

The Freedom of the Press - Some Reflections
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I stand before you as an unrepentant believer in the importance and the role of journalism. From my early teenage years, I wanted above all to be a journalist and, over more than four decades – with the exception of some six years in full-time politics – I have always been connected with journalism in one way or another. I am equally unrepentant in my belief that among the best guarantees of the freedom of the press are the development and maintenance of high professional standards and public accountability.

The freedom of the press has been hard-won, and, like many freedoms, it always runs the risk of being taken for granted. It is also important – vital, even – for the health of democratic societies. If that freedom were to be circumscribed in response to an undifferentiated public anger, we might find it very difficult to replace what we would have lost.

In Ireland we have, by international indices, one of the freest media in the world. We would be immeasurably poorer if we didn't. And, as part of that media, newspapers and magazines provide a public service, even though they are located in the private sector. Because the press is in the private sector, it waxes and wanes with the economy as a whole. It is under particular pressure at the moment as its economic model has come under severe pressure, not only from the general economic downturn, but from technological developments that threaten its very *modus vivendi*.

This is not to make a plea for state subsidy. There is a long tradition in this and many other countries of press independence, and a profound belief that government subsidy to the press is the thin end of a very dangerous wedge, and a serious threat to the independence as well as to the freedom of the press. The other side of that coin is an equally trenchant resistance to government or state control of the press by way of regulation: this resistance was at the heart of the industry decision to set up an independent Press Council and Press Ombudsman as a response to suggestions that state-based regulation was in the offing in Ireland.

There are, however, still issues in this area. These include the possibility, however remote, of a privacy bill. There is also a potential threat to normal journalistic practices because there are differing interpretations of the data protection legislation in relation to the protection of journalistic sources. It is not special pleading to say that these issues should not be ignored.

Of course the press is powerful; and power can sometimes be abused. But, while abuse of power by anyone is always a cause for concern and for action, the press has now, for the first time, created and accepted significant voluntary restrictions on its own power in its Code of Practice for Newspapers and Periodicals. This is an important step.

The freedom of the press, however, also includes the freedom to – on occasion – offend people, including people who would prefer to be portrayed in the press as rather better than they actually are. The publication that never offends anyone is probably not doing its job properly. But just

because someone has been offended doesn't mean that the offender has to be punished, preferably severely and as soon as possible. We live in a rough old world of give and take where things are not perfect, taste is not always exquisite, language is not always polite, and, as long as the power of the press is not abused, grown up people should be able to live with that and take their chances.

Newspapers, of course, sometimes have their favourites – and their targets. Whether the objects of their affection always deserve the adulation that is heaped on them, or whether their targets deserve the slings and arrows to which they are sometimes subjected, is luckily not generally a matter for decision by me or by the Press Council. And we are a very long way – in terms of the press's attitude to public figures – from the raunchy, scatological excesses of the seventeenth century coverage of public figures, up to and including royalty!

We are also a long way, but in a different sense, from the 1930s. In that year, just after the coming into force of our present Constitution, Dr. Cornelius Lucey, then Professor of Theology at St. Patrick's College, Maynooth, addressed the question of the freedom of the press in an article in the *Irish Ecclesiastical Record*.

You will not be surprised to hear that Dr. Lucey defended the freedom of the press, which he said was a good thing, strictly within the terms of his own definition of freedom – that it was legally free to print whatever it was morally justified in printing. But you will be more surprised, I think, to discover that he also delivered a trenchant criticism of the law of libel, which he found far too restrictive for his taste.

“Suppose”, he said, you find that a Cabinet Minister is very friendly with a businessman, and that this businessman is given licences to export or import goods not given to any others, you will rightly suspect favouritism. But you can hardly voice it and escape the charge of libel. Or again, you may play the detective on slum landlords, and collect evidence as to their rent charges, the condition of their property, etc. But you cannot publish, with names and dates, that evidence and call for an enquiry. In other words, you cannot voice mere suspicions, however well grounded. And you may not publish facts discreditable to certain public services or classes.

