

Press Freedom: a Democratic Rubric

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The Inquiry has heard strong arguments for the importance of a free press in a democratic society. The Inquiry would be interested in submissions on the special role to be played by the press in a democracy, what 'freedom' requirements need to be in place for that role to be played and the whether this role places any obligations or responsibilities on the press.

On 14 November 2011, when Lord Justice Leveson opened the formal phase of his Inquiry, he stated that 'I fully consider freedom of expression and the freedom of the press to be fundamental to our democracy, fundamental to our way of life. But that freedom must be exercised with the rights of others in mind'. In this submission to the Inquiry, I want to suggest that the time has come to re-think the whole notion of press freedom – and indeed of the freedom of the media in general. In particular, I want to argue that traditional notions of press freedom are rooted firmly in the seventeenth, eighteenth and early nineteenth centuries and are in serious need of updating; that freedom of expression and freedom of the press are all too readily conflated and need separating out from one another; and that we need to consider not only the right of the press to publish but the right of readers to receive the information which they need in order to function effectively as citizens of a democratic society, a right which places certain obligations on the press¹.

The press largely defines freedom of expression as being constituted by the absence of statutory regulation. As we have seen during the run-up to and the course of the Inquiry, any suggestion that the press might be subject to greater regulation by the state, either directly or at arms length, is criticised by newspapers as being tantamount to threatening to impose on them the conditions under which newspapers exist in Zimbabwe, Syria or Hungary.

‘Free enterprise is a pre-requisite of a free press’

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. Such a view is based (albeit implicitly) on the property rights of press owners, on ‘free market’ economic theory, and on the closely related notion of the press as a marketplace of ideas. This last rests on the entirely laudable assumption that democracy is best served by the free exchange of ideas, for which freedom of expression is vital. However, whether it is best served by unfettered competition in the newspaper market is highly questionable. But evidence that this is indeed the dominant view in this country is not exactly hard to find. For example, the 1949 Royal Commission on the Press stated that ‘free enterprise is a pre-requisite of a free press’ whilst the 1977 Commission approvingly quoted Justice Wendell Holmes’ famous 1919 judgement that ‘the best test of truth is the power of the thought to get itself accepted in the competition of the market’ and themselves stated that:

In the case of the press, with certain limited exceptions, no legal restriction is placed on the right to buy or launch a newspaper. The justification is that this freedom produces a sufficiently diverse press to satisfy the public interest by ensuring a broad spectrum of views, and at the same time meets the individual interest by enabling virtually anyone with a distinctive opinion to find somewhere to express it. Consequently, there is no specific obligation on editors or proprietors to have regard, in what they publish, to the need to meet either the public or the individual interest, since the invisible hand of the market is expected to fulfil both (1977: 9).

Similarly, in 1992 the UK government specifically told the Council of Europe that ‘the United Kingdom regards press freedom as an absolute freedom. The government leaves it to the market forces to decide which press products survive’ (1992: 53). As James Curran has rightly concluded:

Liberal theory assumes tacitly that press freedom is a property right exercised by publishers on behalf of society. According to this approach, publishers should be free to direct personally their newspapers, or delegate authority to others, as they see fit. What they do is consistent, ultimately, with the public interest since their actions are regulated by the free market. This ensures, in liberal theory, that the press is free, diverse and representative (Curran and Seaton 2003: 346-7).

Thus as far as the press is concerned, newspaper owners and politicians are agreed that the marketplace of ideas should be treated and should function in the same way as the market for any other product or service. In other words, consumer demand determines what goods are produced and who purchases them, and government's only role is to make and enforce the rules which allow a competitive market to function. Any other form of regulation simply distorts the market, operates against the interests of both producers and consumers, and violates the private property rights on which this whole edifice rests. To which highly idealised view of the workings of the 'free market' one really must add that commercial institutions are themselves legally and politically constituted, as are the market conditions under which they operate. In this respect, it is extremely important to grasp the fundamental point that the so-called 'de-regulation' of the broadcast media in the UK has come about because of deliberate changes to statute law – in particular the Broadcasting Act 1990 and the Communications Act 2003, both of which have replaced regulations designed to protect the public interest with regulations designed to promote corporate interests; this is a process of re-regulation, not de-regulation. The 'free market' so highly prized in neo-liberal dogma is made possible in the first place only by a highly complex system of laws and regulations. Governments everywhere organise and enforce economic relations, rendering market structures no more 'natural' than political ones.

