

Annual Livery Lecture

“Newspaper Publishing—
is the Freedom of the Press in Danger?”



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*Master, Wardens, Members of the Court of Assistants,
Liverymen, Ladies and Gentlemen :*

There is a character in Tom Stoppard's play *Every Good Boy Deserves a Favour* who is incarcerated in a Russian lunatic asylum because he thinks he is an orchestra conductor. He is quite mad but harmless. I have to begin tonight by asking you to extend to me, an editor without a newspaper, the kind of indulgence the Stoppard audience affords to the demented conductor without an orchestra. There is a *Sunday Times* – I can hear it now – and I hope it will be back with you before too long. I will have something to say about its suspension and that of *The Times* shortly, but it would, I am afraid, be an appropriately sombre overture for this paper tonight on the state of the British press, its freedom and its performance: Tosca, or if you are of an optimistic disposition, Fidelio Act One with the prisoner condemned but not yet executed. I have a benchmark for melancholy. When I gave the Granada Guildhall lecture five years ago in 1974 I characterised the British press as half-free for reasons of legal restraint which I need merely indicate without detail tonight.

The comparison was, of course, with the freest press in the world, that of the United States. I did not say then, and I do not say tonight, that the American press is twice as good as the British – in some respects such as prose and design it is markedly inferior – but only that it was twice as free: that it has a greater opportunity for excellence. It would be possible, in the Micawberian manner of defining happiness, to say that the British press was 100 per cent free by taking as the norm the liberties enjoyed by, say the *Albanian People's Daily* or the *Times* of Kampala or Manila. But Britain, seed bed of the idea of free press, has higher pretensions. We can accord the American press 100 per cent freedom not because it is wholly without restraints of course but because its freedom is entrenched in its constitution and because we can compare, in area after area, a specific limitation in Britain with a specific liberty in the United States. These comparisons are a gauge for us to measure our liberties, and that is a useful exercise to do from time to time, because in the organic development or decline of that living organism, the modern complex

political democracy, it is the cellular changes which matter – the barely perceptible accretion of case law, the creep of administrative rules, the seduction of public temper, the effrontery that goes unchecked or is unchallenged so it becomes a custom and finally a new power.

Freedom in a sophisticated society perishes in a thousand whimpers rather than in the single revolutionary bang of a developing state. Adding up or subtracting all that has changed since 1974 I can only conclude that the epithet half free would today be an exaggeration.

There is no single cause of this deterioration; and no single solution. It is the result of individual decisions and of inertia, of acts and of attitudes in law, government, public life and the press: journalists as well as judges and politicians and civil servants have played their part, each perhaps with a clear conscience but producing a collectively malign consequence. There have, to be sure, been one or two good moments. The Royal Commission on the Press has rejected a variety of schemes for weakening or ruining papers that people want to read in favour of papers they don't want to read. But the Commissioners were too optimistic of course in saying that by arguing the pros and cons at length they hoped they had finally laid them to rest, but have laceratingly revealed the familiar combination of naivety and nascent authoritarianism that ran through all these plans for government subsidies, licences, controls and allocation of advertising revenue including the Labour Party's People and the Media.

Then there is the gleam of light represented by the Liberal MP, Mr Clement Freud, who, where Jenkins feared to tread, has introduced a Freedom of Information Bill as a private member's measure. There are facts the British Government will not tell you here or which British companies prefer to keep to themselves which you can discover in the United States because of their Freedom of Information Act. It is absurd that it should be so, that we can learn more about our own affairs in Washington than we can in London, but so we can in a wide variety of subjects whenever a British firm trading with American or Govern-

ment Department has to comply with US regulations. The information elicited then by US regulation is available to the press on demand and is normally forthcoming without a fight.

Never to my knowledge is the safety of the realm at issue in the refusal to yield the same information in Britain: In what foods, for instance, does the FK dye appear rather than kippers? One of Britain's Official Secrets. We may yet have reason to be grateful to Don Quixote Freud. His Bill is a modest one by comparison with the American, and it may fail, but its existence is itself evidence of the paradox that has developed: we have a democratic political system and an authoritarian information system.

Parliament's powers of scrutiny have withered. Question Time is reminiscent of Owen Glendower's boast in *Henry IV* that he could call spirits from the vast deep to which Hotspur sardonically replies: 'So can any man, but will they come when you do call for them?' Ministerial powers have grown enormously since 1906 but Question Time has stayed fixed at 50-55 minutes; it would need to be 4-5 hours to have kept pace. But not only is the time perfunctory. The rules have grown so restrictive that Question Time is something of a joke for extracting information other than that which the administration wants to give.

