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A Paper Given By

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One of the oldest myths about the press is that external restrictions, in particular legal constraints, define the limits of free speech and that, without imposed restrictions, free speech would be a ‘free for all’. Yet, for the responsible editor, the restrictions on free speech are societal as much as legalistic, criminal or civil. Such societal constraints (tending to ‘self-censorship’, if you like) are more to do with prior restraint for fear of consumer alienation than for fear of injunction or the risk of subsequent retribution in the courts. Legalistically, prior restraint can sometimes be a problem (most editors would argue against the ease with which injunctions can be obtained in this country). Broadcasters are particularly vulnerable, given the length of time and publicity attending the production process. But on the whole the editor thinks of legal restrictions in terms of the percentage probability of subsequent legal action.

There are many here who could recount fearful obstacles to free speech in the mountains of statute law. Many would attest that the last dozen pieces of legislation directly affecting the press have all diminished its freedom. But the obstacles are not always in the mountains – and I am going to start from perhaps the less obvious quicksands on the plains.

What I want to establish first is that the restrictions on free speech are by no means confined to legal considerations, and that the responsible editor has to seek a balance between his evaluation of the editorial need in the long-term public interest against his sense of social inhibition and his estimation of the risk of legal action – a triangle of factors rather than a simple boundary line. The question then is whether we have got the balance of factors right in this country, not for the good of the editor, but for the public he seeks to inform. For, as US Supreme Court Justice Felix Frankfurter put it, ‘free speech is not an end in itself but a means to the end of a free society.’

Let me look at the three sides of the triangle in turn: editorial need, social pressure, legal restraint. The easiest for the editor to handle is editorial need. It comes down to his evaluation of the long-term public good, driven by professional virility and a certain inevitability. His credibility will not withstand
the criticism that he has failed to publish important information or that he has failed to grapple with uncomfortable issues. Obviously this editorial drive is a positive force for publication. Social pressures on the other hand may be the reason for self-imposed restrictions on publication, often a negative force, albeit a proper one. Thus, the editor and his publication will be judged by a public some of whom have personal but limited knowledge of what is reported. If he fails to reflect what they know to be the situation which is within their experience, they are liable quickly to discount what he says about all those things beyond their horizon. What price the broadcaster or newspaperman who does not carry accounts of fearful events right outside their front door? Equally, the individual will cease to trust the publishing organisation if on the rare occasion that it has dealings with them, it lets them down. Credibility depends as much on fair dealing as it does upon fair description, yet the dictates of one sometimes conflict with the other.

Take consumer journalism, for example. To present an honest picture of a situation which puts the public at large in jeopardy, the journalist may well have to discomfort the individual transgressor beyond socially as well as legally acceptable limits. If he does a proper job of exposing the swindler running off with pensioners’ life savings, society applauds. But if his doughty investigative journalism is flawed or clumsy, society condemns him. For the editor is constantly accountable to society in the shape of his audience or his readership. He has influence (not ‘power’) only so far as he is trusted.

The ethics of the editorial process are rooted in the social morality of the day. Certainly that is the case with drawing the line on matters of taste, matters of sensitivity and so on. Yet, sometimes, it results in our sanitising the truth. Thus, we have never shown the worst pictures of the terrorist acts in Northern Ireland for fear of outraging sensitivities. Yet, if rather more of the film left on the cutting room floor (or the stills rejected by picture editors) showing what it is really like when a bomb goes off in a crowded bar or a soldier steps on a mine had been seen by the public on this side of the water, I wonder whether there would be so much apathy today about what is going on in that corner of the United Kingdom?

Without reliable, independent and courageous journalism in the face of societal pressures, the public is in danger of not being able to assess for itself the performance of authority (outside as well as inside the courts) or the need for legislation. These may be high-sounding claims for the press but, as with all freedoms, they presuppose a greater public good to be gained from the free exercise of controversial judgments as much by editors in their quasi-judicial fashion as by judges in the courts of the land. Editorial policies must be geared to

the principle that the voters have a right to know all the news that is fit to print and the right to decide for themselves what is right and what is wrong.