Market censorship

There are two major problems with the market approach to media freedom. The first is that there is a vast disparity between the way in which actually existing markets work and the way in which 'free market' economists claim that they should, or indeed do, work. The second is that democracy may not be best served, and may indeed be extremely ill served, by media regulated according to purely market principles. As Laura Stein points out: 'media markets cannot guarantee the production of diverse and high-quality goods and services aimed at meeting the communication needs of all citizens. In fact, efficient market behaviour systematically favours the interests of advertisers, shareholders, and more valued audience segments over those of the broader populace, including the poor, the very young and old, and racial and ethnic minorities. Media markets also systematically disfavour unpopular and minority viewpoints' (2006: 47). It is, of course, precisely for this reason that terrestrial broadcasting in Britain, whether publically or privately funded, has been regulated according to public service principles, the dilution of which in the drive for 'de-regulation' so relentlessly pursued by successive governments since the mid-1980s has been seen by many critics of this policy as seriously endangering the health of our democracy. Nevertheless, the principle is still accepted in the UK that at least parts of the media may need to be regulated in the public interest if the market, left to its own devices, fails to deliver what citizens require. We shall return to this point later.

The press, however, has always been left to the tender mercies of the market, as noted above. But this has had extremely serious consequences for press content. There is a large and ever-growing literature on the manifest shortcomings of the English press (and not simply the popular press, either), but few critics have traced the origins of these shortcomings back to the economic basis on which the press operates as starkly as has Colin Sparks (although one

would also wish to draw the Inquiry's attention to the work of James Curran, Martin Conboy, Bob Franklin and Roy Greenslade). As Sparks puts it:

Newspapers in Britain are first and foremost businesses. They do not exist to report the news, to act as watchdogs for the public, to be a check on the doings of government, to defend the ordinary citizen against abuses of power, to unearth scandals or to do any of the other fine and noble things that are sometimes claimed for the press. They exist to make money, just as any other business does. To the extent that they discharge any of their public functions, they do so in order to succeed as businesses. (1999: 46).

The consequences for journalistic content of the untrammelled free market economy in which English newspapers exist are particularly apparent at the popular end of the market, which is where most of the journalism with which the Inquiry is concerned is to be found. Again, it is worth quoting Sparks at some length, because of the unvarnished manner in which he presents the situation:

The intense competition for circulation between the popular press means that there is an inbuilt tendency to attempt to gain 'scoops' in those areas known to be attractive to readers. The lurid, sensational and sometimes offensive material that dominates the mass market press is the logical and inevitable consequence of its economic position. None of these elements can be traced to the shortcomings of individuals. Newspaper proprietors may be, in the main, bullying reactionary bigots who force their editors to print politically biased material. But even if they were self-denying liberal paragons, it would still make sense for editors to act in the same way, because that is the best business model available to them. Again, editors and journalists may well be moral defectives with no sense of their responsibility to society and to the people whose lives they so pruriently report. But even if they were saintly ascetics, it would still make

sense for them to publish the same sorts of material, because that is what best secures the competitive position of their newspapers. (Ibid.: 59)

