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# Challenging The Business Paradigm In The Interests Of Media Freedom

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They might be mortal enemies in day to day corporate warfare, but there is one single issue where media outlets stand united. The defence of media freedom. All it takes is the whiff of regulation in the air – an aside by a politician, or a committee’s recommendation for a limit on media powers – and we hear the screams from the leader pages.

It is a cry which has been articulated in a variety of ways for more than 300 years. Yet blind defence of any historic principle can be perilous – particularly in an era of change when so many traditions are being revisited and sometimes abandoned. Hollow rhetoric will not preserve media freedom into the longer term. A true defence for the modern era needs to be grounded on plausible foundations which apply to the dynamics of modern society. Threats to press freedom in modern society abound throughout the Asia-Pacific region. Government interference over the reporting of the second Gulf War and the SARS outbreak in some Asian countries, banning of publications and the use of sedition laws against journalists in some small Pacific Island states, late night legislative changes to defamation in New Zealand, and proposals for the broadcast regulator to patrol print newsrooms under cross-media law changes in Australia. In this article, I look briefly at the historical foundations of media freedom, identify some of the threats it faces today, and propose some mechanisms for breaking through the rhetoric to help it serve the mission for which it was proposed.

## Origins of press freedom

First to the origins of press freedom. Let me quote: “The time, it is to be hoped, is gone by, when any defence would be necessary of the ‘liberty of the press’ as one of the securities against

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corrupt or tyrannical government.”

England’s great philosopher of the latter nineteenth century, John Stuart Mill, expressed the challenge which continues into the 21st century in his essay *On Liberty*, first published in 1859 (Mill, 1991, p.20).

The battle for the principles of “freedom of the press” can even be traced back to times before Johann Gutenberg’s invention of movable type circa 1450 because for several centuries philosophers and other intellectuals had struggled for freedom of expression in their writing and speaking. The Greek philosopher Socrates was sentenced to death in 399BC for his persistence in speaking his mind against the government of the day (Brasch, 1986, p.9). In many ways, the history of freedom of expression can be read as a history of censorship, because it is primarily when free expression has been threatened that intellectuals have been called upon to defend it.

Nevertheless, it was the burgeoning of the publishing industry over the 16th and 17th centuries that first prompted repressive laws and then the movement for press freedom. Official censorship was imposed in 1530 via a licensing system for printers (Overbeck, 2001, p. 34). The first major backlash against this came in 1644 when the political philosopher and poet John Milton penned *Areopagitica*, a speech to the parliament appealing for freedom of the presses. One quote from Milton’s oration has become a rally-cry for free speech: “Give me the liberty to know, to utter, and to argue freely according to conscience, above all liberties.” (Patrides, 1985, p. 241).

Part of Milton’s argument centred upon the “marketplace of ideas” concept – the idea that truth will naturally win over falsehood when both are allowed to compete. It is still being argued today.

Philosopher and political theorist John Locke took up the fight for freedom of expression after Milton’s death. Under his social contract theory, he said governments were there to serve the people, and central to this was a freedom of expression (Overbeck, 2001, p. 36).

One of the great legal minds of the 18th century, Sir William Blackstone, in his *Commentaries on the Laws of England*, had a great impact on the evolution of press freedom by defining it as the absence of “previous restraints upon publications”. (Blackstone, 1765, pp. 151-152). Blackstone was introducing the notion of “prior restraint” which underscored the development of media law in America. The idea was that freedom of the press should tolerate no restrictions before publication, such as licensing and taxes which had been imposed in Britain, but that the law be allowed to take its course after publication to punish those who abused this

freedom.

English liberal ideals expounded by the likes of John Milton and John Locke found their way into the wording of the American Declaration of Independence in 1776 and into the US Constitution in 1789 and its Bill of Rights in 1791. Central to the Bill of Rights was the First Amendment to the US Constitution which has enshrined freedom of the press to this day: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

It was in the context of lively public debate over the wording of the First Amendment and during debates over its ratification by the States that Thomas Jefferson, the greatest advocate of press freedom, famously wrote: "The basis of our government being the opinion of the people, the very first object should be to keep that right; and were it left to me to decide whether we should have a government without newspapers or newspapers without a government, I should not hesitate a moment to prefer the latter." - Thomas Jefferson to Edward Carrington, 1787. (Inglebart, 1987, p.124)

Whether or not individual nations share a libertarian view of press freedom, the principle is included in the Universal Declaration of Human Rights, the foundational document of the United Nations, proclaimed in 1948. Article 19 states: "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." (UN, 1948).

In the modern era, media freedom has taken on different shades throughout western democratic nations, with the US experience being the expansion of First Amendment rights through the latter half of the twentieth century into a solid defence against defamation, while other countries like New Zealand and Australia have left it to their courts to imply a guarantee of freedom of communication in government and political matters. (Evident in NZ and Australia's respective Lange defamation cases.)