There are at least *ninety-five forbidden subjects*. There is no explanation for the reasons of refusal. Successive administrations have refused to answer questions about rent for government offices, telephone tapping, Cabinet committees, the cost of the hot line, details of air miss inquiries, trade statistics for Scotland, details of export licences, advice from economic planning councils, contracts for the Forestry Commission, for forecasts for future trends in incomes, the forecasts for changes in food prices, the names of non-medicinal and cosmetic products containing hexachlorophane, the number of prosecutions, both successful and unsuccessful against chief constables since 1945. Details of government contracts with manufacturing companies, and particularly contracts for building Concorde. The report of an inquiry into Government Building Standards. A report

on the Central Office of Information and departmental information services. And so on and so on and so on.

Members of Parliament are, of course, up against an entrenched bureaucracy, one of the wonders of the world in its ability to change form, to multiply, to camouflage, it resembles an octopus in every way and in particular in its ability to squirt dark ink when alarmed. It has so contrived affairs that any number of great decisions have gone unscrutinised and looking back one cannot think that secrecy has been the handmaiden of triumph – the millions wasted on the Beira oil patrol, when Whitehall knew the oil was going through South Africa; the wrong decisions on Stansted assisted by the suppression of an interdepartmental committee's report; the faked cost estimates for Concorde, the continual concealment of bases for economic forecasting. It will require a great deal of change if Parliament is to resemble the efficient engine of inquiry that the US Congress is; and MPs like Clement Freud and Jack Ashley will need allies inside and outside Parliament. One of the saddest aspects of Britain's slide is that there has not been here the alliance for free speech and free inquiry between journalists, politicians and lawyers which set back in the United States the inexorable tendencies to increase executive power. The American Bar Association played a major role in the ten years of pressure that led to the US Freedom of Information Act; but our own Bar sees its role differently. And turning to the law as it affects free speech and free inquiry one cannot but be dismayed.

The impetus for my judgement in 1974 was the realisation that the crimes of Watergate could never have been exposed in Britain because our laws of contempt and of confidence would at several stages have prevented newspapers doing what the *Washington Post* did – provoking sufficient concern to set up a Congressional inquiry. British laws of contempt would have come down as series of port-cullises as first the burglars and then others were named, protecting them from press scrutiny from the moment a charge was imminent whatever the apparent public interest. Secondly, the British law of confidence would have

quickly suppressed any use of the vital document the *Washington Post* obtained listing the names and addresses of the Committee members of Creep. The officials of the committee could have sought, and would under English law, have readily obtained an injunction – not merely to prevent the wording being reproduced but to any use of the information in the document. This common law of confidence was not much more than the shadow of a tipstaff's hand when I spoke in 1974. It was originally invented to protect Queen Victoria's etchings and then developed over such great constitutional issues as to whether it was Peter Pan Brassieres who invented a new cup or whether it was Fashion Silhouettes Ltd. So it has stayed in the United States, a law relating to trade secrets, in which information may fairly be regarded as property. But in Britain, such is the elevation of property rights over personal rights, the law of confidence has been extended into the discussion of public affairs so that any information may now fall under censorship by court injunction. And I am talking about information, however it is worded, not the necessary and understandable entitlement of copyright.

Together with the archaic powers of Crown Privilege, which punishes many a citizen to an unfair fight with the Executive, and which judges have been afraid to challenge, the Executive secrecy shield is as thick as a Kremlin wall. It was confidence which was used by the Attorney General in the attempt to ban the Crossman diaries. It succeeded at the first hearing and even though the Lord Chief Justice lifted the injunction at the trial he none the less accepted the Attorney General's submission that the law of confidence, hitherto used in private contests, could be invoked to protect Government information. In private actions confidence has been used against the *Daily Mail* when it tried to detail corruption affecting a Labour peer; it hindered *The Sunday Times* in disclosing information about the then world's biggest air crash involving a DC10 and Turkish Airlines. And confidence – much more than the law of contempt – has ensured that the world will never know what it was in the thalidomide documents that the company wanted to

conceal. The contempt injunction has long since lapsed but there is no time limit to the order of Mr Justice Talbot that the material in them must remain secret on grounds of confidence and be destroyed if the company so chooses. There is a very limited public interest defence against the law of confidence: it cannot be used to conceal 'iniquity'. The narrowness of how this is interpreted by judges is well illustrated by Mr Justice Talbot's dismissal of it: even if the documents did demonstrate negligence that was not sufficient of an iniquity to set against the property right.