Thus while newspaper owners and editors daily stress the importance of press freedom and inveigh against the spectre of state censorship, newspapers themselves are actually subject to what is increasingly referred to as market censorship, which indeed affects all media which are funded wholly commercially and which are not subject to any public service or public interest requirements (which of course include those laid down internally by enlightened owners and editors). Market censorship manifests itself in a wide range of ways: the exercise of both proprietor and advertiser power over newspaper content, lack of adequate journalistic resources as a result of cost-cutting, an insistence on 'giving people what they want' as consumers rather than what they need as citizens, the tyranny of majority tastes, and a general subjugation of the news agenda to purely commercial ends, which, crucially, includes pressuring governments to enact policies which support newspaper owners' commercial interests – *vide* the infamous 'Murdoch clause' in the Communications Act 2003. This last consideration means that national newspapers have become inextricably interlinked with the selfsame political forces over which, according to classical Fourth Estate theory, they are supposed to be keeping watch – a development with which this Inquiry is rightly concerned. In short, market power can be as damaging and corrosive of the democratic purposes which newspapers are supposed to serve as government power. Those who argue that press freedom is best served by the operations of the 'free market' are, frankly, either entirely blind to the shortcomings of actually existing markets or dogmatically wedded to the notion that the market is always a better means of allocating resources than any of the alternatives on offer, or both.

Press freedom and press privilege

But let us now turn to other criticisms of the conventional idea of press freedom as advanced by newspaper editors and owners in the UK. The latter are extremely fond of quoting American sources such as Benjamin Franklin and Thomas Jefferson in their defence of press freedom, but they always quote them extremely selectively. For example, in his 1789 article 'An Account of the Supremest Court of Judicature in Pennsylvania, viz., The Court of the Press', Franklin wrote:

If by the *Liberty of the Press* were understood merely the Liberty of discussing the Propriety of Public Measures and political opinions, let us have as much of it as you please: But if it means the Liberty of affronting, calumniating, and defaming one another, I, for my part, own myself willing to part with my Share of it when our Legislators shall please so to alter the Law, and shall cheerfully consent to exchange my *Liberty* of Abusing others for the *Privilege* of not being abus'd myself.

And again, and of even greater relevance to the substance of the present Inquiry:

It is not by any Commission from the Supreme Executive Council, who might previously judge of the Abilities, Integrity, Knowledge, &c. of the Persons to be appointed to this great Trust, of deciding upon the Characters and good Fame of the Citizens; for this Court is above that Council, and may *accuse, judge, and condemn* it, at pleasure. Nor is it hereditary, as in the Court of *dernier Resort*, in the Peerage of England. But any Man who can procure Pen, Ink, and Paper, with a Press, and a huge pair of Blacking Balls, may commissionate himself; and his court is immediately established in the plenary Possession and exercise of its rights. For, if you make the least complaint of the *judge's* conduct, he daubs his blacking balls in your face wherever he meets you; and, besides tearing your private character to flitters, marks you out for the odium of the public, as an *enemy to the liberty of the press*ⁱⁱ.

Similarly in the course of his Second Inaugural Address, 4 March 1805, Thomas Jefferson noted that:

During this course of administration, and in order to disturb it, the artillery of the press has been levelled against us, charged us with whatsoever its licentiousness could devise or dare. These abuses of an institution so important to freedom and science are deeply to be regretted inasmuch as they tend to lessen its usefulness, and to sap its safety.

Suggesting that only the demands of more important matters had prevented several States from invoking their laws forbidding falsehood and defamation, he added that 'no inference is here intended, that the laws, provided by the State against false and defamatory publications, should not be enforced; he who has time, renders a service to public morals and public tranquillity, in reforming these abuses by the salutary coercions of the law' (1993: 316-17). In other words, the freedom of the press to publish did not, in his view, include freedom from prosecution for spreading untruths and perpetrating libels. And the same year he wrote in a letter to John Norvell that:

It is a melancholy truth, that a suppression of the press could not more completely deprive the nation of its benefits, than is done by its abandoned prostitution to falsehood. Nothing can now be believed by which is seen in a newspaper. Truth itself becomes suspicious by being put into that polluted vehicle ... The man who never looks into a newspaper is better informed than he who reads them; inasmuch as he who knows nothing is nearer to truth than he whose mind is filled with falsehoods and errors (ibid: 533).

Another figure much referenced by the defenders of the traditional notion of press freedom is Tom Paine. However, in his 1806 essay 'Liberty of the Press', he complained that 'nothing is more common with printers, especially of newspapers, than the continual cry of the *liberty of*

the press, as if because they are Printers they are to have more privileges than other people'ⁱⁱⁱ.