“We are far from suggesting any modification of this law in so far as it protects the private citizen. But we do suggest that it be given a little more latitude in criticising public men.”

He might, on this evidence, be enlisted as a welcome, if unlikely, supporter of those of us who believe that once you start to interfere with the freedom of the press to express its own views, you are at the beginning of a slippery slope indeed.

There is actually a law from the same era which, you may be surprised to hear, is still technically in force, and which may be of interest for this afternoon's discussion. This is that part of section 7 of the 1929 Censorship of Publication Act 1929, which still empowers the Minister for Justice to ban, on the recommendation of the Censorship of Publications Board, any periodical that has “devoted an unduly large proportion of space to the publication of matter relating to crime.” I hope you will understand why I use the word “technically” advisedly.

There are, however, a number of areas that do not, strictly speaking, come within the remit of the Code of Practice for Newspapers and Magazines – or do so only rarely and in very specific circumstances – but which do form part of the public discourse about the power of the press. I hope I will be afforded the luxury of expressing some personal opinions about these, but on the understanding that these do not necessarily have any specific implications for the particular position that I hold.

Is it true, for instance – as research students ask me regularly in interviews – that the press is being dumbed down, that standards are slipping, that the dreaded tabloids are eating away at the foundations of civilization as we know it?

I don't subscribe to these moral panics. There is no golden age of journalism in the past to which I would want us to return. Journalism in every era has its gold as well as its dross. Bad journalism is sometimes part of the price we pay for good journalism. And to make journalism the scapegoat for everything else that is wrong or distressing in society is wide of the mark.

One of the main threats to good journalism today comes from factors other than moral turpitude: they include the erosion of the classic economic model that supported it, and the economic crisis that deprives people of their purchasing power for newspapers, among many other things. The fact that the Press Council was set up and is supported financially by the press at a time of extreme financial difficulty for the industry, and that it applies a Code of Practice that was devised by journalists themselves, is evidence that today, in spite of these difficulties, standards matter more, rather than less, than they used to.

“The press”, of course, is a very large and variegated concept, about which people are prone to generalise. I sometimes think that it is about as meaningful to generalise about “the press” as it would be to generalise about Kerry men. I am one. So are Paudie O'Se and Jackie Healy-Rae. So was Lord Kitchener.

So, the first thing to be sorted out when we talk about the press is: are we all talking about the same thing?

This is because our attitude to the press should be informed, not by meaningless generalisations or unachievable standards of perfection which we would never apply to ourselves, but by acknowledging its importance, that it gets many things right, and by using it critically but sympathetically. Equally, criticism of the media or of journalism is most useful and meaningful when it is accompanied by evidence: our culture, far too often, substitutes assertion for argument.

More than is generally supposed, the media are also a reflection of the society in which they are created. They are not created by aliens, or imposed on us at gunpoint. They are, to use the cliché, part of what we are. Like the human beings who produce them, they can be brave, informative, or funny; they can also be biased, and error-prone. But remember, also, that bias, and error, sometimes exist primarily in the eye of the beholder.

They can also – Shock! Horror! – publish rumours, and entertain us with gossip and frivolities. Think of how boring life would be if this function was denied– if they were not allowed to entertain us. Journalists sometimes undervalue the entertainment function of the industry in which they work; but there is a sense in which the work of the political anoraks is often subsidised by that of the sports reporters and the gossip columnists.

The freedom of the press does not exist for the press itself: it exists and is exercised for and on behalf of the public. Some recent examples are relevant. Would the phenomenon of child physical and sexual abuse still be under wraps if we did not have a free press? Would the reform of our creaking health service be proceeding even at its present painfully slow pace if it had not been for the almost universal media spotlight on its defects? Would public life in general have benefited if it had been excluded from investigation by the press under the Freedom of Information Act? Would our business elites' life-styles, activities, and commercial practices still be immune from scrutiny?

