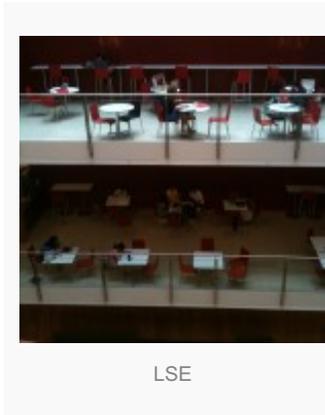


Orwell, Hezbollah and Rusbridger: the limits on media freedom (guest blog)

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The limits on freedom of expression in journalism by Rebecca Hales

A western European, when questioned on the subject of freedom of expression, might wave his or her hand in a vague easterly direction and boldly claim the privilege of a comparatively free press and liberal broadcast organisations.

Formally, freedom of expression is considered a universal value but just 17% of world's population enjoy what is widely considered to be a 'free press'.^[1] This essay will identify and explore the three levels of limitation on free speech that all journalists in the modern world have to negotiate, not just those working in countries historically perceived as being non-democratic or 'not free'.

Restrictions exist on three distinct levels: firstly, The Personal (which relates to self-limitation set by the individual journalist); secondly, The Professional (editorial constraints and regulatory frameworks observed by the employer); and, lastly, The Political (limitations prescribed by the state and the legal system). A potential news story will start buried beneath these strata. In order to emerge as an acceptable piece of journalism, it is forced up through these layers: shaped and re-imagined at every stage.

Market Pressures

The Personal Level is home to a key limit on free speech that is commonplace in the news media today: self-censorship.^[2] Market pressures – manifested when newsworthy stories are avoided because they are complex or lack audience appeal – are a factor, as are the pressures of competition in a fast-paced news environment where stories break online some time before they reach the newsstand or the 6pm bulletin. As a result of these pressures good stories may not be pursued or, if followed-up, are censored pre-emptively to fit with the expectations of the editor and consumer. George Orwell, in his essay 'The Freedom of the Press', laments this veiled censorship:

Anyone who has lived long in a foreign country will know of instances of sensational items of news — things which on their own merits would get the big headlines — being kept right out of the British press, not because the Government intervened but because of a general tacit agreement that 'it wouldn't do' to mention that particular fact.^[3]

The reason self-censorship is such an effective limitation on freedom of expression rests on the idea of responsibility. If a journalist's personal standards fail to meet those set by the employer or the audience, then there is only one person who can take responsibility for that shortfall and only one person who suffers the consequences. With this in mind, taking steps to limit freedom of expression on The Personal Level becomes an important self-preservation strategy for journalists around the world.

The Nasr CNN Case

For example, in July 2010 CNN International sacked one of its senior editors, Octavia Nasr, after she published a Twitter message expressing regret at the death of Lebanese Shi'ite cleric Mohammed Hussein Fadlallah who was

closely involved with the Hezbollah political and paramilitary organisation. The tweet caused anger amongst certain supporters of Israel who contacted the broadcaster with their concerns.

A CNN spokesman said: 'CNN regrets any offence her Twitter message caused. It did not meet CNN's editorial standards'[4] and Nasr, writing on CNN's blog, expressed her deep regret at reducing the complex life of a 'terrorist' figure to a brief tweet. She explained:

Reaction to my tweet was immediate, overwhelming and provides a good lesson on why 140 characters should not be used to comment on controversial or sensitive issues, especially those dealing with the Middle East.[5]

It could be argued that Nasr was entitled to express her opinion on the death of Fadlallah. However, CNN clearly felt that, when tweeting under the name @OctaviaNasrCnn, Octavia Nasr's views should align with its own. Nasr's failure to self-impose limitations based on an awareness of both her audience and her employer's position was her downfall.

The Personal Level

It is not unreasonable to suggest that a journalist wishing to remain in employment would be willing self-censor and, thus, actively limit their freedom of expression at The Personal Level.

The limitations on freedom of expression that exist on The Professional Level are less reliant on individual judgement and are largely practical in their nature. The voice of the traditional journalist – which he has already restricted of his own accord – faces the further constraints of professional standards; deontology; and access to skills and resources.

News media in the United Kingdom – and, indeed, most other European countries – are subject to regulation and the journalist, as an employee, has his freedom of expression limited by such regulatory framework.

The Harm Principle

Certain systems of regulation have, at their core, an awareness of John Stewart Mill's Harm Principle which proposes that the only justification for preventing freedom of speech is the prevention of harm to an individual.[6]

For example, the Editors' Code of Practice in the UK is designed, not to prevent the press publishing varied and robust opinions, but to protect vulnerable individuals from genuine harm (be that through misrepresentation, intrusion or discrimination by newspapers or magazines).[7]

This form of regulation is based on Mill's premise that 'the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others'[8] and, provided his employer is actively observing the regulatory rules, the newspaper journalist will find his freedom of expression limited to this effect.

The Offence Principle

The Offence Principle, introduced in 1985 by Joel Feinberg, goes somewhat further than the Harm Principle in limiting freedom of expression. Whereas the Harm Principle refers to the interests of the individual affected by the journalist's conduct, the Offence Principle refers to the moral position or feelings of his audience, arguing that preventing serious offence is necessary and in the general interest of the community at large.[9]

The rules laid down by Ofcom's Broadcasting Code – which applies to all television and radio in the UK – appear to take the Offence Principle into greater account than the Editors' Code. Ofcom's Code states:

To ensure that generally accepted standards are applied to the content of television and radio services so as to provide adequate protection for members of the public from the inclusion in such services of harmful and/or offensive material.[10]

It could be said that, as a result of the above, UK broadcast journalists encounter more limitations on their freedom than print reporters on The Professional Level.