In this country, statutory law is concerned principally with defining what is unacceptable – where the freedom of behaviour has to stop. The mass media do not presume to make that definition, but they must patrol the whole frontier between that which might be lawful on the one hand and unlawful on the other. Often the boundary is not clear, but our role must be to present to the public as fully and honestly as we can all the information it needs, not only to determine its attitudes as to what authority judges right or wrong, but in the longer term to determine where the legal line should be drawn, where legislation is needed to delimit the activities of individuals.

On one thing I am sure we are all agreed – the law needs the media (providing you will all accept that dreadful word to encompass the press, radio and tv). Legislation is not enough in itself – laws do not just work on their own – legislators need to create such a climate of opinion that people first recognise the need and then accept the powers involved. In a divided, disrupted democratic society the task of the media is even greater. Furthermore, justice needs to be seen to be done, both if it is to be trusted and if it is to be a deterrent. Across the world, international law and Accords such as the Helsinki Agreements are themselves of little consequence without international knowledge. In totalitarian countries, it will generally be the pressure of international opinion rather than the letter of international law which curbs the worst excesses.

In democracies, where the four estates of the judiciary, the legislature, the executive and the media co-exist, inevitably there will be contradictions between their different imperatives. Bluntly, the proscriptions of the law do not always coincide with the responsibilities of the media. There is no question that the media must live by the democracy of which they are part. For one thing, however they are constituted, they are ultimately responsible to society. In the case of the BBC, it is constitutionally responsible to ‘the people in Parliament’. In other circumstances, it is the people in a free commercial market place – either they buy newspapers or they do not. And before one dismisses that as a base criterion, it is worth pointing out that saleability is linked to credibility. The BBC has no compunction in seeking to maximise its audiences for its serious informational programmes. We are proud that the External Services appear to attract the largest audience world-wide despite being a poor sixth in terms of hours broadcast – no question of gaining such an audience by taking the product down-market. None the less, if you lose your audience, for whatever reason, you cannot do the job of informing them – consumer alienation is a very real spectre for the editor, though
I grant consumer demand is also a positive force to publish and be damned!

Apart from the societal restraints I have been describing (the pressures to conform to social norms), in broadcasting we are constrained by constitutional arrangements on top of criminal and civil law, notably the BBC’s Charter and Licence and the Independent Broadcasting Act. The need for such instruments arose historically from the requirement to regulate limited resources, namely the electro-magnetic spectrum. But that reason is fast disappearing with the emergence of plural outlets in the electronic field. None the less, in the meantime, such constitutional restraints upon the broadcaster tend to overlap statutory law. And one must ask whether we need all these instruments.

Given the welter of statute law restraining the media, what happens? Often the law, particularly when it is archaic or unrealistic, is simply not invoked. Often the societal pressure to publish spurs the journalist knowingly to break the letter of the law.

Whereas the media cannot exist outside the law (at any rate not the mainstream media – there will always be underground alternative presses), the criteria whereby the media decide whether to publish will not always coincide with the dictates of the law, which is neither defined nor intended to describe the limits of what is publishable. In the vast majority of cases, editors draw the line well inside the law for societal reasons, including timidity. We do not publish a great many things which we might within the law of the land. For one thing, the responsible editor has to make choices between competing freedoms – the right of expression, the right of privacy and, in between, the right to know. Democracies with written constitutions tend to enshrine such rights so that they end up being weighed by the courts – vide the US and the First Amendment growth industry – but because, in this country, these are assumed rights, it is the editors who often end up having to weigh them against each other and against statutory legal limitations. Thus, in treating the most heinous events affecting and possibly threatening our democracy, the journalist may deem it necessary from time to time to step, often quite literally to go, outside the law to meet outlaws, to reflect what they are saying and to question their motives. Quite commonly a journalist will come across information in the course of his business that, if he were a private citizen, he would be compelled to pass on to the police. But as a journalist, if he is to protect his sources, and more particularly if he is to safeguard his credibility and continue to be able to cover what affects the public at large, it is necessary for him not to reveal his sources and not to pass on his information. In dealing with terrorists the journalist must also consider his personal safety and that of his family and colleagues. If he starts to volunteer information to the police about a terrorist with whom he has been in contact, he may put his own life and others’ in jeopardy.