The freedom of the Press is, of course, not unlimited. Those of you who have read Evelyn Waugh's marvellous newspaper novel, "Scoop", will remember the passage in which the unfortunate Basil Seal, who is about to be sent abroad to report a war in Africa because his employer, Lord Copper, has mistaken him for someone else, realises that there is only one phrase that will express agreement with his bombastic employer without giving too many hostages to fortune.

It is: "Up to a point, Lord Copper."

The freedom of the press always exists "Up to a point, Lord Copper": the fascinating thing is to try and decide where that point is. There would, I am sure, be broad agreement about the two ends of the spectrum. For example, the freedom of the press entitles the press to publish, in the public interest, some information that might otherwise be an invasion of privacy, or information that has been obtained by subterfuge. The freedom of the press, at the other end of the spectrum, does not entitle it to publish lies about people. It's in between these two points that the fun starts.

In this context, it is also worth remembering that the freedom to publish also involves decisions not to publish. Indeed, I would hazard a guess that the number of decisions not to publish something on any given night in any given newspaper are roughly equal to the number of decisions in favour of publishing something. But decisions not to publish are, usually, invisible, so that readers are rarely in a position to know what has been left out, or why. And these decisions are at least as critical to the freedom of the press as decisions to include something.

Let me give you a few examples of what I mean. In the days when people who were defendants in criminal cases had to run a press gauntlet on their way into and out of court, most newspapers eventually took the decision not to publish photographs of people on criminal charges, before they had been convicted or sentenced, showing them wearing handcuffs. A small step towards the protection of human rights and the presumption of innocence, but a significant one.

Again, it is now common to pixelate the faces of people in some photographs – particularly but not exclusively photographs involving children – even in circumstances where it might not be

illegal to publish the photograph unpixelated, in order to avoid the unnecessary identification of uninvolved third parties.

Finally in this context, it may not have escaped your notice that much of the coverage of court cases involving the repossession of homes by sub-prime lenders will not have included the names and addresses of the unfortunate mortgage-holders, except in a small handful of high-profile cases.

The bottom line here is that the key factor in any decision, whether to publish or not to publish, is editorial discretion, very often in areas to which the Code of Practice has no direct relevance. An academic study some time ago demonstrated that the editor of a major British national newspaper took about 200 significant decisions – decisions not to publish as well as decisions to publish – every publication night. In these circumstances, the fact that so many of the decisions are right can legitimately be set against the fact that a much smaller number are inevitably wrong.

But that isn't to say that there aren't other aspects of today's journalism that deserve some thought – aspects that don't specifically come under any Code of Practice, but are perhaps related to the uncertainty and bad humour that clouds all our horizons at the moment. Are there bits of this vast and complex system that need attention – a dab of the oil-can, a quick bit of attention with the screw-driver – or something more serious?

One of my heroes, A.J. Liebling, once remarked: "Newspapers write about each other with circumspection – and about themselves, with awe." I think that the time for circumspection and awe is past, and that journalists should take more time out to reflect publicly on what they do, why they do it, and perhaps on how it can be done better. This is not a job for the Press Ombudsman or the Press Council; it's a job which can be done best by the professionals themselves, and with opportunities for participation by the public.

What I would like to offer for your attention now, therefore, is a short check-list of topics which are not only ripe for reflection by journalists, but could become part of a debate involving society as a whole.

One contemporary journalistic phenomenon is what might be described as 'news with attitude'. In this context, it is important to remember that journalists are not tape recorders. All editing involves selection, involves a value judgment. Is this news, or is it not? Will it interest my readers, or not? How will I phrase it? What will I put in, and what will I leave out? Why will I put in what I decide to put in, and why will I leave out what I decide to leave out? Have I identified and excluded my own prejudices?

Impartiality in itself is not an achievable objective. It is, or ought to be, a methodology rather than an outcome. It involves being fair with the facts, and fair with the context in which those facts are presented, so that the readers can make up their own minds on the basis of the evidence presented to them.

