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Paper No. 5
MEDIA ETHICS: OBEDIENCE TO THE UNENFORCEABLE

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Regional Seminar on Media Ethics
Kuala Lumpur, Malaysia
11-13 Sept. 2000
Media Ethics: Obedience to the Unenforceable

by

Venkat Iyer

It is said that "[w]riting about [media] ethics is the sort of martyristic foolishness which probably only the bold or the pompous should or would attempt." In venturing to discuss this topic at some length for the next couple of days, therefore, we are all consenting to take a risk which is by no means insubstantial. But it is, I believe, a risk worth taking, because no media practitioner can afford to ignore the ethical aspects of his professional obligations without seriously undermining his credibility.

The concept of media ethics is not always susceptible to a neat definition, although, in practice, it is not difficult to recognise what is meant by that term. Ethics, as we all know, is the science of morals, and morals are concerned with the distinction between right and wrong. In journalistic terms, the commonest manifestation of an ethical dilemma would involve competing claims between the public’s right to know about something, on the one hand, and a range of equally legitimate interests which society holds dear – e.g. an individual’s right to privacy – on the other.

Statutory v. voluntary regulation

Some societies have attempted to resolve such dilemmas through binding legal rules. Others have relied on voluntary self-regulation, believing that a set of statutory principles, powers and penalties might involve too heavy a cost in terms of freedom of expression. But self-regulation is by no means a guaranteed cure for the ills of bad journalism. Indeed, as one leading commentator has rightly pointed out,

"[F]or the argument against legal control to be valid, the [mechanism of self-regulation] must genuinely offer a speedy and effective remedy for distortion and inaccuracy. It must lay down authoritative principles on invasion of privacy and cheque-book journalism and the right of reply, and its principles must be respected and applied."

Not always have existing self-regulatory mechanisms lived up to those challenges. Many are perceived as lacking in teeth or being unduly restrictive in their mandate. Some are ineffective because they are inadequately resourced. Often, the regulatory body has poor public visibility, which results in its languishing in obscurity. Questions have also frequently been raised about the desirability of state sponsorship of, or state funding for, self-regulating mechanisms – a subject which has assumed growing importance in the context of certain recent developments touching press councils, to which I shall return later on.

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Public Cynicism

There is, understandably, a good deal of public cynicism generated by the very concept of self-regulation by journalists. Not only is the idea objected to on grounds of principle — viz. that it amounts to the media practitioner acting as a judge in his own cause — but it has also provoked criticism based on popular perceptions of the 'ethical journalist' as a contradiction in terms. Increasingly large numbers of people believe that the modern journalist is more concerned about 'getting the story' than about how he gets it. "Don't let the facts get in the way of a good story," they argue, has become the standard refrain in newsrooms around the world.

Even the most ardent defender of the press will find it difficult to deny that there is some truth in this criticism. In the United Kingdom, for example, the behaviour of some of the tabloid newspapers have won the entire British press a good deal of opprobrium over the years. In the opinion of two leading academics who have studied this subject at some length, the modern press in Britain is increasingly viewed by foreigners as "intrusive, offensive, quasi-pornographic, arrogant, inaccurate, salacious and unprincipled" — a view which is being endorsed by domestic readers as well. Particularly worrying to many has been the effect that the declining standards of the tabloids have had on the so-called 'quality' press, i.e. the broadsheets. These erstwhile pillars of respectability are, according to one influential commentator, no longer content to remain as by-standers as the tabloids "[push] the boundaries of acceptable taste further and further downward in the layers between the gutter and the sewer."

Such behaviour has often led to questions being asked about the industry's ability or wish to regulate itself. Politicians have been particularly scathing in their criticism. One former cabinet minister — whose own extra-curricular activities had been the subject of relentless front-page exposés in the tabloids — famously warned that the press was drinking in the 'Last Chance Saloon' and would, unless it cleaned up its act pretty quickly, soon find itself tethered by statutory regulation. In the event, that warning proved to be a hollow one, and it was business as usual for the press.

Interestingly, for all the public dissatisfaction with the British media, opinion polls have shown them in a much better light than the politicians who rail against them. A survey carried out in 1994 by the Times/Mirror Centre for the People and the Press (now the Pew Centre) revealed, for example, that television and newspapers in Britain enjoyed credibility ratings of 85 and 53 per cent respectively, in contrast to the 26 per cent enjoyed by politicians. The same survey also showed that as many as 64 per cent of the public still felt that the mass media were responsible for keeping British politicians honest.