When I spoke in 1974 there was hope, on all these matters, of some easement for the British press. A Law Commission was examining confidence. Expert committees were about or had just recommended changes in the laws of libel, contempt and official secrets, which would have more sensibly reconciled the competing claims of government and the press, privacy and publicity, fair trial and free press. We in the press attached particular importance to the Committee under Lord Justice Phillimore which was set up in 1971 by the Lord Chancellor, and which reported in 1974 with a series of highly judicious proposals for contempt reform. This was followed by *The Sunday Times* appealing to the European Commission of Human Rights, arguing that the thalidomide contempt decision was in breach of Article 10 on free speech, and the Commission agreeing: the matter is now before the European Court. Yet after all this not a single clause of a single one of any of these legal reforms recommended by expert committees, set up by Government itself, has passed into legislation. On the contrary. Judges taking a narrow view have made matters worse and worse in case law. The National Union of Journalists has just had a victory in the House of Lords in the Colonel B case, but on a technical point – when is a court order not a court order? Otherwise the law of contempt is more onerous than it ever was, more erratic, more absurd, more arbitrary.

There is supposed to be no such thing as a gagging writ but the Attorney General himself attempted to intervene with *The Sunday Times* when we refused to wait two years for a libel trial while lies in the *Babies for Burning* abortion

book continued to pollute public discussion. And the Attorney General notably failed to intervene when, pending a law suit, a Government report was leaked making criticisms of the Birmingham smallpox laboratory. Contrary to what we understood in 1973 it can now be contempt to publish a fair and accurate report of a public trial (when there are overlapping charges). It is still, despite Phillimore, a contempt to report something when a charge may be 'imminent' and a Scottish case has even suggested that contempt begins from the moment the authorities start to investigate, which is certainly a discouragement, if no more, for spontaneous press monitoring of fraud and corruption. As Paul Freund said of imminence in another context, 'imminence, weighing gravity against probability, is countenancing speculation in historical futures, the most dangerous form of gambling with liberty of speech.' And what does the Lord Chancellor's department say when it is asked what it will do about Phillimore, which it set up itself after a decade of anxiety and which reported with a draft bill five years ago? 'We must,' says the Lord Chancellor Elwyn Jones, 'approach this matter with deliberation.' The Lord Chancellor's department reminds me of nothing so much as Dorothy Parker's remark when told that Calvin Coolidge was dead. How do they know?

The most striking summation of the glacial genius for inertia we possess is that seven years after all the hullabaloo about the thalidomide children, nothing has changed to avoid a repetition of that shambles. The worst evil was leaving damaged individuals to win their own compensation, while preventing the press crying foul until almost too late. But that is precisely the situation still today. The Pearson Commission on personal injury has reported – and been shelved just like Phillimore, and few MPs seem to care. Years ago MPs gave themselves immunity from libel and contempt laws. The logic of it was that Parliament was the forum for scrutinising power and the public interest required unqualified free speech. There was a time perhaps when a few hundred privileged free-speaking MPs and a very much limited Executive were in equilibrium. Today

nobody pretends Parliament alone can monitor the diverse interactions of modern government and society – yet none of the logic about free speech is applied to speed the merely marginal easements sought by the press.

Having suggested what others might do for us, I must turn reluctantly to what we might do for ourselves. For there is no doubt that some of the dispiriting disappointments, not to say menacing developments, have come from within the press itself.

Beachcomber in the *Daily Express* once reported how Dr Strabismus of Utrecht (whom God preserve), was making a speech at a public meeting when he suddenly began pelting the audience with eggs. In the ensuing riot as he was led away by the police he murmured ‘Sorry, I seem to have got things the wrong way round.’

An image of the absurd Dr Strabismus has been my only consolation at the sight in recent weeks of journalists inciting public officials to suppress public news. I have no doubt what I think about the pay of provincial journalists. It is too low. I do not want to open up the whole can of worms about reward and responsibility in this society but if rewards on newspapers should be related to the contribution made there, then it is wrong that the experienced journalist should be paid less than the experienced printer. But there is a greater wrong than that and it is this: the invocation of press censorship by any journalist. It is one thing to withdraw one’s labour. It is another to conspire with the jacks in office for the blacking of news – news about the rates, gas leaks, fires, building plans, television programmes, rents, from councils and public and semi-public bodies. This is what the NUJ did in the recent provincial strike; not only were NUJ press officers ordered to hinder newspapers by refusing to answer inquiries from editors and IOJ and non-striking NUJ men, which is one thing, but councillors and other unions and especially Nalgo press officers, were beseeched to stop public news getting out. This is hard to understand, impossible to condone. The NUJ has been sensible in its attitude to editors, recognising though not encouraging their ambition to keep their papers going, yet

