

Leveson Inquiry into the culture, practices and ethics of the press

Witness Statement from Professor Susan Mendus

Biography and Career History

Education

B.A.(Wales) first class honours in Philosophy, 1973

B.Phil (Oxon) in Philosophy, 1975

Career

1975-1988, Lecturer in Philosophy, University of York

1988-1995 Senior Lecturer in Politics and Morrell Fellow in Toleration, University of York

1996-2000, Director, Morrell Centre for Toleration, University of York

1996 onwards - Professor of Political Philosophy, University of York

2004 – elected Fellow of the British Academy

2008-2012 Vice President (Social Sciences), British Academy

Main research interests and publications

My main academic and research interests are in modern moral and political philosophy, especially liberal political theory and theories of toleration, on which I have published extensively. Some of my publications which are relevant to the themes of this inquiry are:

Toleration and the Limits of Liberalism (Macmillan, 1989)

'The Tigers of Wrath and the Horses of Instruction: Reflections on the Rushdie Affair' in *Free Speech* ed B Parekh, London, Commission for Racial Equality, 1990, pp. 3-17.

Politics and Morality (Polity Press, 2009)

'Private Faces in Public Places' in M. Kramer, C. Grant et.al. (eds) *The Legacy of H L A Hart*, Oxford, University Press, 2008.

Witness Statement

I am, by training, a moral and political philosopher, and my statement reflects that fact. In what follows I outline some of the main philosophical arguments which could inform the questions raised in your letter, and the questions to be addressed by the Inquiry more generally. My statement follows the structure requested in your letter – ie, I begin with ***Relevant aspects of the public interest*** and then move on to ***Press ethics***.

Relevant aspects of the public interest

In addressing questions about the public interest in a free press, it is important to ask why we value free speech or free expression in general. It is reasonable to think that the value we attach to a free press will be in some way connected to, or dependent on, the value we attach to free speech or free expression of opinion more widely.

Three arguments for free speech have been dominant in political philosophy. They are: the argument from truth; the argument from self-fulfilment; and the argument from democracy.

The argument from truth, which is most closely associated with the nineteenth-century philosopher, John Stuart Mill, is problematic in itself (ie as a defence of free speech or free expression of opinion) and acutely problematic when used to justify extensive press freedom. One reason is that, *pace* Mill, it is not at all clear that extensive free speech is either necessary or sufficient for the attainment of truth. As the late Bernard Williams pointed out:

In institutions that are expressly dedicated to finding out the truth, such as universities, research institutes, and courts of law, speech is not at all unregulated. People cannot come in from outside, speak when they feel like it, make endless, irrelevant, or insulting interventions, and so on; they cannot invoke a right to do so, and no-one thinks that things would go better in the direction of truth if they could¹.

¹ Bernard Williams *Truth and Truthfulness*, Princeton, University Press, 2002, p.217. See also Eric Barendt *Free Speech*, Oxford, Clarendon Press, 1985, pp. 1-36.

In addition, of course, we may ask whether and why truth should have over-riding importance. We may feel that truth is not always as important as, for instance, racial harmony. So even if a free press were necessary and sufficient for the attainment of truth, that aspiration might need to be balanced against other important societal values. In any event, this first argument is limited, particularly when used to justify a free press.

The argument from self-fulfilment, which construes free speech as an important component of each individual's development as a human being, is also problematic. In the first place, it is not at all clear that free speech has the centrality attributed to it by this argument but, even if persuasive in the case of individual free speech, the argument has little to offer by way of a justification of press freedom. One reason for this is that the press has, as it were, no 'self' to fulfil, so an argument from self-fulfilment or self-development will not be directly relevant to questions of press freedom. More importantly, however, demands for press freedom are not (or not centrally) demands for free expression, but rather for the communication of information, and even if we think that individuals need to be able to express their views in order to develop fully as human beings, it does not follow that extensive freedom should be extended to those (eg the press) whose primary concern is with communication of information². To put the point starkly, those who aim to communicate must aspire to standards which are inapplicable for those who aim only to express their own views³.