On that point, whilst the wise editor does not obstruct the course of justice, he will always require the police to go through the proper process of subpoenaing either staff or material evidence if they are needed in court. He cannot break the trust of his sources, not even when he suspects they are outlaws. I say ‘suspect’ because it is often suggested to us that the media should treat, inter alia, paramilitary organisations and their spokesmen ‘for what they are – thugs, murderers, terrorists by any other name’. Whilst we must condition our approach to such people with due scepticism and we must couch our descriptions of what they do and say in appropriate terms, we cannot state explicitly such presumptions of guilt – we very soon find ourselves in court paying out large sums for defamation if we do!

It may also be necessary to demonstrate palpable illegality in order to bring to public attention situations previously unknown or where there is reluctance to take administrative decisions to use existing law to bring prosecutions. In two or three cases in Northern Ireland the BBC has gone out and filmed people in what was palpably an unlawful situation wearing masks, training paramilitary units with unregistered firearms etc., and threatening murder and assassination. We would do that in order to demonstrate the nature of their organisations. A good example was in the late summer of 1974 the paramilitary Ulster Volunteer Force (which was legal at the time) was known to various journalists to be training ‘commandos’ in South Armagh. Panorama wanted to film this activity and to interview and to question the people involved about their motives. The BBC believed it important to demonstrate to the public at large the threat to their security; but clearly the reporter and the film crew would run foul of the law in several respects. They would be present at an unlawful gathering of more than three persons at which there was a conspiracy to commit a serious crime. Their subjects would almost certainly be in breach of the Northern Ireland Emergency Provisions Act in that they were wearing hoods to conceal their identity. Instruction in the use of firearms is in breach of the same Act, and the firearms demonstrated were home-made and therefore almost certainly unregistered and held illegally. In all these respects the participants in the film were likely to be in breach of the law and the reporter and the film crew were likely to be accessories. The BBC was also technically at risk both in having prior knowledge and post facto with not reporting the event until after transmission. We also stood in risk of the Northern Ireland Prevention of Incitement to hatred Act, which makes it illegal to publish threatening matter with intent to stir up hatred against a section of the public on the grounds of religious belief, ethnic or national origins – although it is
worth noting that only one action has been brought under this Act in the 12 years since it has been on the statute book and that was against the utterer, not the publisher, and in the event the case was dismissed. Admittedly, it has always been reckoned that the need to prove intent would safeguard the publisher in such circumstances.

The editorial justification to film and transmit this film sequence lay at the time in the fact that the Ulster Volunteer Force was no longer an illegal organisation. The Secretary of State, Merlyn Rees, had de-proscribed it some five months earlier. Either the sequence illustrated common practice amongst the ranks of this organisation, or it illustrated the impression which these people, who identified themselves on the film as being ‘commanders’ in the UVF, chose to leave, knowing our cameras and microphones to be present. Thus it was essential that the introduction should make it plain that this might be a pseudo-event organised for the benefit of our cameras and also that the home-made submachine gun might not be a practical weapon. Our role was to put the evidence before the public for them to come to their own judgement. But as is so often the case, we felt that not to show such a sequence in a film all about various paramilitary activities was more dangerous than showing it, because not to show it could leave an unrealistic impression of the UVF as a benign organisation instead of one which, according to the evidence reaching us, was acting in a highly threatening manner. On the possible consequences of broadcasting such a sequence, it was obvious that the message would not be new to the Provisional IRA or to the Catholic population living in South Armagh. Much more likely was a Protestant reaction, including a rejection of some elements of the paramilitaries (possibly the UVF themselves) seen in such a bad light. Naturally we had to take precautions for our own immunity lest any of the participants were to be traced from the evidence of the film or questioning the BBC staff involved. To that end, it was important that the subjects were unrecognisable, even though they were breaking the law by wearing hoods etc. and our people were accessories.

