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Communication Freedoms versus Communication Rights: Discursive and Normative struggles within Civil Society and Beyond

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In this chapter, I aim to retrace the normative implications of historical and contemporary debates and struggles between discourses and activists aiming to protect press freedom and those advocating for the need of communication rights and media regulation. I will argue that this conflict can be related to distinct normative positions concerning the role of media and communication in a democratic society, and competing views as to the balance of power in society between market forces and the state.

Press freedom is very much part of a longstanding liberal model concerned with the tyranny of the state, while a communication rights agenda pertains more to a social responsibility and public sphere paradigm which emphasizes the need of state intervention. While one advocates the need to protect us from state intervention, the other precisely requires the state to intervene in order to guarantee certain rights. It was almost inevitable that these two perspectives would clash at some point, especially as the rights agenda was high-jacked by many authoritarian regimes to justify limits on press freedom.

I will address this tension in the context of three key-moments of contention, 1) the conflicts relating to UNESCO's MacBride Report (1980), 2) the conflicts in view of the final declaration of ITU's World Summit on the Information Society (WSIS) which was held in Geneva (2003) and Tunis (2005) and 3) the Leveson inquiry into the ethics of the UK press held in 2011-2012. In each of these cases advocates of press freedom clashed with proponents of communication rights.

Before addressing these cases, I will first present a brief theoretical framework, based on Berlin's distinction between negative and positive liberties, which will subsequently serve to contextualize the discursive and normative conflicts between communication freedoms and rights. By relating this conflict to these two competing forms of liberties, I aim to demonstrate how intra-civil society struggles are also instrumental in the ideological conflict resisting the regulation of media ownership and the imposition of democratic protections against the commercialization and commodification of the public space.

Negative and Positive Liberties

In his famous essay entitled 'Two Concepts of Liberty', Berlin (1958) deals with a set of inherent tensions, between: freedom and equality, a coercive and an emancipatory state, personal autonomy and collective endeavors. It concerns here, in other words, competing and intrinsically incompatible political ideas concerning freedom and rights.

The classic – and according to Berlin the preferred – way of conceptualizing liberty, is in negative terms; being free from coercion, reaching your full potential without the interference by external others. To be free is, in other words, to be a fully independent agent with total control over your own destiny. With reference to Mill's (1859) position, Berlin (1969 [1958]: 126-7 – emphasis in original) writes that '[t]he defense of liberty consists in the *negative* goal of warding off interference'. It is negative because it pleads for the absence of something – i.e. interference or coercion. From the perspective of negative freedom, state power should thus be limited to an absolute minimum; rather individuals need to be (legally) protected from state power. Berlin is, however, also critical of this classic position as it all too easily assumes that all coercion is necessarily evil and all non-interference is inherently good, which is not always the case.

The second, competing, conceptualization of freedom starts from a radically different premise, namely a sensitivity towards the conditions which determine the nature of our freedoms and a concern with collective rather than individualistic goals and values. Positive freedom implicates the common good and the development of a collective will through which the individual is supposedly able to achieve 'true' or 'genuine' self-determination. As Berlin (1969 [1958]: 132 – emphasis in original) explains:

The real self may be conceived as something wider than the individual [...], as a social *whole* of which the individual is an element or an aspect: a tribe, a race, a Church, a State, the great society of the living and the dead and the yet unborn. This entity is then identified as being the *true* self which, by imposing its collective, or *organic* single will upon its recalcitrant *members*, achieves its own, and therefore their, *higher* freedom.

Positive freedoms thus justify emancipatory interventions (by the state or a collective) to create the conditions for freedom and self-mastery through the provision of resources to citizens to fulfill their full potential and self-determination, such as free education, health care, welfare, or through guaranteeing equal opportunities for all.

As is already apparent in the quote above, Berlin was highly skeptical of positive freedoms especially due to the potential of abuse of state power in the name of a higher goal, using the Jacobin and Bolshevik revolutions as a case in point. As a result of this danger, he and many others with him, promote positive freedoms over and above negative ones.

