

Seminar 2: The Rights and Responsibilities of the Press 6th October 2011

The importance of a free press

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Anyone wanting to know why a free press matters could do worse than study the story of how the phone-hacking scandal at the News of the World was uncovered – looking both at the dogs that barked, and those that didn't.

It took almost exactly two years for the story to unravel. For the first 18 months not very much happened. The police added two more cursory investigations to their original inadequate probe in 2006. Parliament did its best, and some individual MPs did very well indeed. But it struggled to flush out the truth. Politicians, from prime ministers down, have since admitted to everything from pragmatism to fear as an explanation for their inaction or general complicity. The regulator produced a lamentable report which betrayed an inability, or lack of will, in getting at the truth. And, with some notable exceptions, much of the media showed little initial inclination to shine a bright light on a particularly glaring abuse of power. The normal checks and balances in civil society didn't work.

Those 18 months were telling – because the only reason the full story came out at all was down to a free press. I'll be immodest enough to single out Nick Davies and the Guardian as the single most important force in ensuring that so much was eventually uncovered. Other journalists, in time, joined in. And what these reporters did – peel away at the evidence; accumulate facts; ask questions; cultivate sources; look at documents; talk to people who were involved; win trust; ignore threats; verify information; report accurately – is as good an illustration as you could have for the importance of a free press.

It's for others to answer the question about the dogs that didn't bark: why other institutions in our society didn't function effectively over 18 months. But the saga tells you much about the need for an institution, an estate, a profession, a trade – we'll probably never quite agree what to call it – that exists independently of the other main centres of power in society.

The fourth estate – power without responsibility

The press is sometimes called the fourth estate. That's probably too grandiose a concept for most journalists' tastes – but it does suggest an important, coherent and independent force in society. That "apartness" is crucial. The press does not share the same aims as government, the legislature, the executive, religion or commerce. It is, or should be, an outsider.

Stanley Baldwin did not intend it as a compliment when he said of newspapers in 1931 that they had "power without responsibility." But, in fact, that lack of responsibility is one of the important respects in which the press is different. Of course, the press must be responsible for its own standards and ethics. But it's not

the job of journalists to run things: they are literally without responsibility. They don't have to respond to a party whip, make the compromises necessary in politics or answer to shareholders. They are not bound by the confidentiality agreements that bind others. They are careless of causing inconvenience or embarrassment. They don't have to win votes. They can write things - about the economy, say, or the environment - which may need saying but which are unsayable by politicians. They come from a different place.

This freedom is a fundamental one. There are plenty of writers, jurists and political philosophers who consider it the first and foremost of our freedoms. The American first amendment is probably the most robust expression and enshrinement of the primacy of free speech in an open society.

So that's the ideal. But it's worth asking, in a British context, how "free" is our press? And, even more fundamentally, what is "the press?"

How Free?

Many journalists and lawyers would argue that the press in the UK is relatively, but only relatively, free. It is not clear that the situation has improved notably since Harold Evans, unable to publish the full truth about the Thalidomide scandal, bemoaned what he called Britain's "half-free press" in the mid 1970s. A 2009 Index/PEN commission into our defamation laws concluded: "The law as it stands is hindering the free exchange of ideas and information." The 2011 Global Press Freedom Rankings placed the UK in joint 26th place.

Another measure of freedom is whether reporters are genuinely free to follow any story they wish – regardless of proprietorial, editorial or commercial pressures or influence.

Yet another measure of freedom is economic freedom. It is no secret that newspapers face an existential threat due to the combination of technical and economic factors. Digital disruption comes in many forms: it sucks revenues out of print. It challenges the very idea of what a "newspaper" is, or what journalism does. The sort of (expensive and time consuming) journalism Nick Davies does is threatened in many news organizations by the quite understandable need to cut costs.

What is 'The Press?'

Until recently it would have been self-evident what "the press" was. The 1947-9 Royal Commission on the press described it as "the chief agency for instructing the public on the main issues of the day... the main source from which information, discussion and advocacy reach the public."

Whether or not "the press" remains the chief agency of instruction today, it would be very rare to find a "newspaper" that existed only as a printed product. Increasingly "the press" encompasses digital forms of journalism as well. That will include moving images, data and sound, often published around the clock on a variety of platforms.

The further it moves from its traditional and historic form the more it sails into uncharted, converged waters where it meets with broadcasters coming from one direction and so-called amateur creators of content from another.

Countless blogs, platforms and websites reproduce some of the functions of newspapers, though very few aspire to replicate the entire bundled form of a newspaper, if only because the economic model is so unpromising.