Paine's words are as true today as when he wrote them.

Who runs this place?

Clearly, then, even the 'classic' defenders of press freedom never argued that such freedom should be absolute. Any serious defender of press freedom in the contemporary era needs to be aware of this frequently overlooked fact, but they also have to ask themselves whether the 'classic' defences still hold good in our media-saturated era of market-driven journalism. As John Keane put it in a remarkably prescient work: 'the old ideal of "liberty of the press", brought back to life by the market liberals, is redolent of a time of hand-set pamphlets, penny newspapers, limited edition moral and scientific treatises, and widespread belief in decentralised market competition as the chief antidote to political despotism' (1991: 89). A similar point was made more recently by Onora O'Neill in her seminal 2002 Reith Lectures, where she noted that 'the wonderful images of a free press speaking truth to power and of investigative journalists as tribunes of the people belong to more dangerous and heroic times. In democracies the image is obsolescent: journalists face little danger (except on overseas assignments) and the press do not risk being closed down. On the contrary, the press has acquired unaccountable power that others cannot match (2002: 92-3). Indeed, it cannot be stressed too highly that the lengthy death toll of UK daily and Sunday national newspapers during both the present century and the previous one is accounted for entirely by purely economic factors, and not by any actions on the part of the state. It is also a sobering reflection on the way in which market forces act as censors that when the *Daily Herald* was closed in 1964 it had a circulation five times greater than that of *The Times* and when the *News Chronicle* died in 1960 its circulation was on a par with that of the *Telegraph*; the problem in both cases being that the newspapers did not attract the 'right' kind of readers for the advertisers.

The classic liberal argument for press freedom simply assumes that it is governments which should be the sole object of press vigilance, since they are the main seat of power in society. But in modern societies corporations and other vast private interests are rapidly becoming ever more powerful, and, in a steadily growing number of instances, are taking over functions previously performed by the state. Indeed, as Onora O'Neill, John Lloyd and others have noted, the media, and in particular the press, have themselves become seats of considerable, and indeed ever-growing, power. This was a point was made by some force by Anthony Sampson in *Who Runs This Place?*, in which he observed that in the late twentieth century 'no sector increased its power in Britain more rapidly than the media ... The masters of the media are the new aristocracy, demanding and receiving homage from politicians, big businessmen and the old aristocracy. Columnists and broadcasters are more famous than many of the politicians or public figures they interview' (2005: 211). And yet, for all the power of the media, and especially of the national press, their legitimacy is unclear. They are not elected, and press journalists in particular are widely distrusted and heavily dependent on commercial masters who have their own political agendas and commercial priorities. Significantly, Sampson's chapter on the press is entitled 'Unelected Legislators', and he notes that MPs are now 'in the gallery of the virtual debating chamber, looking down in awe on the journalists. The fourth estate had become the first estate (ibid: 241). And in the *Independent*, 13 April 2004, he pointed out that: 'newspapers, whatever their value as an opposition, can never become a serious first estate – a substitute for an elective democratic system. Parliament without a press is now unimaginable, but a press without an effective Parliament is an invitation to demagogy and rule by unaccountable new elites'. Furthermore, as primarily commercial operations which are thoroughly enmeshed with a wide range of other enterprises, newspapers have been far less keen to attack and investigate corporations, businessmen and financiers than they have been to turn the spotlight or flamethrower on

politicians – hence the much-remarked upon failure by most of the press (with certain honourable exceptions) to spot the coming financial crash of 2008 (which had most certainly been heralded for some considerable time by those economists not in thrall to neo-liberal dogma and voodoo economics).