It is, in my view, the perceived incommensurability between negative and positive freedoms that lies at the heart of the conflict between advocates of the protection of press freedom, which relates to negative freedom and those that advocate communication rights, which inevitably relies more on positive freedoms to establish and subsequently enforce rights. In what follows three cases where this tension came to a head will be addressed in more detail, first UNESCO's MacBride Report, second the UN's WSIS and lastly the Leveson Inquiry into media ethics in the UK.

UNESCO's MacBride-Report (1980)

In 1977, Amadu Mohtar M'Bow, UNESCO's Director-general at the time, tasked an *International Commission for the Study of Communication* to write a report on the emerging problems of new communication technologies and the impact of these on the already existing asymmetries between core, semi-periphery and periphery, to refer to Wallerstein's world system model, which was published a few years earlier (Wallerstein, 1974). While the appointment of the Commission was very much a means to appease the ideological confrontations and conflicts concerning information and communication between Western, Communist and non-aligned countries, the report it produced ended up exasperating them. The cold war was in full swing and information provision and communication infrastructures became unavoidably a focal point of contention.

The so-called MacBride report, named after the much respected chair of the Commission, Seán MacBride, an Irish journalist, human rights activist and politician, was in many ways an astonishing international document and statement; clear-cut and critical in its analysis and diagnosis, progressive and daring in its prognosis and proposed solutions. In the report, the authors took a critical stance against the devastating impact of marketization and they emphasized the social importance of communication. Communication was furthermore positioned as an unalienable human right. The idea of a right to communicate was originally proposed by Jean d'Arcy in an essay published in 1969 and the Commission appropriated it to extend communication freedoms beyond press freedom (MacBride, 2004 [1980]: 265). As one of the co-authors of the report put it later, 'the freedom of press (and freedom of

information) was enriched with the right to communicate, the right to accept and spread information and to be informed' (Osolnik, 2005: 8).

The Commission unequivocally sided with citizen interests and promoted above all democratic values. Exclusive and intrusive state control as well as oligopolistic corporate control of the media were considered equally problematic. The ever-increasing concentration of ownership and the emergence of powerful oligopolies in the media market were strongly condemned. Instead, communication was approached as a genuine two-way process rather than a one-way communication flow from top to bottom or from North to South. The many asymmetries between North and South were also highlighted as troublesome and in urgent need of redress. At the same time, it was also argued – in a nuanced way – that with (press) freedom comes responsibility:

Freedom without responsibility invites distortion and other abuses. But in the absence of freedom there can be no exercise of responsibility. The concept of freedom with responsibility necessarily includes a concern for professional ethics, demanding an equitable approach to events, situations or processes with due attention to their diverse aspects. (MacBride, 2004 [1980]: 261-2)

The Commission also proposed a set of recommendations which would lead to a New World Information and Communication Order (NWICO), a sort of third way *avant-la-lettre*, positioned in-between unbridled liberalism and monopolistic state ownership (Osolnik, 2005: 10).

At a general conference in Belgrade in October 1980 UNESCO agreed on a resolution spelling out the principles of NWICO, including the elimination of 'imbalances and inequalities' and of 'the negative effects of certain monopolies, public or private, and excessive concentrations' (UNESCO, 1980: 71). It goes without saying that the aftermath of this meeting, during which NWICO was approved, was marred by serious conflicts and had long-lasting repercussions. Probably the most spectacular of these was the withdrawal of the US and the UK (as well as Singapore) from UNESCO. However, less known are the fierce debates concerning the right to communicate and NWICO within civil society, mainly focusing on the tension between a negative freedom of the press and a communication rights agenda requiring positive freedoms to guarantee and protect these rights.

The World Press Freedom Committee¹ (WPFC), an international lobby group of editors and media owners specifically set-up to contest NWICO, was most vocal in opposing it. Bullen (1981: 9) wrote a highly skeptical piece on

UNESCO's Belgrade meeting in which she fundamentally contested the good intentions of NWICO:

the first principle is "elimination of imbalances and inequalities" in communication. There are lots of ways to take such words, whatever the merits of the case. One person's "inequality" may be another's "editorial freedom." Another principle suggested in the resolution is that the "freedom of journalists" is "inseparable from responsibility." But there are very different ideas of what "responsible" journalism is. In some countries, it's "responsible" to follow a story wherever it leads. In others, it's "responsible" to drop a story if it leads in the wrong direction.