it has, contradictorily, tried harder than ever to cut the flow of news. This is a mockery of years of valiant effort by journalists – and by the NUJ and IOJ – against secretive public authorities. It is defended as a temporary industrial weapon. But that is like asking Sweeney Todd for a close shave. It is at best imprudent, at worst suicidal for it legitimises the suppression of news in a conflict. The founders of the NUJ would have died a thousand times at the idea that journalists would encourage a political leader to dictate to newspapers about who shall be told what and when. It is a professional betrayal; and it has exposed again the sickness about freedom in Britain. For if the NUJ is possibly entitled though foolish to ask for suppression in a sectional cause, what right is it that entitles council leaders George Wilson in Sheffield and Roy Shaw in Camden, to name two well known examples, to accede?

Or the Coal Board, the Post Office, Granada TV, Yorkshire TV, The AA and those refugees from the stage army of the good, the National Citizens Advice Bureau and the Consumers Association? The Press Council condemned such discrimination on a previous occasion. Will anybody else say boo?

I am conscious of a certain awkwardness in making these criticisms. After all, I have agreed to the suspension of publication of *The Sunday Times* along with *The Times*, *The Times Educational Supplement*, *The Times Literary Supplement* and *The Times Higher Educational Supplement*. There is no denying that these are severe blows to press freedom. The first duty of an editor may be to truth but the second must be the continuation of his paper. Suspension began on 30 November and the dispute has become so complicated, so forgotten in its origins, I am reminded of Lord Palmerston’s remark about the Schleswig Holstein question. It was, he said, so abstruse, that only three people had ever understood it: one was dead, the second was in a mental institution; he was the third and he had forgotten.

Along with the other unhappy events, I have been trying to trace tonight, there has been a crisis of newspaper production in Fleet Street, often unpublicised by the papers

affected. The best newspaper is that in the hand of the public and the Sunday Sometimes, as we came to be called, was on that account becoming one of the worst in 1978, because of unofficial disruption in breach of agreements. As the Royal Commission on the Press said of millions of copies lost in this way in 1977, events which would have been unthinkable a few years ago were now becoming commonplace. By April when Times management appealed to the production unions *The Sunday Times* had lost 3.5 million copies; by 30 November losses had trebled to 9 million, heartbreaking and demoralising to most of the staff. We had reached a point where we were fast losing credibility with the readers and with advertisers, where editorials adjuring others to efficiency could only be hypocritical given the chaos of our own production. Something had to be done to protect the reputation, the viability, and the very life of *The Sunday Times*. It is a tragedy it has had to be suspension. There is no doubt that suspension, following failure to agree, and a programme of dismissals, has induced bitterness and resentment, not least among loyal staff who were never themselves, as distinct from others in their same union, responsible for the losses, and especially amongst journalists who have never disrupted production.

There is no doubt also that a settlement on production, manning and technology is possible which would be good for staff and revitalising for the *independence* of *The Times* and *The Sunday Times*.

Nobody can say that for the latest wheeze of Mr Wedgwood Benn for at a time when the Government menaces the BBC by fixing its licence fee inadequately and for only a year and proposing the appointment of Home Office nominees to the board of management, Mr Benn suggests that two great independent newspapers should also come within its thrall. Can't he wait until 1984?

Mr Benn's diversion suggests, among other misdemeanours, that the Times management wants 'to impose the new technology by force.' That is not true and the subject is too important to be left to Mr Benn's mischiefs. What the management proposes is a phased introduction of a pro-

gramme announced in 1976, with guaranteed employment for everybody who wants it. There is more to this than simple economics. Fundamental interests of journalism are at stake in the jurisdictional arguments about who shall have access to the visual display terminals and through them the computer. This has not been sufficiently appreciated. It is essential that every individual affected is treated decently, generously, honourably, imaginatively; there must be time for consultation, and adjustments. But to deny the journalist access to the computer would be to damage the potential of journalism to assist the conduct of open debate about detail which characterises democracy.

The VDT is more than a copying or setting device. To take the simplest examples first, it is also a counting device. Through the computer it can offer the reporter, sub-editor and layout man instant precise calculation of how much space in such and such space any article will take. Or any headline. This is a boon which is completely wasted where the journalist is denied access to the VDT, for the typesetter who is simply copying does not require this facility. The second simple benefit of the VDT for journalism is that typing at it is not the same as typing on an ordinary or even electric typewriter. The VDT keyboard is much more sophisticated. It is faster: there is no need, for instance, manually to return the carriage to start a new line. It is more accurate. It is easier to transpose paragraphs, words, sentences, letters, to rewrite – again a facility for which the ordinary typesetter has no need. Thirdly, the potential of front end entry to limit setting and journalistic error is very real: you can rarely find a typo in the front-end American newspapers. But beyond these important practical benefits the future holds prospects of still further benefits which go to the very heart of journalism – advantages which, again, are wholly irrelevant to the copying typesetter and which will be lost to society if there is a one-union monopoly of the VDT keyboard.