Invisible political actors

However, a peculiar feature of this state of affairs is that the power and the political role of the media, and especially of the national press, are very rarely acknowledged by journalists, who claim simply to be holding up a mirror to political reality in an entirely passive, disinterested fashion whilst in fact playing an extremely active role in shaping that reality. But to acknowledge that power and that role would, of course, be to cast considerable doubt on the validity of the carefully honed myth that the press is a delicate flower constantly menaced by the chill winds of state power. One of the very few journalists to have drawn attention to this state of affairs is the *Guardian*'s David Walker, who noted that 'the power held by journalists and the media organisations for which they work is unperceived or assumed away. The occupational myth of the English political specialist is the dented sword of truth in a Manichean world where a lonely battle is fought for honesty' (2002: 108). And in his contribution to *Invisible Political Actors*, a book which is highly germane to certain of the Inquiry's concerns, he argues that:

Political accountability, as demanded by journalists, is asymmetrical. Politicians, especially activist centre-left politicians, are held subject to tests and deficiency-meters. Their judges – reporters, columnists and presenters – account to no one for their veracity, fairness or prejudice ... It is as if media institutions are invisible. Most journalists model politics as a straightforward transaction between office holders – who are generally presented as corrupt or tending towards the corrupt – and the pure and undefiled people of the United Kingdom. These are, in most newspaper accounts,

sturdy individualists with a marked reluctance to pay taxes. The media, in this story, are disinterested. Journalists are the people's proxies; they have no power, apparently, they merely frame the questions which 'those lying bastards' refuse to answer. (2004: 7)

Compared to press journalism in the US, English national newspaper journalism is remarkably un-self-critical and almost wholly lacking in self-reflexiveness (with precious few exceptions such as Roy Greenslade, Peter Osborne and Nick Davies, who have not been exactly thanked by newspapers for breaking the *omertà* which habitually surrounds the subject of journalism in the English press). Press journalists, it seems, are happy to investigate anything other than their own practices, and in particular their relationship with each other, with politicians and with those who own the newspapers for which they work. In this respect, it does need to be stressed that the matters which quite rightly concern this Inquiry – the illegal practices employed in order to obtain stories about celebrities, the overly close relationship between journalists and the police, the stranglehold over certain aspects of public policy exerted by papers such as the *Sun* and the *Mail* – have for years been common knowledge amongst many who work in or study the press, or both, but an impenetrable veil has been drawn over them by newspapers, until very recently indeed, on the venerable Fleet Street principle that dog doesn't eat dog.

What all this has resulted in, as Will Hutton noted in the *Observer*, 17 August 2003, is that 'Britain's least accountable and self-critical institutions have become the media', in spite of their insistence that every other institution in society should be as transparent, accountable and open to public scrutiny as possible. However, what the press, or at least very large sections of it, demands is freedom of expression without any reciprocal responsibilities or obligations.

The freedom of the powerful

This brings us back to the nature of the freedom which newspapers claim is rightly theirs. One of the main problems here is that the arguments for freedom of expression, as a right which everyone enjoys, are frequently taken over wholesale by newspaper owners and editors as arguments for press freedom. But individual speech is very different from mediated communication, and the modern press consists largely of vast and complex institutions which differ in every essential respect from individuals. As Onora O'Neill put it in the *Guardian*, 13 February 2006:

Once we take account of the power of the media, we are not likely to think that they should enjoy unconditional freedom of expression. We do not think that corporations should have unrestricted rights to invent their balance sheets, or governments to damage or destroy the reputations of individuals or institutions, or to deceive their electorates. Yet contemporary liberal readings of the right to free speech often assume that we can safely accord the same freedom of expression to the powerless and the powerful.

To continue the comparison, my being free to speak does not, as a general rule, prevent others from doing so. But because I am free to speak, and indeed to write, as I am doing now, that does not mean that I am free to express my views in a newspaper, even if that newspaper has traduced me in its pages or published articles which I know to be based on untruths. The newspaper has an ability (which it would doubtless claim as a right) to publish, a corresponding ability which I lack in any meaningful or operational sense, because the ability to publish a newspaper is deeply embedded in an already existing system of property relations, and, as such, is jealously guarded. What this entails is that press freedom all too often boils down to the self-proclaimed 'rights' of press proprietors to own newspapers and to do with their newspaper property exactly as they please. Thus their endless claims that the

press must remain free are really assertions of a property right in the guise of a free speech right. However, the right to free speech, which is indeed enjoyed by everyone as individuals, does not entail that powerful press corporations must therefore enjoy the 'right' to enjoy complete editorial autonomy. The point made by Robert McChesney in a US context is equally valid in the UK:

It is one thing to assure individuals the right to say whatever they please without fear of government regulation or worse. This is a right that can be enjoyed by everyone on a relatively equal basis. Anyone can find a street corner to stand on to pontificate. It is another thing to say that any individual has the right to establish a free press to disseminate free speech industrially to a broader audience than could be reached by the spoken word. Here, to the extent that the effective capacity to engage in a free press is quite low for a significant portion of the population, the free speech analogy weakens. Moreover, those with the capacity to engage in a free press are in a position to determine who is empowered to disseminate speech to the great mass of the citizens and who is not. This accords special privileges to some citizens who can then dominate public debate. (2000: 269)

Or as A.J. Liebling succinctly put it: 'freedom of the press belongs to those who own one' (quoted in Baker 2007: 2).

The requirements of democracy

What I have suggested thus far is that the defence of press freedom traditionally put forward by newspaper owners and editors rests on a number of implicit assumptions which are either outdated or are in one way or another highly questionable. What I will now go on to argue is that the debate about press freedom needs reframing and refocusing, that press freedom in a democratic society carries with it certain duties and obligations, and that these correspond with the rights of citizens to be properly informed.

Arguments for the freedom of the media in general revolve, albeit often implicitly, around the important role played by the media in a democracy. As Laura Stein puts it, democracy requires 'certain resources, capacities, and institutions that make self-governance possible. Some of these resources require communication. Communication that serves democratic political processes, enabling citizens to deliberate over, define, and decide the common good, is the essence of democratic communication' (2006: 2). In this vision of things, the media, and especially the press and the broadcasters, provide people with what they need in order to function effectively as citizens: in particular a diversity of ideas, perspectives and voices, and a wide range of sources of reliable information. Thus informed they can make both individual and collective judgements about day-to-day matters of social and political import. Free expression is obviously central to this process. Accordingly, government must not suppress ideas and information, but, equally, the mainstream media must cover serious issues and do so in a way which is accurate, widely accessible, comprehensible and interesting. The endless repetition of the conventional wisdom, the routine recycling of 'common sense' explanations of social reality, the daily conflation of news and views, the demagogic appeal to popular prejudices, and the privileging of 'soft' news over 'hard' – all of which are besetting sins of substantial sections of the English national press – most emphatically do not fall within this democratic remit.

Press freedom, as advocated by newspaper owners and editors, consists, as we have seen, almost entirely of freedom from legal restrictions. However, an alternative view is that press freedom should be understood as something enjoyed not simply by those who produce newspapers, and should also be regarded as more than simply a negative freedom, that is, a 'freedom from'. In this reformulation, press freedom would also be seen from the point of view of those who read newspapers, as well as from the point of view of society as a whole, since we are all in one way or another affected by press coverage of events. This would be a

positive freedom, a 'freedom to' – in this case, the freedom of readers to access the kinds of information which they need in order to function effectively as citizens of a democracy, a freedom which also places certain positive obligations on newspapers. Of course, one can already hear the tabloid pack bellowing that 'this isn't what popular journalism is all about', 'people aren't interested in that kind of thing', and so on and on. However, the answer to this kind of knee-jerk populism has been particularly clearly articulated by Cass Sunstein (and again I am quite deliberately quoting an American source, since these are usually invoked by press owners and editors to trump arguments for press regulation of any kind) who states that:

The system of deliberative democracy is not supposed simply to implement existing desires. Its far more ambitious goal is to create the preconditions for a well-functioning democratic process. If current preferences disfavour the acquisition of information about political affairs, there is a serious problem with the system. To be sure, no political regime can or should insist that citizens be thinking about politics all, most, or even much of the time; people have many other things to do. But lack of interest in information about government should not be taken as inevitable or as a product of 'human nature'. We know enough to know that lack of interest is often a result of inadequate education, perceived powerlessness, unsatisfactory alternatives, or a belief that things cannot really be changed. Indifference to politics is frequently produced by insufficient information, the costs of gaining more knowledge, poor educational background, or, more generally, an unjust status quo. (1995: 21).