This brings us to the third argument – the argument from democracy. This justification of free speech can plausibly be extended to include an argument for press freedom, but caution must be exercised before drawing too many conclusions about the extent of press freedom it implies.

The argument from democracy focuses on the character of the relationship which holds (or should ideally hold) between a democratic government and its people. In particular, it emphasises

(i) the fact that liberal democracies are characterised by their commitment to openness and accountability. This commitment reflects the belief that, in a liberal democracy, people should know and understand the principles on which their society works. They should know, for example, which principles govern the distribution of wealth, power, authority and freedom⁴. But if people are to know and understand these principles, then they need to

² See Eric Barendt *Free Speech*, Oxford, Clarendon Press, 1985, p.217.

³ See Onora O'Neill 'Media Freedoms and Media Standards' and 'News of this World', *Financial Times*, 18th November 2011.

⁴ For a discussion of this point see Jeremy Waldron 'Theoretical Foundations of Liberalism' in Waldron *Liberal Rights: Collected Papers 1981-1991*, Cambridge, University Press, 1993, pp. 35-62.

have access to extensive information and, in particular, they need to have access to information of a kind which government itself may sometimes be disinclined to offer up. So the character of a liberal democratic society – its commitment to transparency and accountability of government – speaks in favour of a free press.

(ii) the fact that, in a democracy, the people elect the government and the government, to some extent, acts in the name of the people⁵. Here again, democracy implies a need for press freedom. Where someone acts in our name, we should know what it is that they are doing and a free press can serve as an important source of information.

In both cases, a free press is seen as an important bulwark against the government. It is necessary in order to secure knowledgeable and effective citizens.

However, it is important to note that the argument from democracy is also one which imposes limitations on press freedom. In particular, it defends press freedom in the area of the political – but not thereby more generally. ‘Political’ can, of course, be interpreted widely, to include all those things which people need to know and understand in order to be effective as citizens. Nonetheless, the argument is not limitless. It does not justify press freedom *tout court*.

So – to respond to the specific points raised in your letter:

The public interest in a free press lies largely in the character of our society as a liberal democracy. It is in the public interest that there be a free press because and insofar as such a press serves as a necessary bulwark against government duplicity or tyranny. A free press serves also to inform people about the principles under which they live and the policies which government adopts and pursues in their name. This is of particular importance in a democratic society where governments are elected by the people and act in the name of the people. Of course, to say this is not to deny that there are other considerations (such as its contribution to individual self-determination) which speak in favour of a free press but, for the reasons offered, these considerations are less significant and, in my view, more properly understood as arguments for free expression of opinion rather than arguments for a free press.

⁵ In large, modern liberal democratic societies it is harder to sustain the conviction that government is the agent of the people. Nonetheless, this ideal is not without intuitive plausibility and it remains an ideal which informs modern liberal democracies.

Press Ethics

The central questions here concern the criteria for deeming press conduct to be 'ethical', and for determining to whom ethical duties are owed. My responses to your questions follow directly from the arguments presented above. In particular, it is an implication of the argument from democracy that the most significant ethical duties are the duties to provide accurate information of the kind which people need in order to function effectively as citizens. Obviously these duties will need to be balanced by other considerations – eg by considerations of national security. And there is no general answer to questions about how best to strike that balance. Nor, in the words of Bernard Williams, is there a 'disposition which consists in getting it right every time'.

Nonetheless, the argument from democracy is, so to speak, a 'guiding light'. Insofar as it reminds us of the most important purpose of a free press, it also, and at the same time, reminds us of the most significant duties of a free press – duties to communicate those things which people need to know if they are to be effective and informed citizens⁶.