Some lessons come from the past which might inform our discussion today and strengthen our arguments for media freedoms.

One myth that should be debunked is that, despite the rhetoric surrounding the historical development of press freedom, none of the luminaries in history – Milton, Mill, Blackstone or Jefferson – portrayed it as limitless. All were at pains to suggest

## Media Freedom: What's Changed?

that with freedom should come responsibility and accountability.

In the new millennium, many contextual factors have complicated the notion of media freedom. Society is more complex and anyone who oversimplifies an issue like press freedom should be viewed with suspicion. When we cut through the rhetoric, the reality we are debating is all about the extent of media regulation rather than whether or not there should be regulation at all. A society which had unrestricted press freedom would, by definition, allow untenable invasion of its citizens' privacy, unlimited publication of its defence and security secrets, open slather on people's reputations, wilful racial vilification, and pornography on primetime television.

We need to feed into the equation some very important changes which make this millennium quite different from the last which spawned the principles of press freedom. One is the impact of changing technologies. The advent of broadcast media and, more recently, the Internet, has muddied the waters, as broadcasting authorities are all too well aware. The international nature of these media – both their technologies and the corporate structures of their businesses - defy jurisdictional borders by which we legislate and regulate. An example was the recent decision of the Gutnick Case in Australia (2002) where the High Court decided Internet publications could be sued for defamation wherever they are read, despite originating elsewhere. Changing technologies also mean the very practices and institutions which have evolved over centuries have changed overnight. Journalism itself, the occupation which stakes out the territory of press freedom, has changed markedly. In my own doctorate, I identified 169 new tasks and practices that journalists were undertaking as a result of the advent of the Internet and I identified fundamental shifts in both the context and the practice of journalism (Pearson, 1999).

One of the issues that stood out there – noted by numerous others in recent years – was the increasing commercial challenge to traditional journalism ethical principles. The phenomenon was well encapsulated by the title of a 1993 book - *When MBAs Rule the Newsroom: How the marketers and managers are reshaping today's media* (Underwood, 1993). It has been noted again recently by US authors Kovach and Rosentiel who have just published the fruits of a major project on the elements of journalism. They lamented that journalism values were being discarded and the independence of the press was being threatened as it became a subsidiary inside large corporations for which news was just one element of a larger, more complex, revenue stream (Kovach and Rosenstiel, 2001, p. 32).

Bond University's *Our Centre for New Media Research and Education* conducted research for the Australian Broadcasting

Authority on various journalistic issues published in 2001 (ABA). Titled *Sources of News and Current Affairs*, the project canvassed the views of media practitioners and their audiences on a broad range of issues. Interestingly, both journalists and their audiences found that many respondents were disturbed by the influence of commercial factors upon the news product., with journalists suggesting that audiences, ratings, circulation and the interests of media owners were the biggest influences on the news product (p. 78), while the audiences perceived that media owners, big business, and commercial sponsors were a greater influence on news products than the needs of the audiences themselves (p. 335). Journalists interviewed for the study volunteered a range of situations where the commercial interests of the media outlet had influenced or even overridden the news values of stories they were pursuing (pp. 79-84). Self-censorship for fear of career reprisal was a serious concern.

Criticisms of the modern media and the eroded claim to special freedoms came from the Australian High Court bench in the minority judgement of Justice Ian Callinan in *Australian Broadcasting Corporation v. Lenah Game Meats Pty Ltd* [2001] HCA 63. Justice Callinan pointed out:

- The media's position of independence has become ambiguous as the boundaries between news and comment, advertising and information, and journalism and government have blurred. (Para 254).

- The commercial value of information needs to be factored into discussions of, and judgments about, freedom of expression and related issues. (Para 256).

- At the same time as publishing technologies have expanded, ownership and control of media organizations has become more concentrated and is a matter of public concern. (Para 258).

- While the expression "marketplace of ideas" is used to justify free speech, it actually means everyone should have access to express their ideas in the public domain. Concentration of media control prevents this. (Para 261).

- The media's claim to freedom of the press had taken on an "air of dogma", as if this was a right superior to all other rights. (Para 273).

Research supports the view that the press freedom rhetoric is being undermined by the operations of the media as a business. In Schultz's (1998) study, in which she argued that journalism should not be just another business, journalists claimed that their media organisations' commitment to commercial interests had diminished their own abilities to defend the Fourth Estate ideal.