There was in fact a twist to this story because, between the time we filmed the sequence and were due to transmit, there was a single day on which a number of bombings and shootings in Belfast for which the UVF claimed responsibility took the lives of a dozen people. Immediately the Secretary of State made the organisation illegal once again, confirming all the inferences drawn from the film, the sort of men involved and how they differ from other paramilitaries in that they are prepared to use acts of violence to achieve their aims. Clearly the sequence we had filmed illustrated one of the prime reasons for their being re-proscribed. The editorial justification had been altered but not diminished, and we became even more convinced that it was important to transmit the sequence, but clearly stating the date on which it had been filmed.

The BBC does not lightly disregard the letter of the law. But as a recent exchange of correspondence between the Attorney-General and the Chairman of the BBC confirmed, current Emergency (anti-terrorist) Provisions are incompatible with the role of the journalist in these areas – for they place a positive duty on every citizen to make over information which might lead to the apprehension of a terrorist.

On another occasion, early in 1977, the self-styled Irish National Liberation Army were going around claiming a dozen or so murders, mainly in South County Londonderry. The organisation had not been proscribed and the BBC decided to expose their activities, including an interview with one of their spokesmen to challenge their claims and motives. To protect the film crew it was made plain to the interviewee that it was up to him to take whatever steps he wished to remain anonymous, for it was likely that our people would be interrogated about what they saw. There was little public outcry about the messenger but the message got over and shortly afterwards the INLA was proscribed in Northern Ireland. Government ministers had no doubt the programme performed a valuable public service.

In both these cases involving terrorism, society was clearly behind the editorial decision to break the law for the greater public good. The BBC crews were duly interrogated by the police and, possibly because they provided nothing the police did not already know, no action was brought against the BBC.

But more frequently the editor finds himself working without societal support, often in situations where the line of the law is not so clear. Even when the editor is trying to stay clear, he is lucky to know where the line of the law is drawn. Often, to switch the analogy, he is sailing between legal shoals. Often he must risk going aground if he is to pursue the task society expects of him.

Compared with countries with written constitutions, the position of journalists in the UK can appear very daunting. In the USA, the First Amendment protects the journalist’s rights, but does not, of course, save him from having to defend them in court. It is a rich area for media lawyers. The legal position in this country is more complicated just because it is more defined – ‘gung-ho’ editors from the States whistl when they hear the list of Acts and common law that circumscribe press freedom here:

Broadcasting Acts
Copyright Acts
practical purposes, the broadcaster is often inhibited in the period after nomination from providing serious treatment of major candidates by the need to obtain waivers from frivolous candidates. Or any candidate, come to that. During the campaign for the European Parliament elections, one Tory candidate, comfortably ahead in the opinion polls, refused to participate in television programmes or to let her rivals do so without her.

Third, the BBC is constitutionally obliged to operate to editorial guidelines which go beyond the letter of this law. For example, the Representation of the People Act 1969 places no legal inhibition on broadcasts by a candidate’s spouse or other close relative, but the BBC could not mount any interviews with such persons which might give an electoral advantage to the candidate. It is also BBC policy, stemming from its Charter obligations, that before the ‘pending period’ begins, care must be taken not to build up any prospective candidate. These considerations are consistent with the spirit of the law, with the need to remain impartial and to avoid giving any candidate an electoral advantage but, once again, they illustrate the distinction between legal constraints and editorial restraint. The IBA, operating under a statute, is susceptible to legal restraints anyway. Thus we have already seen a case against one of the Independent companies in Scotland for failing to observe ‘due impartiality’ in their programmes during an election run-up.

Another statutory limitation is the Rehabilitation of Offenders Act 1974. Anyone whose offence is deemed, within the terms of the Act, to have been ‘spent’, must be treated as a person who has not been convicted of the offence concerned. From the point of view of the journalist, this means that if an offence falling within the terms of the Act (ie a sentence of up to 30 months) is mentioned in a programme, the complainant has certain protections additional to those which normally apply under the law of libel.