A lack of interest and an indifference which, in the case of the UK, has to be blamed at least partly on the demagogic and populist manner in which the popular press represents the political process (whilst, of course, at the same time complaining loudly about 'voter apathy').

As noted earlier apropos public service broadcasting , it is still widely accepted in the UK that in order to protect and promote freedom of expression in its fullest sense, a sense which includes the needs of audiences as well as the rights of media producers, positive forms of regulation may well be necessary if the public interest requires it. There are strong democratic reasons for the public regulation of speech which is exercised simply as the result of being in the extremely fortunate and powerful position of owning or managing a piece of the corporate media. Freedom of expression should not mean only freedom *from* government but should also mean freedom from powerful corporate interests *by means of* government, and, unless one is a member of the Tea Party tendency, there is no reason to presume that the state will be more likely than any other institution to exercise its power to distort public debate. Admittedly the British state does not have a good record when it comes to protecting freedom of expression, but there again it is no worse than that of Rupert Murdoch, *vide* the *Sunday Times* campaign against the Thames Television documentary *Death on the Rock*; the resignation of *The Times*' East Asia correspondent Jonathan Mirsky over the repeated spiking of his articles about China, articles which Murdoch feared would hinder his attempts to extend his satellite TV empire into China; the cancellation, for the same reason, of Chris Patten's memoirs by HarperCollins, and so on and on.

The crucial point here is that when the integrity and the democratic functions of the press are threatened by the capricious exercise of private power and the play of untrammelled market forces, positive forms of regulation are needed in order to remedy the situation and to protect the public interest. As Laura Stein argues: 'in a democracy, it is not unreasonable for citizens to look to government to correct for market behaviour that is rational but does not serve their interests. When the public's interest in democratic communication conflicts with commercial goals and values, it is the government's responsibility to intervene to establish more democratic conditions ... When markets fail to produce socially desirable outcomes,

government regulation designed to produce more speech opportunities is justified' (2006: 47). None of this is to suggest that the principles of public service broadcasting should be applied wholesale to the press, nor that newspapers should be prevented from expressing their views, but it is most certainly to argue for, at the very least, a far clearer distinction between news and views than exists at present (and precisely as required by the very first clause of the PCC Code), the accurate presentation of a much wider range of views than is currently found in the English press, an adequate right to reply, full recognition of trade union rights for journalists, and conscience clauses in journalists' contracts.

The rights of readers

None of the above are proscriptions – they are positive requirements which, if put into practice, would benefit citizens and improve the democratic process; they might even encourage more people to read newspapers. They also align newspapers' freedom to express themselves with the freedom of readers to be able to access the information which they need to function as citizens of a democracy. As Onora O'Neill put it in a lecture to the Royal Irish Academy: 'democracy requires not merely that the media be free to express views, but that they actually and accurately inform citizens. If we are to have democracy, the media must not only express views and opinions but must aim to communicate and inform' (2004: 7). And as she argued in her 2002 Reith Lectures, *contra* the conventional press wisdom:

A free press is not an unconditional good. Press freedom is good because and insofar as it helps the public to explore and test opinions and to judge for themselves *whom* and *what* to believe and trust. If powerful 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 are knowledgeable and which are probably not, they

damage our public culture and all our lives. Good public debate must not only be *accessible to* but *assessable by* its audiences. (2002: 95)

In this view of things, the freedom of the press (unlike individual freedom of expression) should be regarded as an instrumental good, that is, good insofar as it causes the press to act in the public interest and reinforces democratic ideals, but not good insofar as it suppresses diversity, impoverishes public debate, makes it impossible for citizens to judge matters for themselves, systematically prevents certain individuals or groups from speaking or routinely distorts what they have to say, exacerbates social divisions and gives rise to a particularly poisonous form of anti-political populism