This digital disaggregation, or fragmentation, of a newspaper has, of course, severe economic implications. But it also brings into question the hitherto distinct role of “the press”. Many of these new digital forms of information sharing are based on a different idea of what media is, or who should take part in it. This revolution in technology – considered by many the most significant since the invention of moveable type in the 15th century – allows virtually anyone to create and share their news and thoughts. 21st century media, in many respects, marks a sharp break with what went before – a world in which a relatively restricted group of people benefited from having a platform to address a mass audience. Gone are the days when the freedom of the press is limited to those who owned one.

The courts are already grappling with the implications for enforcing rules of one jurisdiction on an internationally–available medium which may be based elsewhere. The British footballer impotently trying to protect his privacy in London is part of the same tide that allows a digital citizen of Syria or Zimbabwe to exploit the free-press jurisdiction of other countries in order to publish necessary truths.

An imperfect art

In London last week, Carl Bernstein, the legendary co-author of Watergate, talked about the parallels between the story on which he and Bob Woodward worked in 1972 and the work of Nick Davies nearly 40 years later. He used the phrase “the best obtainable version of truth” to describe what journalists, at their best, seek to achieve.

Bernstein’s definition combines a nobility of ambition with the implication that journalism, by its very nature, may often fall short. We shouldn’t over claim for what a free press can do. My favourite description of journalism was coined by the late sage of the Washington press corps, David Broder. He described a newspaper as

“..a partial, hasty, incomplete, inevitably somewhat flawed and inaccurate rendering of some of the things we have heard about in the past 24 hours - distorted, despite our best efforts to eliminate gross bias - by the very process of compression that makes it possible for you to lift it from the doorstep and read it in about an hour. If we labelled the product accurately, then we could immediately add: ‘But it’s the best we could do under the circumstances, and we will be back tomorrow, with a corrected and updated version.’”

But the imperfections of the press are not the point when considering its freedom. A free press is not there for the benefit of a group called journalists. It’s primarily there for the benefit of ordinary citizens. The freedoms belong to them – freely to receive

reliable and timely information about their society. A free press is part of a larger right of free expression – something to be jealously preserved and guarded, regardless of the abuses of those freedoms by, or on behalf of, a small number of people calling themselves journalists.

A battle never won

We meet at a time when, for the first time since the Enlightenment, it's possible to imagine societies – towns, cities, and even countries – without any agreed or verifiable forms of the truth. As journalists we would like it to be self-evident that what we do is as crucial to democracy as a clean water supply or a fire service. That surveys show that this is not a widely held view ought to be a matter for self-reflection.

Since Watergate journalists often like to cite big campaigning investigations to demonstrate why what we do matters. It's we, the free press, who exposed phone-hacking, MPs expenses, illegal rendition, the truth about the death of Ian Tomlinson, match-fixing in sport, world cup votes for sale, chicanery in the arms trade, cash for questions and so on.

This work of investigation is, indeed, vital evidence of the importance of the free press. As vital is the institutional muscle of the press that stands behind a reporter engaged in this kind of work. Reporters need to know that they will be protected from the threats and immense costs that are often involved when people seek to stop daylight being thrown on their affairs. Our Moscow correspondent, for example, could not be free to work in Russia without the solidity of the Guardian behind him. The widespread defence of the sanctity of journalistic sources when our reporter, Amelia Hill, was recently threatened with the Official Secrets Act was an example of the institutional strength of the press as a whole.

But there is a quieter, less glamorous side to our trade which is also vital, and which is not easily replicated by social media or bloggers. It is the simple craft of reporting: recording things; asking questions; being an observer; giving context. It's sitting in a magistrates' court reporting on the daily tide of crime cases – the community's witness to the process of justice. It's being on the front line in Libya, trying to sift conflicting propaganda from the reality. It's reporting the rival arguments over climate change – and helping the public to evaluate where the truth lies.

Totalitarian governments can never allow a free press. Our own relative freedom has been fought for over 400 years, and there can never be a moment when freedom can be considered "won." When people talk about 'licensing' journalists or newspapers the instinct should be to refer them to history. Read about how licensing of the press in Britain was abolished in 1695. Read about how Wilkes, Cobbet, Locke, Milton, Mill, Junius and countless anonymous writers, lawyers and printers argued and battled for the comparative freedoms the press in Britain enjoys. Remember how the freedoms won here became a model for much of the rest of the world. And be conscious how the world still watches us to see how we protect those freedoms.