Throughout Bullen's report of the Belgrade meeting, a sense of deep-seated distrust can be observed. While the MacBride Report was said to contain 'some good ideas, such as opposition to censorship and free access to news sources by journalists', overall it was considered to be a 'batch of mischievous proposals' (ibid) providing the intellectual justification for Communist and authoritarian regimes to impose limits on press freedom and on the activities of journalists; it was seen to promote the abuse of positive freedom to curtail negative freedom.

It is within this context that in May 1981, about 60 delegates to the *Voices of Freedom Conference of Independent News Media* and representing many regional and international journalism organisations, agreed on a strong statement to uphold an absolute negative press freedom, free from any form of state intervention. In their so-called the 'Declaration of Talloires' they pledged 'to expand the free flow of information worldwide'. They furthermore called upon 'UNESCO and other intergovernmental bodies to abandon attempts to regulate news content and formulate rules for the press'. A strong rejection of all forms of positive freedom was also adopted:

We believe that the state exists for the individual and has a duty to uphold individual rights. We believe that the ultimate definition of a free press lies not in the actions of governments or international bodies, but rather in the professionalism, vigor and courage of individual journalists. (Declaration of Talloires, 1981)

What is frightfully absent from these anti-NWICO discourses is a mentioning of potential issues regarding media ownership, concentration of ownership, commodification and the impact this has on the production of media content and on editorial freedom. The privileging of negative freedom over and above positive freedom in the context of information provision and communication implies an imaginary which considers 'free' and 'freedom' to be unavoidably and necessarily market-led, which is in itself never problematized or

considered potentially detrimental for democracy. This subsequently fed into a broader imaginary advocating the privatization and marketization of media and telecommunication, which became the new mantras of the 1990s. This neoliberal logic reduces the provision of information and communication to a mere commodity rather than a public service or a societal democratic good.

ITU's World Summit on the Information Society (2003-2005)

Fast forward to early 2000s. When it became clear that the asymmetrical introduction of the internet was re-enforcing old divides as well as producing new ones, the UN decided to act and called for a World Summit on the Information Society (WSIS) in order to address 'the whole range of relevant issues related to the information society' (UN, 2001: 1). Not UNESCO, but rather the ITU, was mandated by the General Assembly to organise and run the WSIS. This was a significant and telling choice. Raboy (2003: 110) observed that '[w]ithin the UNESCO logic, media are cultural institutions, part of the process of human development. Within the ITU logic, media are technical systems for information delivery'.

This choice did not mean that the cultural perspective was absent from the WSIS, on the contrary, but these tensions did inevitably lead to a clash between different visions or what could be called 'social imaginaries' of the internet (Mansell, 2012) and above all about what the role of the state should be within the information society.

In terms of process, an all-together different strategy was chosen compared to what UNESCO did in the 1980s. There was no appointed commission of wise grey-haired 'men', carefully gathering evidence and writing up an eloquent report, which would then provide the basis for debate and discussion. Instead, in true multi-stakeholder fashion, UN Resolution 56/183 encouraged 'intergovernmental organisations, including international and regional institutions, non-governmental organisations, civil society and the private sector to *contribute to, and actively participate in* the intergovernmental preparatory process of the Summit and the Summit itself'. (UN, 2001a: 2 – emphasis added).

The UN/ITU WSIS process and the invitation of civil society to actively participate in the preparatory process was perceived by some as a golden opportunity to revive the demand for the establishment and protection of a set of communication rights (Calabrese, 2004). By publishing the People's Communication Charter (PCC) some years earlier, Hamelink (1998) had

already prepared the ground for a return of a communication rights discourse into civil society discourse and the communication policy realm.