But if newspapers become viewpapers, if editorial opinions are smuggled in here, there and everywhere, it becomes increasingly difficult to distinguish news from comment. At the risk of sounding old-fashioned, I believe that the distinction remains an important one.

Scepticism is an important – probably essential - trait in journalists, dealing as they must with battalions of spin doctors, special pleaders, lobbyists, and God only knows what else. But to what extent are we being true to the foundations of our own calling, which is essentially one of public service, if a necessary scepticism modulates into a default cynicism? Do we interrogate the motives and the agendas of our confidential sources as rigorously as we interrogate the motives and agendas of those they criticise? How often do we swim against the journalistic tide?

As the French philosopher Poincaré – quoted in one of our own newspapers on a different topic only a few weeks ago – said: “To doubt everything or to believe everything are two equally convenient solutions; both dispense with the necessity for reflection.” Even in this busy world, not being able to find the time for reflection is an explanation, not an excuse.

While protestations by those in authority about the negativity of the media can and should always be taken with a large pinch of salt – “They would, wouldn’t they?” is the phrase that springs to mind - those of us who are involved in the media at any level would do well to remember that we have not actually been put in charge of anything. We are in the business of public service, not of ordering people about. It is some fifteen years since two American academics described the relationship between journalists and politicians as “a chronic state of partial war.” If this is true, does it always contribute as much to democracy as is sometimes argued?

How often is the evocation by journalists of fear and mistrust, and even anger, justified? Let me give you an unscientific example. In one calendar month taken at random some time ago, the word “fury” appeared in newspaper headlines on no fewer than fourteen of the last eighteen days of the month, often in more than one newspaper. On several days it appeared in three different newspapers – twice in some – and over quite different stories. And they weren’t all tabloid newspapers.

Of course “Fury” is the ideal word for a headline; it’s much shorter than “disappointment,” or “anxiety,” or bewilderment,” for example. But isn’t there a risk that if you cry ‘Wolf’ too often, when there’s only a rather cross dog barking outside, that people will become de-sensitised to real risks, and to real injustices and scandals? Have we the energy to be all that furious, all the time? Or is something being lost in translation?

This doesn’t mean that there isn’t a case for fury, on occasion. The freedom of the press – and the Code of Practice - confers substantial protection on expressions of opinion, and on the right of newspapers to advocate their own views strongly on any topic. This is vital. But while the journalism of assertion – and even of denunciation – has its place in a free press, are we - in a society which is discarding the authority figures of old with breakneck speed – running the risk of erecting new pulpits, ordaining new preachers?

The journalism of evidence-based argument, which imposes its own disciplines and has its own internal accountability, carries a higher premium. As Barack Obama said recently, quoting his fellow country-man and controversialist, Senator Daniel Patrick Moynihan: “Every man is entitled to his own opinion, but not to his own facts.” The corollary of this is that well-written, knowledge-based and fact-respecting commentary will always have, not only a journalistic, but an economic value, because readers will find it useful, even necessary.

There are a number of other matters I would like to put on your agenda, and they are based on concrete examples.

Not too long ago the former editor of a national newspaper, in an article discussing the series of financial and economic crises that have wracked this country for the past two years, asked: where were the media watchdogs? Had our financial and economic journalists been remiss in spotting emerging trends, or in raising key issues, too seduced by the purring of the Celtic tiger to notice the mange spreading underneath its fur (my metaphor, not his!).

It was not surprising that he raised this question. What was surprising, at least to me, was the silence that greeted it. Nobody publicly expressed support for his analysis, that I am aware; nor did anyone challenge it, with or without evidence. Was this the tree falling in the forest, making no sound because nobody was there to hear? Or was it evidence of a reluctance, by the media, to debate publicly matters that are or should be of serious relevance to their own authority and credibility?