Data retrieval is the most significant, though there are others. As systems improve the VDT will be seen more and more not simply as a mechanism for copying but as a

creative part of the whole communication process. For instance, advances in data retrieval will mean it is possible for a journalist to summon up on the right hand side of his screen the information he wishes to examine and knit into a story on the left hand side of the screen. There is already the Telegram VDT, which can be used to collect information for background research from remote computerised data banks. The *Washington Post* with Raytheon has a system which enables the reporter to use his machine as a note-taker – to take his collections of notes for all the stories on which he is working at any time. And the terminal will also record telephone messages.

I hope that men of goodwill and imagination can devise a solution to the current impasse, not necessarily the same as in other countries. Our genius for compromise, might, for instance, settle on defining some key strokes as mechanical copying of prepared text; and some as creative writing and editing. It could be agreed that at least for a transition period creative keystrokes by journalists would not exceed a certain percentage of content in any single issue.

Eventually, no doubt, the configuration of trades unions could adapt to the new configuration of production skills. But whatever happens it will be a catastrophe for the freedom of the press to do its job if the journalist is locked off from the computer. Nothing can replace the dedicated journalist following his nose, the ability to write clearly or vividly and the courage to publish. But if we are to make sense of an increasingly complex world, to bear, in Walter Lippman's phrase, the burden of popular sovereignty, spontaneously supplying the truth that democracies hoped was inborn, we will need all the help we can get. Without the computer it would be more and more like trying to play Bach's *St. Matthew's Passion* on the ukelele: the instrument is too crude for the ambitions of the performer and the needs of the audience.

To conclude, there is one sense in which my current deprivation has been salutary. It has put an editor at the receiving end of the business. This has persuaded me that all the things I have been saying all these years about the

importance of the press are true – but also that we have a long way to go to justify I A Richard's description of the newspaper as a machine to think with. Little light, I am sorry to say, has been shed on the problems at Times Newspapers and there are other causes for unease. There have been some good things – notably *The Guardian's* exposure of offensive testing of immigrants' virginity. But in the industrial crisis there has been a surfeit of emotion and a famine of facts. Too much adversary journalism, and not enough analysis. Too frequently a reminder that the struggle in communication is a struggle between education and propaganda.

The vocabulary of the national crisis has been clobber, hammer, war, bosses, cripple, nightmare, knife at the nation's heart etc. I do not object to strong opinion but as Christopher Hitchens has documented in the *New Statesman* there have been grave examples of distortion and there has certainly been a dearth of explanation. For weeks press and broadcasting resounded with slogans about low pay but not until last week did a newspaper – *The Guardian* again – take the trouble to find out exactly what current earnings were for public employees (higher than the placards) and demonstrate the lack of *assumed* correlation between the low paid and the poor. Increasing low pay may be the least effective way of helping poorer families. I wish I could say that *The Guardian* had done as well with our dispute. On foreign affairs it seems to me, a humble reader, that the press has been swift in confirming the picture of violence in Iran, but slow or negligent in providing an understanding of the events and their underlying causes. Again, when one reads of the North Vietnamese conquest of IndoChina we must pause, I think, to ponder on the antecedents. The world's press was free to roam in South Vietnam and duly exposed corruption and errors. There was never any such facility in North Vietnam and all too readily we let it be assumed that the North Vietnamese possessed the mirror virtues of the vices exposed in the South. Similarly in Cambodia the Khymer Rouge, unreported, unreportable perhaps, were given a hue of

glamour in contrast to the bumbling inefficiencies of the Central Government. The individual reporters in both countries did a splendid job, but the press as a whole, including my own, quite failed to reflect the realities of the Khmer Rouge and the imperialism of the North Vietnamese. We may be doing the same in Africa today where the glare of exposure is borne by those who maintain some semblance of a free press.

Our case for the beneficial effect of the press assumes a free flow of information but judgements are all too easily made on the basis of a demonstrably partial flow.

These are perplexities that can be no more than sketched tonight. I mention them as a reminder to myself and my colleagues that we must defend and enlarge the freedom of the press, not merely by resisting and attacking the daily encroachments as I have tried to do tonight, but by improving our standards, reflecting on our aspirations, and rededicating ourselves to truth in print.