In view of the upcoming WSIS, the Communication Rights in the Information Society (CRIS) campaign was officially launched in November 2001 at the World Social Forum in Porto Alegre (Brazil) and the stated aim was to 'help build an information society based on principles of transparency, diversity, participation and social and economic justice, and inspired by equitable gender, cultural and regional perspectives'. It explicitly referred back to the MacBride-report by adopting the right to communicate as 'a means to enhance human rights and to strengthen the social, economic and regional perspectives', invoking positive freedoms (CRIS Mission Statement, 2001). This attempt to introduce a progressive and democratic agenda into the WSIS preparatory process was fiercely resisted, by market forces, obviously, but also by some State actors and by some civil society actors.

Regarding the latter, the World Press Freedom Committee (WPFC) voiced its continued opposition to this cheeky attempt to revive the MacBride legacy. In a rather blunt and strong-worded piece, the European Representative of the WPFC launched a personal attack on Hamelink and wrote:

No new rights are needed. Those who have advocated the "Right to Communicate" define it in terms that would legitimize censorship and other limits on the unrestricted practice of journalism. These advocates depict this "Right to Communicate" as a collective right that supersedes individual human rights and harks back to directly to the same proposals they made under the banner of the "New World Information and Communication Order". (Koven, 2003a: np)

In another piece, the same representative described the CRIS-campaign as 'radical' and its demands as 'extreme' (Koven, 2003b). The tainted baggage of the 1980s right to communicate debate was remobilised against the communication rights agenda proposed by the CRIS campaign in the framework of the WSIS – 'The bad new ideas are the bad old ideas. In some cases, they even are being pushed by the same people', Bullen (2003: 11) wrote. Besides the WPFC, the freedom of expression NGO Article XIX also reacted strongly against all attempts by civil society actors to articulate a set of communication rights for the information society. Unlike the WPFC, Article XIX did, however, acknowledge the value of communication rights, but it considered 'that there is the potential within the framework of existing rights to accommodate the legitimate claims made in the name of the right to communicate' (Mendel, 2003).

Just as was the case with NWICO in the 1980s, advocates of press freedom agreed on a declaration, this time arguing for a regulation-free internet, but also explicitly condemning all attempts to revive a communication rights agenda.

A number of proposals for regulation and controls now being made were made and rejected during past debate over now-discredited proposals for a “new world information and communication order.” There are clearly those at work who seek to revive and assert for their own purposes such restrictive proposals in the new guise of countering alleged threats and dangers posed by new communication technologies. These proposals must again be successfully resisted, just as they were earlier. (Statement of Vienna, 2002: point 9)

Despite all the efforts of communication rights activists to deny this, communication rights were positioned by the proponents of press freedom as a mere code word for censorship and the impositions of restrictions on the negative freedom of expression.

Yet again we can observe here a clash here between those fighting for a voluntaristic agenda through positive freedoms and those who approach freedom in a negative sense, i.e. the need to protect us all from state intervention, regardless of what that intervention aims to achieve. In other words, in both cases we see that a broader political struggle is being played out which crystalizes around communication and different conceptions of freedom and state intervention.

The UK’s Leveson Inquiry (2011-2012)

The two previous cases were situated at an international level of governance, whereas the case presented in this section relates to a national context. It could be argued that the tensions between positive and negative freedom become more concrete and real given in a national context, precisely because nation states have more leeway to actually implement binding (media and communication) regulation that is enforceable. At the national level the realm of the discursive can potentially have real and actual policy implications for the media organisations that operate there.

After it emerged that large parts of the British media had been using private detectives on a large scale to hack into mobile phones of celebrities, political elites, the royal family as well as ordinary citizens, including a murdered girl (Milly Dowler), the issue of media ethics, the lack of accountability of the media and media concentration propelled itself firmly onto the political

agenda in the UK. In order to address these issues the Prime Minister David Cameron, appointed Lord Justice Leveson to lead an inquiry into two parts. The first part, which concluded in 2012, was to investigate

the culture, practices and ethics of the press, including contacts between the press and politicians and the press and the police; it is to consider the extent to which the current regulatory regime has failed and whether there has been a failure to act upon any previous warnings about media misconduct. (Press Release, 14/09/2011)

The second part on the Inquiry, which is supposed to address the 'extent of unlawful and improper conduct' by several news organisations, including Rupert Murdoch's News International, still has to take place (criminal investigations are ongoing).