The Political Level contains numerous obstacles that limit freedom of expression for journalists. Reporters have to battle with the conflict between Article 8 and Article 10 of the European Convention on Human Rights[11]; libel law; Government secrecy on a local and central scale; laws preventing hate speech, court orders and restrictions; notions of social responsibility; and, in Britain at least, the Official Secrets Act.

The Political Level

Perhaps one of the strongest recent examples of limiting freedom of expression on The Political Level involved a global commodities company, a British national newspaper, a few thousand social networkers and an ambitious law firm.

In October 2009, The Guardian newspaper reported that a legal injunction applied for by libel lawyers Carter Ruck prevented it from covering a question put forward in Parliament (contrary to the long-established right of newspapers to act as the Fourth Estate and hold a mirror up to politicians). The newspaper complied with this injunction and neither named the questioner nor published the question.

Various bloggers speculated that the blocked question was likely to be linked to Trafigura's role in dumping toxic waste in Africa, and as the story was shared across the online community, 'Trafigura' became a trending topic on Twitter. When the order was lifted the following day, the newspaper confirmed that Trafigura was the source of the injunction.

Fantastic Own Goal

Alan Rusbridger, editor of The Guardian, described the injunction as "a fantastic own goal"[12] as, while it initially looked as if the injunction would protect Trafigura and keep its actions from public scrutiny, its mere existence piqued the interest of so many networked individuals that within a short space of time the relevant information was freely available in the public domain. The injunction became, to all intents and purposes, defunct.

However, the key point to remember is this: a legal order was put in place and the newspaper had no choice but to comply (albeit grudgingly). Without the persistence of citizen journalists and the immediacy of the internet, it could be argued that the injunction would not have been lifted just a matter of days after its existence came to light as was the case. Roger Silverstone reminds us:

It should not be forgotten that the media in many states in the world are still subject to the kind of political and cultural controls with inevitably, and by design, restrict, sometimes to the point of nullity, the possibilities of judgement and the freedom of speech.[13]

The fact remains that in any country – non-democratic or otherwise – The Political Level, in particular the law, has the potential to limit – or, indeed, remove altogether – a journalist's freedom to report what he wants, in the manner of his choosing.

There are many limitations on freedom of expression and every traditional journalist (as opposed to citizen journalists) around the world will see his output affected by at least one limiting factor at each of the three levels: Personal; Professional; and Political.

There is no doubt that completely free expression in the media is an ideal, rather than a reality, and precisely what is meant by a 'free press' is a matter that demands careful scrutiny. However, the real question is whether the acceptable journalism that emerges, having traversed the three layers of limitations that affect freedom of expression, accurately represents the original story.

By Rebecca Hales Polis Summer School, 2010

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[1] Freedom House, *Freedom of the Press Index*. 2010. See URL (accessed 15 July 2010)

<http://www.freedomhouse.org/template.cfm?page=16>

[2] In a survey of nearly 300 US journalists and news executives by the Pew Research Centre and the Columbia Journalism Review one-quarter of the local and national journalists claimed to have purposely avoided newsworthy stories. See URL (accessed 14 July 2010) <http://people-press.org/report/?pageid=219>

[3] Orwell, G. *The Freedom of the Press*. (Excerpt from the suppressed preface to *Animal Farm*; published 1972 in the *Times Literary Supplement*, also 1993, in the *Everyman's Library* edition of *Animal Farm*)

[4] Greenslade, R. *CNN fires journalist for tweeting her praise for Islamic cleric*. *The Guardian*, 8 July 2010. See URL (accessed 14 July 2010) <http://www.guardian.co.uk/media/greenslade/2010/jul/08/cnn-twitter>

[5] Nasr, O. *Nasr explains controversial tweet on Lebanese cleric*. *CNN*, 6 July 2010. See URL (accessed 14 July 2010) <http://news.blogs.cnn.com/2010/07/06/nasr-explains-controversial-tweet-on-lebanese-cleric/>

[6] Mill, J.S. *On Liberty*. Yale University Press, London. 2003.

[7] Editors' Code Committee. *Code of Practice*. Press Complaints Commission, 2009. See URL (accessed 15 July 2010) http://www.pcc.org.uk/assets/111/Code_A4_version_2009.pdf

[8] Mill, p 22

[9] Feinberg, J. *The Moral Limits of the Criminal Law, Vol 2: Offense to Others*. Oxford University Press, New York. 1985.

[10] Ofcom. *The Ofcom Broadcasting Code (revised edn 2009)*. See URL (accessed 14 July 2010) <http://stakeholders.ofcom.org.uk/binaries/broadcast/code09/bcode.pdf>

11 Article 8 provides a right to respect for one's 'private and family life, his home and his [correspondence](#)', subject to certain restrictions that are 'in accordance with law' and 'necessary in a democratic society'. Article 10, of course, relates to freedom of expression.

[12] Rusbridger, A. *The Trafigura fiasco tears up the textbook*. *The Guardian*, 14 October 2009. See URL (accessed 14 July 2010) <http://www.guardian.co.uk/commentisfree/libertycentral/2009/oct/14/trafigura-fiasco-tears-up-textbook>

[13] Silverstone, R. *Media and Morality: On the rise of the Mediapolis*. Polity Press, Cambridge. 2007. p 49

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