

MEDIA FREEDOM IN A LIBERAL-DEMOCRATIC SOUTH AFRICA

The three recognised pillars of a modern democracy are the executive, the legislature (Parliament, Congress) and the courts. To these must be added the fourth estate, the media. The media's traditional rôle is that of public informant and watch-dog over abuses of power in the other three estates.

In fulfilling their dual function, the media enjoy no special privileges over and above those of the individual in any society. Citizens of a free country have a right to know what is happening around them, to attend Parliament and the courts of law, to obtain information from officialdom, to find out how their taxes are being spent and to air their opinions without fear of retribution.

It follows that where the liberties of citizens in a country are restricted, the media will also be restricted. The freest media are bound to be found in countries where individual rights and freedom of speech are constitutionally protected. Sweden and the United States are two notable examples.

In South Africa, where the majority is subjugated by a minority, the limited degree of freedom permitted to citizens is reflected in the restrictions imposed upon the media. The right of some but not all citizens to comment and criticise is fairly well-established, but the ability of the media to disseminate information prejudicial to the interests of the ruling minority is severely limited. The media are allowed only as much freedom as is consonant with preserving the status quo, while the ruling party's tolerance of a certain amount of criticism enables it to claim that media freedom exists in South Africa.

The media in a liberal-democratic South Africa would reflect the degree of freedom permitted to individuals in that society, and would depend on the degree of protection afforded by the constitution and by the attitude of the elected legislature. In a healthy democracy there will always be tension between the media and the public authority. The public authority will try to prevent the media from revealing its inner workings and its failures. The media, for their part, are constantly looking into what public servants are doing and how they are doing it.

Most countries — including those behind the Iron Curtain — pay lip service to the ideal of media freedom, but few respect or tolerate media freedom in practice. In non-democratic societies, ownership of and control over the media vests in the central authority. The first country in the world to enshrine press freedom — in the true sense of the term — was Sweden in 1766. Sweden's current Freedom of the Press Act dates from 1949; it could well serve as a model for a liberal-democratic South Africa.

Sweden's Press Act:

- Forbids censorship of the press.
- Establishes the principle of the responsible publisher, liable for any violation of the law. No individual reporter may be held responsible for, or forced to disclose the

source of, any report. If a report contravenes the law, the responsible publisher alone is liable.

- Guarantees a citizen's free access to public documents, the only exceptions being documents relating to national security and foreign relations.

By introducing the concept of the "responsible publisher", Sweden has deliberately created a scapegoat, other than a reporter or informant, for breaches of the law. Protection is thereby extended to civil servants and others who leak information of public interests to a newspaper. While the law may protect an informant, however, it does not protect the publisher against infringement. The protection of anonymity may only be overruled in cases of national security or in criminal cases where, in the Court's opinion, there is an overriding public or private interest in the disclosure of a source.

Offences punishable under Sweden's Freedom of the Press Act include crimes against the State (high treason, incitement, conspiracy, sedition, etc.), libel and contempt of minority groups on grounds of race, colour, creed, etc. But criminal and civil law suits involving the media are rare. A prosecution of the media requires a decision by the Chancellor of Justice, and the case has to be tried by jury.

The rationale for Sweden's protection of sources and the protection of media from legal harassment is that the media — as the eyes and ears of the public — require the fullest possible insight into the operations of society.

Ownership of the media:

A liberal-democratic constitution would protect a citizen's right to publish and distribute printed matter, film or sound recordings and the like, subject only to the common and statute law. But it should also guard against an over-concentration of publications in too few hands. Even the most democratic countries regard monopolistic conditions in the media as undesirable. In most of these countries, in order to promote diversity, the State subsidises either the printed or electronic media or both, while leaving ownership and control of the media in independent hands. The essential aim should be to counteract concentration and encourage competition in a capital intensive and highly expensive industry.

In South Africa, ownership of the print media is concentrated, with few exceptions, in the hands of four large publishing groups, all of which are in white hands. Radio and television are owned and controlled by the State. If the needs of a liberal-democratic society are to be adequately served, the South African media will have to become more broadly based. Black-owned publications will need to be encouraged by means of establishment grants, by production subsidies to help the commercially disadvantaged or by tax concessions for publications in under-developed areas. Although it may be argued that subsidisation shores up the weak and discourages competitiveness and efficiency, it is difficult to envisage any other way

of promoting diversity in the print media.