Just as the duty to communicate accurate information may have to be balanced against other considerations, such as national security, so the duty owed to the public as citizens may need to be balanced by duties owed elsewhere. I would like to single out two areas of special concern here:

(i) *persons who are the subject matter of stories and other media products*. If we take the argument from democracy as the most important argument for a free press, then we may ask, in any given case, whether the story is one which affects or influences the working of a democratic society. This question is complicated where public figures such as politicians are concerned because, it may be said, the public have a legitimate interest in knowing about the moral character of those who represent them and exert political power over them. So while private individuals can legitimately expect their private lives to remain private, that is far less so for politicians. Or so it is sometimes said. There is a growing body of literature on this topic, and I have contributed to it myself in an article entitled 'Up Close and Personal' which is not yet published and which I therefore send as an attachment in case it is of interest. It offers my views on the duties owed to those who are the subject matter of stories and, in particular, the complex questions which arise when considering duties owed to politicians and public figures.

(ii) *shareholders, owners and others with an economic interest in the media*. It was noted earlier that an important function of a free press is to communicate accurate information to

⁶ There is much which people do not need to know for that purpose, though they may of course wish to know it. The argument for democracy offers no justification for disclosure in cases where there is simply a desire to know. This is not to say that the only things which can be published are things which are 'political'. It is simply to say that, if a justification for publishing those stories is required, it will need to be found elsewhere.

the public. And it was also noted that a free press is often defended as a necessary bulwark against government. Now we must note that these two considerations do not always march in step, not least because press owners may use their freedom to advance their own causes, and the pursuit of those causes can be in tension with the duty to provide accurate information. The problem goes back at least as far as the 1930s and indeed prompted the 1947 Royal Commission on the Press. Famously, Stanley Baldwin declared that, under Rothermere and Beaverbrook, the 'free press' had become 'engines of propaganda for the constantly changing policies, desires, personal wishes, personal likes and personal dislikes of two men'.

It is, I believe, a mistake to think of this as merely a piece of bad luck in the ownership of the press. There is a systemic problem here which is that a free press may be needed in order to curb the excesses of government, but a free market is unlikely to be the surest way of securing and communicating the truths at which a free press should aim. Again, Bernard Williams puts the point clearly when he writes:

No liberal democracy can afford to be too discouraging of expressive, disorderly, and even prejudicial speech, nor too fussy about who publishes it or how, and it cannot force people to think about public or political matters. At the same time, the basic rights of liberal society and democratic freedoms themselves depend on the development and protection of methods for discovering and transmitting truth, and this requires that public debate embody in some form an approximation to an idealized market. Squaring this circle must be a prime aim of institutional invention in liberal states⁷.

Williams' conclusion suggests at least an approach, if not an answer, to your questions about the Code of Practice. It suggests that processes (methods) need to be put in place for securing greater transparency and accountability from press owners, editors and journalists. These might include: stricter anti-monopoly legislation, a requirement on press owners and editors to declare their financial and political interests; a requirement to declare sums of money paid for information, and so on. Perhaps, ironically, many of these proposals were advanced by the NUJ itself prior to the 1947 Royal Commission and, as Onora O'Neill has recently pointed out, some of them (anti-monopoly provisions) have been significantly weakened by recent legislation⁸. Crucially, however, all these suggestions aim to 'square the circle' to which Williams refers: they all aim to encourage and facilitate the communication of truth while also safeguarding press freedom. It seems to me that securing this will depend largely on the possibility of regulating process without unduly restricting content.

⁷ *Truth and Truthfulness*, p, 219.

⁸ See 'The British Press Inquiry' by Henry Donaldson Jordan, *The Public Opinion Quarterly*, Vol,11, No,4,, 1947-8, pp, 558-566, and Onora O'Neill 'Media Freedoms and Media Standards' op.cit.

I have not considered all the topics you raise. Some are not within my area of competence. I have, however, tried to address those questions which may be illuminated by philosophical enquiry. I hope that there is some helpful and interesting material here and I am, of course, very happy to do be contacted again if that were thought to be helpful.

Susan Mendus