On another matter, some time ago there was considerable media concern expressed at the fact that the new criminal court building had been constructed in such a way as to enable defendants to be brought to and from court without having to run the traditional media gauntlet. At that time, some journalists trenchantly expressed the view that, as far as convicted criminals were concerned, unwelcome media publicity was an intrinsic component of the punishment for their crimes.

This view is common to the media culture of these two islands. However, other cultures – notably those of Sweden and the Netherlands – would sharply disagree. In countries like these, journalists voluntarily – because there is no law forbidding them to do so – refrain from publishing, or delay in publishing, much personal information about people involved in criminal trials. In Sweden, the identity of the person put on trial for the murder of their Prime Minister, Olof Palme (he was convicted but cleared on appeal) was not revealed by the Swedish media during the trial and disclosed only after he had been convicted.

As far as I can ascertain it, the justification for this reticence – extraordinary by British, Irish and US standards, as I think you will agree – is the belief in these countries that even where people who have been convicted of crimes are concerned, additional public shame arising from some aspects of media coverage can raise issues because it can be of its nature arbitrary and selective. It may involve substantial collateral damage to innocent parties, the victims of crime and perhaps even the families of those convicted. It may interfere with – perhaps even nullify – any prospect of rehabilitation. It may – as has been strongly argued in the Venables case in Britain – create a risk to the life of the former criminal. It may even create a sense of pressure, isolation or

notoriety in the former criminal that could heighten the risk – to the community – that he or she will re-offend.

Of course the media have a role in protecting society against criminality and evil-doing. But the primary role in this regard belongs to the police and the courts, and there are risks in outsourcing this role wholesale to others, however well-intentioned they may be. Are the Swedes and the Dutch no more than lily-livered, politically correct do-gooders? Is the sentence passed by the media always life? Is someone who has been convicted of a criminal offence and has served his sentence always a criminal, not entitled to basic human and civil rights?

Even more recently, a judge who presided over a murder trial stated publicly that he was reducing the sentence he was giving because he anticipated that the person convicted by the jury would become the object of media attention following his release.

It is interesting that his remarks did not give rise to a media debate.

Would this view have been greeted with the same silence if a judge had used it to explain a reduction in a sentence he was been imposing on, for example, a banker – or a paedophile?

I don't know the answers to these questions, and I certainly don't think they are easy to answer. Hard cases make bad law. But if we are to have a mature and meaningful debate, not just about the rights of the press, but about its responsibilities, I think that they should be addressed.

The last word, and perhaps the answers to some of these questions, may well in the final analysis be up to the public itself. The public will continue to support our press, despite the ravages of the downturn and the unpredictable outcome of technological change, while the press continues to perform a function that the public sees as useful, valuable, and even essential for the proper functioning of society and its various institutions. Whatever shape the press may take in the future, its credibility and authority will still be the vital benchmarks.

It will also continue to be a complex, valuable, and occasionally challenging phenomenon. An Irish journalist of a very different generation, J.B. Hall, recorded the views of a contemporary celebrity on the press (including a few Shakespearean allusions) as follows:

The Press is a queer little monster, half angel, half octopus. It is 'backed like a weasel'; it is 'very like a whale.' Its eyes are countless like the stars, yet it is sometimes blind. Its ears are keen as the wind, yet it is often deaf. Its utterance is louder than the storm, yet it can speak in a still, small voice. It has nimble feet, made of wire, with which it skips from point to point of the earth's surface, annihilating distance. It has arms so long that it can wrestle with and embrace the whole universe. It devours paper, it drinks ink. It has a consummate brain, an uncertain temper, a magnificent heart – and it never goes to bed.¹

It's difficult to improve on that, even a century or more after it was written.

¹ J.B. Hall, *Random Records of a Reporter*, London and Dublin, n.d., pp. 239-40.

According to one recent survey almost three quarters of the Irish population retain a measure of trust in our media. That figure is some 40% higher than that obtaining in, for example, the United States. This is a precious inheritance, and whether we invest it or waste it is in our own hands. We would do well not to squander it.