Special attention will need to be given to radio and television, whose high costs militate against free entry and open competition. The broadcast media are also more dependent than newspapers on public finance, in the form of licence fees. Where governments are able to determine revenue levels, the media may be vulnerable to political influences.

In Britain, the concept of public financing of the broadcast media combined with independent management and public accountability has worked well. While the Government helps to fund and appoints the Chairman and Boards of both the BBC and IBA (Independent Broadcasting Authority), these bodies regard themselves as representatives primarily of the public. They bear sole responsibility for the editorial content of broadcast.

In Sweden, all radio and television programmes are broadcast by one of four subsidiaries of the Swedish Broadcasting Corporation, which is owned partly by private industry (10%), the press (20%) and popular movements (60%). Popular movements include the churches, consumer co-operatives, adult education groups and the trade union movement. Programming policy is determined by agreement between the government and the broadcasting companies and the programmes must be "impartial, balanced and calculated to satisfy a broad range of tastes". Here again, a Swedish-type model may be more appropriate for South Africa than the British or the commercially-orientated American system.

In common with other Western democracies, the US, Britain and Sweden enjoy high levels of education and literacy, established democratic procedures, an advanced economy and a reasonably fair distribution of wealth. In South Africa the situation is markedly different.

It is perhaps worth remarking here that media freedom is not good in itself; it has value only insofar as it upholds the interests of the society it serves.

Opinions will differ over the true interests of South African society and how the media should serve those interests. There is a school of thought which contends that develop-

ing countries — particularly in Africa — cannot afford the luxury of an inquisitive, adversarial press that holds African societies to liberal Western norms and standards. Some argue that unity is of overriding importance in any emergent African democracy, and that a temporary suspension of democratic values is justified in the early stages. Experience elsewhere in Africa, however, has shown that "development journalism" or "positive reporting only" have invariably resulted in "sunshine journalism", in which the media refrain from publishing what the authorities do not want published. The outcome is always an inadequately informed populace and an out-of-touch, unresponsive government.

Given South Africa's history, it is inevitable that any government in a transitional phase towards an open society will seek to keep control over the various competing economic and political forces. If control over resources is the essence of power in any society, it goes without saying that the State will insist on exercising a degree of control over the media. The media can expect to be curbed in the same way that individuals are curbed — from fomenting revolution, inflaming racial feelings, inciting violence or deliberately giving offence to ethnic or religious minorities. In principle, these restraints are defensible if they are approved by Parliament and applied even-handedly by independent courts, not the governing party.

In addition, it would be prudent for the media in a transitional society to regulate itself — as the press does now — by means of a media council and a code of conduct which holds the media to the highest professional standards in the reporting of racial, religious and other sensitive matters. The broadcast media should also be subject to the media code of conduct, which is not the case at present.

However much one may theorise about media freedom, in practice the media in a post-apartheid South Africa will be as free or unfree as the constitution and the law of the land allows. A truly democratic constitution which safeguards individual liberties, protects freedom of expression and entrenches the rule of law is essential if the media are to function effectively. □

(Discussion on this article will be welcomed — Editorial Board.)

by PETER VALE

INTEGRATION AND DISINTEGRATION IN SOUTHERN AFRICA

A College Lecture at the University of Natal, Pietermaritzburg.

Forty years ago in "Cry the Beloved Country", Alan Paton caught the dilemma of all South Africans with these words: "it is hard to be born a South African." If this article had a subtitle, it would paraphrase this famous statement thus: "It is as hard to be born a southern African."

The country of which Paton wrote, not unlike the South Africa of today, is riven with strife, anger and deep mistrust. It is also a curiously insular country: the narrative is as divorced from the world as it is from Africa. This does not mean that Paton was a parochial writer. Nor does it mean that the novel is not an African one. Rather, the book's

preoccupation is with the South African situation to the exclusion both of southern Africa and Africa within which apartheid plays out. [Paton was not a man without experience of a broader Africa. As the fine vignette, "Travels with my father" by Jonathan Paton¹ suggests, he was keenly interested in exploring the continent.]

But Alan Paton is not alone in his neglect of Africa. South African literature is largely devoid of an interest in the region and in Africa itself. In English there are some exceptions. Ezekiel Mphahlele's novel "Chirundu" is set in Zambia, and both Nadine Gordimer (Guest of Honour) and J. M. Coetzee (Waiting for the Barbarians) have written