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3 Hugh Stephenson and Michael Bromley, Sex, Lies and Democracy (London: Longman, 1998), at 1.
6 Frost, Media Ethics and Self-Regulation, supra note 1, at 24-25.
The case for the defence

On its part, the press has put forwarded a number of arguments in its defence. In the first place, it has pointed out that the shock horror tactics of the tabloids is hardly a new phenomenon. They have existed for decades and, as a recent book which cast a backward glance at the popular press over the last hundred years noted, there is little to distinguish many of the tabloid headlines and stories of today from those of their 19th century predecessors. Indeed, the attitude of newspaper proprietors of yesteryears to sensationalist journalism was pithily summed up in the following doggerel:

Tickle the public, make 'em grin
The more you tickle, the more you'll win;
Teach the public, you'll never get rich
You'll live like a beggar and die in a ditch.  

More seriously, the press has often argued that those who indulged in ritual condemnation of it for declining standards were barking up the wrong tree. A particularly unvarnished version of this argument was put forward by the now defunct Morning Post as far back as 1788:

Newspapers have long enough estranged themselves in a manner totally from the elegancies of literature, and dealt only in malice, or at least in the prattle of the day. On this head, however, newspapers are not much more to blame than their patrons, the public.

On the face of it, there is some truth in this argument, especially if you believe in the virtues of consumer choice. It is estimated that, in Britain, no fewer than 20 million people read one or more national tabloid newspaper per week, while the corresponding figure for the 'quality' press is a relatively modest 7.5 million. The argument has also been advanced that not all the ills of the new brash, sensationalist journalism can be laid at the doorstep of the press alone. "[M]any of the 'victims' of [press mistreatment] not only willingly collaborate in their own exposure, but often exist, to solicit it. Celebrity journalism would hardly flourish if there were not people deliberately seeking iconisation," goes the argument.

Which begs the age-old question: how far must the dictates of the market be allowed to determine questions of good taste and decency? There are many who argue that consumer power is perhaps the most effective antidote to media waywardness. This argument has found particular resonance in the United States, where state intervention has traditionally met with strong popular resistance. Consumer boycotts have consequently found greater favour with the American


Ibid., at 17.


Stephenson and Bromley, Sex, Lies and Democracy, supra note 3, at 2.

Ibid., at 6.

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people, on the principle that "if consumers stop consuming the media, or the products advertised in them, media owners will get the message."12

That view is, however, less popular in other parts of the world. The consensus of opinion in Europe, for example, seems to be that, while it would be arrogant to ignore consumer choice, reliance on the power of the purse alone is not enough to keep the media in check. European nations are, however, divided on the question of what shape the further sanctions should take. While countries like France have generally preferred to go down the statutory route, others like Britain have chosen to put their faith in self-regulation. (This is, of course, a broad generalisation: in actual fact, neither country has put all its eggs in one basket: the French National Union of Journalists has, for example, had a code of conduct for its members from as far back as 1918, and the British press has always been subject to a number of sanctions rooted in statutory or common law. Also, it is worth noting that radio and television in Britain are regulated by statutory bodies.13)

**Freedom of expression**

Those favouring self-regulation have usually justified it on the grounds that it is less damaging to freedom of expression than legal control. The more fair-minded among them have, however, conceded that self-regulation offers the media greater leeway for irresponsible behaviour, but that, they say, is a small price to pay for free speech. And as Lord Wakeham, the Chairman of the British Press Complaints Commission, has argued, "responsibility and good conduct stem from other sources than force of statute: from peer pressure; from example; from the moral authority of voluntary rules, freely agreed to and framed by those who are to be bound by them."14

But self-regulation can only work if certain pre-conditions are met. In the first place, there must be a culture of freedom in the society concerned. Secondly, there must be a willingness on the part of the media to heed criticism from their peers - in other words, a willingness to obey the unenforceable. Thirdly, there must be an enlightened public who are neither apathetic nor overly litigious. Fourthly, the system of self-regulation itself must command widespread public confidence. It should strike the right balance between incentives and sanctions for the media, and at the same time have a mandate that is manageable. One of the reasons why the Press Council in England, set up in 1953, failed was that it had been entrusted with the twin tasks of defending the freedom of the press and protecting the public from bad press practices - tasks which were seen by many to be mutually incompatible.15

(Consequently, the Press Complaints Commission, which was set up to replace the

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12 Claude-Jean Betrand, "Media quality control in the USA and Europe" in Stephenson and Bromley, ibid., at 118.
13 Radio and television are also subject to strict licensing control: anyone who wishes to start a broadcasting outfit must show that he is a 'fit and proper person' to obtain a licence from the Radio Authority or the Independent Television Commission, respectively. Complaints against radio and TV are adjudicated by the statutory Broadcasting Standards Commission.
15 See, e.g. Report of the Committee on Privacy and Related Matters (the 'Calcutt' Committee), Cmd 1102, HMSO, London.
Press Council in 1990, was given the mandate only to investigate complaints against
the press.)

