confidence. It involves, also, a belief that public confidence in the value of the freedom of the press is best achieved by a system of accountability, and by credible and authoritative representation of civil society in any structures designed to achieve this.

This model –and I believe that its details can take many different forms – has a number of advantages over the others I have described. If it is properly organized and structured, it will escape the criticisms that can be made of either of the two other models. If it does its job properly, and secures the appropriate degree of public support and confidence, it will also act as a bulwark against governmental attempts to reduce or curtail media freedom.

Much of the contemporary discussion about media freedom between governments and media is a dialogue of the deaf: the State wants to restrict; the media defy all restrictions. The State will not trust the media to exercise its freedom responsibly; the media will not trust the state to defend the freedom of the press. There is no common ground, and no opportunity for civil society itself to make a meaningful contribution to the debate.

In virtually all member states of the EU, and in many of the applicant countries, the media chafe under legal and other restrictions that they feel, often justifiably, are unwarranted. In virtually all member states, governments feel that media are, to a greater or lesser extent, irresponsible and unaccountable. While one can defend, philosophically, the idea that it is always better to have too much freedom than too little, making the necessary arrangements for this is not always easy!

At one level, this tension between the state and media is woven into the very fabric of political

life, and society is poorer wherever such a tension does not exist. But that is not to say that a *modus vivendi* cannot be arranged – a situation in which each side gets something that it wants, without having to surrender anything that it considers vital to its interests.

Instead of being a recipe for stalemate, this scenario could also offer the opportunity for progress and for an enhancement of the media freedom, based on *realpolitik* and an explicit recognition of the objectives of all concerned.

Specifically, government guarantees about the necessary freedom of the media , expressed in legislation or perhaps even constitutionally, could be sought in exchange for an acceptance, by the media, of the appropriateness of independent regulation of its activities within the parameters of a Code of Professional Practice.

This is easily said, but not so easily achieved. And this is where the role of civil society becomes potentially important. Civil society as a whole stands to benefit enormously from such a *modus vivendi*, and that is why civil society has to become a core component of any solution along these lines.

I am sure that there are, in all our societies, civil society organizations and leaders that would be prepared to take part in, and perhaps even initiate, the processes and structures needed to work towards these objectives.

There are, however, a number of key elements of any such solution. I would specify them as follows:

- Any new institution designed to defend press freedom and ensure media accountability within the context of a Code of Professional Practice should, ideally, have a majority of civil society members.
- While media representatives can be chosen by media managements or by journalists, civil society members should be chosen, following public advertisement, from the widest possible group of applicants, by a small independent expert group with no connection whatever to the media or to government, but whose constitution is broadly

- acceptable to all major stakeholders, and which would have the right to renew its own membership when the need arises.
- The chairman of any such new institution should be chosen by the members of the institution itself.
  - The institution should have an appropriate legal status.
  - The institution should be funded on an agreed and secure basis by as many of the stakeholders as is considered appropriate in all the political, social and economic circumstances of the country concerned, but neither the media nor the State (if the State is involved in funding the new organization) should have any operational or policy role in the institution concerned.
  - The level of funding agreed each year should be sufficient to enable the institution to carry out the functions specified for it, so that its effectiveness or authority cannot be undermined by financial sanctions applied by funders who may disagree with its decisions.
  - The institution should be empowered to require publication of its decisions in any medium concerned, but should not be empowered to apply criminal sanctions or financial sanctions that would effectively be of similar effect.
  - Media adhering to the new institution should, in return for their acceptance of the Code of Professional Practice and wherever possible, be given enhanced legal protections in ways that enhance and contribute to the freedom of the media generally.

The potential disadvantages of such structural changes in the media landscape of any country are few. As they would be voluntary organizations, they would depend for their continuing funding and existence on a high degree of acceptance by civil society that they are necessary and useful, and a high degree of acknowledgment by the media and by the state that they represent a significant initiative with continuing benefits for society as a whole. There is also the cost to be considered, of course.

The advantages are more easily identified. They include the creation of new institutions, in that substantial space between the legal system and the political system, with the potential to deal

more sensitively than either of these systems with complex issues of human rights such as privacy and with the freedom of the media itself.

It also goes without saying that, in the case of applicant countries, both the Commission and the Council will – regardless of the precise nature of the *acquis communautaire* and of the legal competence of either body under the Treaties – look more favourably on those countries that have taken such steps to afford media freedom an appropriate structural framework.

In all of this, civil society remains central. This is because the strength of civil society is, in the final analysis, the best guarantor of media freedom, and the immediate beneficiary of the appropriate media accountability that is the other side of the coin of media freedom itself.

Now is the time, in my view, for civil society organizations, individually or in association with each other, to consider possible initiatives aimed at achieving the two vital objectives I have outlined: the freedom of the media, and the creation of a system of public accountability without which that freedom will lack real authority and without which the media's task of protecting and serving the public interest risks becoming a mere empty formula.

John Horgan

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