Academic Stephen Stockwell (1996) encapsulates the argument that media organizations appear to be driven by self-interest when waving the flag of press freedom: "The defence of

free speech has become, in large part, a battle by corporations against government encroachment on their commercial operations. So while media corporations might oppose stringent defamation laws and censorship on obscenity or security grounds, the key reason is that these government interventions interfere with the corporations' competitiveness and profitability. "

The most recent example of business interests threatening press freedom has occurred in Australia, in the shape of a trade-off for major media conglomerates who have been lobbying for several years for the right to acquire more cross-media interests. The legislation allowing them to do this contains a dangerous regulatory change which will have the broadcasting regulator – the Australian Broadcasting Authority – policing the newsrooms of any new cross-media conglomerates to ensure they are independently servicing the different media products in that group. Under the Broadcasting Services Amendment (Media Ownership) Bill 2002, the ABA would be given the power to issue cross-media exemption certificates (s.61D) and to ensure an "objective of editorial separation" (s.61F) within corporations operating newsrooms across media. The ABA "will have power" to enforce "separate editorial news management" for the different media operations, "separate editorial policies", "separate news compilation processes", and "separate news gathering and news interpretation capabilities in relation to each of those media operations". The Australian Press Council's submission to the government on its reform proposals described this aspect as "the first insidious steps of government control over the print media in its journalism role. As any government authority over print media editorial processes must be resisted, it is unacceptable for the ABA or any other arm of government to have this power". (Australian Press Council, 2002).

## Options

So where do such developments leave regulators like press councils and broadcasting authorities whose role it is to balance the rhetoric of media freedom against its reality?

Should citizens call for more regulation of the media? Certainly not. There are enough laws which impinge upon freedom of expression in western democracies. However, there are mechanisms for making the existing regulation of the media more effective and for better utilisation of using the resources allocated to media regulation.

Here are four suggestions which might be worthy of further debate:

1. Media organisations need to be called to account for commercial abuses of the public trust we invest in them. When

media corporations are being misleading or deceptive in their conduct they must surely forfeit the right to their exemption from prosecution under fair trading legislation. Media regulators might develop closer working relationships with consumer regulators to pursue such transgressions. For example, when misleading material appears in an advertorial, a corporate promo, or a report upon the company's own commercial interests, this should be exposed and the company pursued by the appropriate corporate regulator, not the media regulators.

2. Existing laws of defamation are beyond the reach of ordinary citizens. In Australia, legal aid is not available for the pursuit of such actions. Despite a trend in some jurisdictions towards lawyers taking on defamation suits on a no-win-no-fee basis, it is still usually only the very wealthy or the extremely principled who are willing to take on major media corporations to defend their reputations. At the very least, regulatory bodies might invest in the provision of a means-tested legal referral service for individuals who clearly have been wronged in media coverage. Such a service might even be self-funded via the damages payments of successful litigation. This would be simply a more efficient use of existing laws rather than the introduction of new ones.

3. Thirdly, rather than operate in the negative, why not work in the positive? A truly independent panel of citizens could adjudicate on a system of Ethical Accreditation for media outlets which can demonstrate the highest ethical standards in their newsrooms with a viable reward system such as certain tax breaks for compliance. The accreditation could be withdrawn at any time for transgressions reported by the public and adjudicated on by the panel. In other words, media organizations would lose nothing if they continued their current practices, but would be rewarded by government by becoming more ethical and transparent in their operations.

4. Education - not just of journalists or media managers, but of the public - about the media, ethical expectations and channels for complaint. Only by improving the public's understanding of the reality and rhetoric of media freedom might we create grassroots pressure for media managers to improve their act. This might take the form of the funding of special media literacy units in high schools and universities, by the offering of short courses and forums in the broader community, and by the advertising of media responsibilities and channels of complaint in the media themselves.

US writer and academic Neil Postman (in Fulton, 1996, pp. 22-23) has questioned the purpose of journalism in the modern

## Conclusion



era. "What is the problem to which the profession of journalism is the solution?" he asked. Postman argued that in the nineteenth century, journalism answered the problem of scarce information, but by the end of the last millennium the problem had become a glut of information.

One can ask a similar question about press freedom. "What is the problem to which freedom of the press is the solution?" Back in the 18th and 19th centuries, the problem was the need for the free flow of information in society when power-hungry individuals were keen to stem that flow for their own purposes. Most editors and news directors would argue that nothing has changed. And it is true that the human foibles of evil and greed are just as prevalent today, but the trouble is that there are poachers in the sanctuary. There are those who are turning the rhetoric of press freedom to their own commercial advantage.

Many in the mahogany rows of media management have it wrong. Press freedom is not about their rights. Press freedom is not the right of the media to be free of shackles or to make greater profits. Rather, it is a right which rests with the citizenry – the public's right to be informed. And if a major threat to that right is coming from within those very media boardrooms, then our societies need to develop innovative strategies to free the channels of communication once more. I do not envy the task of regulators such as the media councils, press councils and broadcasting authorities in our region, because it will require the deft hand of expert surgeons to operate to extract this cancer from the media industry without threatening the life of our very precious patient – the public's right to know. ■

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