The regulatory body must also be seen to be independent from government. In
particular, it should not be reliant on state funding. Very often, governments find
that some of the so-called self-regulatory mechanisms are an ideal instrument for
stifling freedom of expression because it relieves them of the need to do the dirty
work themselves. However, the mere fact that a mechanism is created by law need
not necessarily make it a stooge of the government. The Press Council of India, for
example, though a creature of statute, is seen by most observers as a fairly
independent body, although questions have been raised about the adequacy of the
level of its funding. Generally speaking, though, concerns are rife over regulatory
bodies that are dependent, whether wholly or in part, on state support or patronage.
This issue has figured quite prominently in the controversy surrounding the World
Association of Press Councils (WAPC), an umbrella body formed in 1992 amidst much
hope and promise, but which has, in recent years, seen the exit of two of its most
prominent members, namely, the British and Australian press councils.

One of the other reasons, incidentally, for the haemorrhaging of membership
within the WAPC has been an attempt on the part of the Association to formulate a
global press code and to establish a trans-national body to oversee its enforcement.
Such a code, it was feared, would “be used by authoritarian governments keen to
extinguish freedom of expression,” as the Chairman of the British Press Complaints
Commission put it. Those opposed to the idea also saw in it the ghost of an earlier
discredited plan to impose global standards for the press. As Paul McMasters, the US
First Amendment Ombudsman, pointed out:

Despite the proponents’ soothing words about voluntary participation
and non-governmental involvement, these proposals betray the same
animus towards Western-style reporting that produced UNESCO’s
‘new world information order’ two decades ago. Although that
disastrous policy was eventually rescinded, there are still nations
around the world that would like to find a way to control the
international press the same way they do their own.

I understand that the idea of a trans-national complaints mechanism has now
been jettisoned by the WAPC, but it will be interesting to see how the debate on the
global code of ethics progresses, because it is a matter that has profound implications
for journalists worldwide.

A panacea for all ills?

To get back to self-regulation, this concept obviously has its advantages, as
the experience of its use in different parts of the world has shown over the years.
But it would, I think, be optimistic to assume that it is a panacea for all the ills which
plague the world of the media, or that it can be used as a universal prescription.

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16 PCC Press Release, “Lord Wakeham announces the withdrawal of the PCC from the
17 Paul McMasters, “Shackling the world’s press with good intentions”, The freedom
Forum Online, 19 October 1998, accessible on the Internet at
Indeed, even in those countries which have a deep-rooted tradition of reliance on self-regulation, the results have often been mixed. In England, for example, it has not stopped the tabloid press from crossing the line between acceptable and unacceptable journalism, sometimes with serious consequences for the rights of the individual, and according to some commentators, even for the health of democracy itself.¹⁸

Conversely, it would be wrong to assume that legal or statutory regulation invariably results in the destruction of free speech. Again, the British example is noteworthy. Radio and television in the UK are, as I said earlier, subject to statutory control and, although this means that broadcasters face a tougher regime than their print media colleagues, few would seriously argue that it has stifled freedom of expression in the electronic media. But that happy experience, I must hasten to acknowledge, may have to do as much with other factors – such as the pragmatic approach adopted by those who run the regulatory regime, internal checks and balances, a high level of professionalism within the media, and a discerning, demanding, enlightened public – as with the type of the regulation. Indeed, I can myself think of several jurisdictions, including some liberal democracies, where statutory regulation, wrongly applied, has all but killed quality broadcasting.

What conclusions then can we draw from all this? Probably only that it would be foolhardy to assume that what works in one society would invariably work in another. Here, as elsewhere, the key to success lies, I suspect, in recognising the reality of diversity, whilst continuing to heed the lessons learnt from across cultural divides. I am sure this seminar will go a long way in facilitating that process of intellectual osmosis.