Essentially, the Leveson Inquiry amounted to a 'damning indictment' of the UK's news industry, as pointed out by Chris Blackburn, the editor of the Independent at the time (quoted in O'Carroll, 2012). Furthermore, the nature and extent of the unethical behaviour displayed by British journalists and editors also called into question the self-regulatory regime that was supposed to counter and prevent such behaviour in the first place. Overall, the Press Complaints Council (PCC) was seen to be weak, ineffective and in urgent need of reform. The broader question, however, was whether self-regulation was sufficient or whether there is a case for statutory regulation of the press, inevitably invoking positive freedoms. Leveson himself considered this question to be at the heart of his inquiry. When opening the hearings (on 14/11/2011), he explicitly referred to the importance of the watch dog role of the media, but he also asked the contentious question 'who guards the guardians?'.

Unsurprisingly, the most important recommendation of Leveson was a reform of the self-regulatory PCC, making it more independent from the media owners, but also giving it more teeth. In order to do so, Leveson controversially recommended that 'there should be legislation to underpin the independent self-regulatory system and facilitate its recognition in legal processes' (The Leveson Inquiry, 2012: 17). While Leveson pointed out that this could be done without needing to resort to a statutory regulation of the press, many journalists and commentators did read it in those terms (f.e. Hislop, 2012).

Besides the phone hacking scandal and ethical transgressions by journalists, Leveson was also tasked to investigate the high level of media concentration and lack of media pluralism in the UK (three companies control some 70% of

newspaper circulation²). However, unlike the very detailed and well-argued recommendations regarding a new framework for an independent press regulator, the recommendations relating to media plurality were rather vague. Despite this vagueness, he did conclude that a new method to measure media plurality was needed (The Leveson Inquiry, 2012: 30). The report also concluded that the threshold for concern in terms of the concentration of ownership should be lower in the media industry than is the case in other industries given the specific nature of media power in a democracy, but it refrained from recommending what this threshold should be.

Just as in the two other cases, we could observe a lot of activity within civil society to either support Leveson's recommendations or contest them vigorously. Regarding the former, an organisation called Hacked Off³ campaigned for an accountable press and made the implementation of Leveson's recommendations as its *raison d'être* (Cathcart, 2013). Hacked off received a lot of flak from right wing commentators and press freedom advocates for being an enemy of press freedom (Hislop, 2012). Besides this, because high profile celebrities keen on privacy protection were officially backing the campaign (f.e. Hugh Grant, Steve Coogan, J.K. Rowling, John Cleese, etc.), many critics framed Hacked Off as a toy in the hand of the powerful elites in their attempts to stop journalists reporting on them negatively.

The Media Reform Coalition is another organisation that was set-up in the wake of the Leveson Inquiry. It brings together civil society groups, academics and media campaigners and is committed to support media pluralism, defend ethical journalism and protect investigative and local journalism. This group was also virulently attacked by right wing commentators for being run by 'left wing academics' and being 'interventionist' (Gillian, 2013). The rightwing blogger Guido Fawkes called the 'Reclaim the Media' event, organized by the Media Reform Coalition, 'sinister' (Fawkes, 2014).

Besides journalists and right wing bloggers, several competing civil society organisations also rallied against Leveson and those who support his recommendations. The Freespeech Network, comprised of media owners, editors, publishers and advertisers and supported amongst others by the WPFC, was set-up in reaction against the Leveson Inquiry's recommendations and was very vocal in its derision of Leveson, denoting his recommendations as 'illiberal' and stating that '[t]he fallout from the Leveson Inquiry and report has left the British press facing the most substantial threat to its freedom in the modern era' (Anthony, et al., 2015: 16). Especially the establishment of a new self-regulatory independent body through a cross-party Royal Charter,

not dissimilar to how the BBC was established, was a point of contention. Article XIX refutes the claim that this body is self-regulatory and argued that it falls 'short of international standards to protect freedom of expression' (Article XIX, 2013).