If the press uses its freedom in the latter causes, there are surely strong arguments for regulating it precisely in order to achieve those purposes for which, as we have seen, freedom of the press was fought for in the first place. Such regulation would have as its aim not the fettering or gagging of the press, but ensuring that it met the obligations which attend its right to express itself freely. As O'Neill has suggested, thinking about the obligations of the press involves questions of 'how we ought to speak, publish and programme, and what sorts of practices of representation and communication ought to be prized and fostered' (in Lichtenberg 1990: 165). Such an approach also involves considering citizens' communicative rights – not simply the right to be informed but also the right to be involved in the communications process. Democratic societies have communicative requirements and it is thus the duty of democratic states to ensure that citizens can exercise their communicative rights. In the specific case of the media, it is the duty of governments to ensure the existence of spaces, whether publically or privately owned, where citizens' speech rights are primary and where there are real and widespread opportunities for participation and engagement.

We also need to consider how we ought not to communicate, in particular in ways which systematically distort the public agenda and which otherwise damage the conditions for informed democracy and active citizenship, such as the routine misrepresentation of serious issues, the personalisation of politics and the concentration on gossip and personal scandals about politicians, all of which help to cultivate a culture of mistrust and cynicism, which in turn leads to voter apathy and a general sense of political disengagement. As O'Neill concluded in her Royal Irish Academy lecture: 'where the press or broadcasters systematically exclude, marginalise or mock certain voices or topics they replicate some of the effects of state censorship. Where they casually depict office-holders in public, commercial and professional life as self-interested and corrupt, citizens cannot judge for themselves which accusations are true, so are disabled. Such activities are more likely to damage than to foster or support democracy' (2004: 8).

A warning from history

It might perhaps be objected that the communications rights which I have invoked in this submission are simply normative, expressing a democratic ideal which is not actually covered by statute law. However, one should not forget that Article 10 (2) of the European Convention on Human Rights states that the exercise of the freedoms outlined in Article 10 (1) 'carries with it duties and responsibilities' and may be 'subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society'. However, as the majority of English newspapers take great pride in the extraordinary fact that they have managed to make 'human rights' dirty words in this country, I fear that we cannot expect them to accept that they even possess these 'duties and responsibilities', let alone to take them seriously. One might also point out that Article 19 of the Universal Declaration of Human Rights holds that 'everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and

to seek, receive and impart information and ideas through any media and regardless of frontiers'. In this respect, it is worth recalling that the 1980 MacBride Report, *Many Voices, One World*, published by UNESCO, argued that 'all communication is a basic individual right, as well as a collective one required by all communities and nations. Freedom of information – and, more specifically the right to seek, receive and impart information – is a fundamental human right; indeed, a prerequisite for many others' (2004: 253). Furthermore, one of its recommendations stated that 'communication needs in a democratic society should be met by the extension of specific rights such as the right to be informed, the right to inform, the right to privacy, the right to participate in public communication – all elements of a new concept, the right to communicate' (ibid.: 265). However, it is also worth pointing out that when these perfectly reasonable arguments were first put forward they were met with fury and venom in the US, where they were disgracefully caricatured and traduced as recommendations for governmental control over the flow of information and ideas and as proscriptions against the private ownership of the means of communication. The truth, of course, is that they challenged the self-appointed 'right' of US communications industries to dominate the global media. Indeed, such was the furore caused by the Report that the US withdrew from UNESCO, closely followed, to its eternal shame, by the UK.

The moral of this story is that although the proposals contained in this submission to the Inquiry may seem perfectly reasonable from a democratic perspective, one interferes with the self-proclaimed 'rights' of media owners to do exactly as they will with their media property at one's peril. This does not mean, however, that the attempt should not be made, nor that one should not try to expose the arrogance and self-interest that lies at the heart of their defences of press freedom – an estimable concept which, unfortunately, all too often finds itself in highly dubious company.

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Notes

ⁱ In this submission, I use the word 'press' to refer to newspapers, and 'media' to refer to the generality of the media in contemporary society.

ⁱⁱ http://press-pubs.uchicago.edu/founders/documents/amendI_speechs16.html

ⁱⁱⁱ <http://www.uark.edu/depts/comminfo/cambridge/tpliberty.html>

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