Yet again in this case we see a similar expression of the long-standing conflicts emerging between those advocating for the negative freedom of the press and those fighting for positive freedoms to regulate media markets for example to promote ethical behaviour amongst journalists or enforce media plurality.

Conclusion

As I have argued in this chapter, the main reason for the lack of a viable middle ground between press freedom advocates and freedom of information activists lies in the incommensurability of negative and positive forms of freedom. Each attempt to posit positive freedoms in terms of media and communication is countered by accusations of infringement to the negative freedom of expression/the press. Incidentally, the discursive equation of freedom of speech with freedom of the press is telling in this regard. O'Neill argued some years ago to decouple both given the high degree of media power. The media, she said, 'while deeply preoccupied with others' untrustworthiness—have escaped demands for accountability'. Furthermore, 'freedom of the press does not also require a licence to deceive' (O'Neill, 2002).

At the same time, we can also observe a subtle and under-stated inter-twining between the arguments of negative press freedom with a neoliberal ideology and discourse which at a meta-level precisely justifies and hegemonises the superiority of negative freedoms over and above positive freedoms (Cammaerts, 2015). This then in turns justifies a withdrawal of the state and feeds arguments for very minimal and preferably no intervention at all. The result of all this is a normative gridlock, which makes it impossible to argue for a voluntaristic media policy agenda aimed at guaranteeing communication as a human right and the promotion of a pluralistic democratic mediated public space. From this neoliberal perspective, freedom is pitted against regulation as fundamentally incompatible.

Positioning public interventions into the media and communication 'industry' as antithetical to freedom and refusing any kind of regulation to protect the communication rights of citizens, suits a number of political and economic actors particularly well, hence the very active involvement of media

proprietors in these debates. Questions relating to the quality and ethics of the content produced by the capitalist 'free' media or important issues regarding the concentration of media ownership within but also across the different sectors of the media and communication industry are too easily swept aside by strongly worded arguments expressing negative freedoms when it comes to media and communication.

Overcoming this gridlock is not straightforward as press freedom and communication rights are both part of a human rights agenda and we also need to acknowledge the tensions between them. What might help, however, is articulating communication freedoms and communication rights as a productive dialectic between both negative and positive freedoms and their corresponding rights. Positive freedoms thus become essential to guarantee and underpin negative freedoms, especially if we acknowledge that a truly free press should not only protect us from abuses by the state, but crucially also from abuses by market-forces abiding by commercial interests and leading to serious unethical and anti-democratic behaviour by media elites. Seen from this perspective, public and democratic interventions in the media in order to ensure that media power is made accountable, is dispersed and fosters substantial increases in the quality of news provision to citizens become legitimate. As even Berlin (1969 [1958]: 124) pointed out:

[...] no man's activity is so completely private as never to obstruct the lives of others in any way. 'Freedom for the pike is death for the minnows'; the liberty of some must depend on the restraint of others.

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Short Bio:

Bart Cammaerts is associate professor in the Department of Media and Communications at the London School of Economics and Political Science (LSE). His research focuses on the relationship between media, communication and resistance with particular emphasis on media strategies of activists, representations of protest, alternative cultures and issues relating to media power, mediation and public-ness. He publishes widely and his most recent books include: *Youth Participation in Democratic Life: Stories of Hope and Disillusion* (co-authored with Michael Bruter, Shakuntala Banaji, Sarah Harrison and Nick Anstead, Palgrave MacMillan, 2015), and *Mediation and Protest Movements* (eds with Alice Matoni and Patrick McCurdy, Intellect, 2013).

Notes:

¹ In September 2009 The WPFC ceased to exist and it subsequently became part of the US-based NGO Freedom House

² News Corporation (Rupert Murdoch), Daily Mail and General Trust (Viscount Rothermere) and Trinity Mirror Group (based on figures of 2013, see Media Reform Coalition, 2014).

³ Hacked off established itself as an independent organisation in August of 2012, see: <http://mediastandardstrust.org/projects/hacked-off/>