Thus, if a crooked businessman whose offence is ‘spent’ is back in business and cheating his clients or consumers of his product, the journalist doing a consumer piece, for example, is inhibited from exposing the individual except in respect of his current activities. Track records are out.

There are other areas when the law is of little help. One example is the Race Relations Act 1968. Racism is one of the editor’s prime areas of concern these days with racial issues assuming larger dimensions in more and more parts of the world. In dealing with such human rights questions, the responsible editor has to balance the need to tell the mass of the public the truth on the one hand, and risk affecting the situation by heightening racial tension on the other. How, for example, do you present speeches which might be held to incite racial hatred? The
onus of decision is very much on the editor. And the considerations are mostly societal. The Race Relations Act has proved singularly ineffective (and therefore provides scant guidance), partly because of the need to demonstrate motive in order to obtain convictions, partly because of the unwillingness to bring actions under this legislation (the recent prosecution of the ‘editor’ of Bulldog was remarkable for its singularity). Furthermore some of the most dangerous people are the most adept at avoiding public statements that put them outside this particular law. Witness previous failures to challenge in the courts the apparent racism of National Front spokesmen. I prefer to regard this as administrative tolerance in a country which has always up to now had the common sense to expose threats and not to sanctify them. But the law is of no help to the responsible editor in such cases.

Take the example of new, legitimate but extremist, political parties. The media’s responsibility may well be to publish just the most heinous things that the spokesmen for such parties are saying alongside their more normal political policies. If, because of fear of the law on the one hand or the consequences of publication inciting further trouble on the other, we were to publish only the most palatable things which extremists say, we would be guilty of leaving the public uninformed about the most undesirable and unacceptable aspects of their policies. So, because the manner of the speaker may be as menacing as his words, the BBC has put out recordings of one or two very frightening statements made on public platforms. Thus, after the death of a black immigrant in South East London, one white spokesman got up and said ‘one dead, and a million to go’ – a frightful statement which we published the way he said it. We do not do these things lightly or too frequently, but I am sure that in a democracy we must have the courage to tell the people the truth and all the truth about the most dangerous threats to that democracy.

Earlier I gave examples of situations in which the media may feel justified in fulfilling its obligations to put itself at risk under known laws. Unfortunately there are many areas where the law is ambiguous and editors are by no means clear as to where the line is drawn. The outstanding example is the Official Secrets Act 1911. Here the secrecy surrounding the categorisation of what is held to be an official secret means that authors and editors cannot get clear guidance as to what they should not publish for fear of prosecution. One classic case relates to the book, Beneath the City Streets, originally published in the late 1960s with no official objection, which gave details from publicly available sources of Britain’s plans for civil defence and emergency preparations in the event of a nuclear war. By 1976 the book was out of print and it was decided to publish a new edition. The author was advised by defence authorities that some 8,000 words offended against four ‘D’ Notices and were likely to be in breach of Section 2 – but no one in the Ministry of Defence, the Attorney-General’s Office, or the Home Office would tell the author which 8,000 words offended since to do so would be to give away the secrets! As Lord Goodman expressed it ‘the Official Secrets Act hangs over editors’ heads like the Sword of Damocles suspended by a very rusty chain.’

Where defamation is concerned, there is no defence of ‘fair reporting’ here as in America. Thus, the publisher can be sued for reporting an accusation which becomes (or has been) the subject of libel proceedings. Writs have been served on the BBC and newspapers in respect of their publication of allegations made by an MP of a company’s financial operations, and the BBC lost a High Court action in Dublin two years ago and paid out considerable damages in defamation following the dramatisation of the (verbatim) court proceedings against members of the IRA following the Herrera kidnapping. One of the accused made defamatory remarks in court about a Garda sergeant. Whilst contemporaneous reports of that remark carried privilege, the subsequent repeating of it in a television dramatisation, seen in the Republic only on an overspill basis, was not so protected.

There are many grey areas of the law, notably the Contempt of Court Act 1981. Editors’ anxieties have been well rehearsed elsewhere; no doubt they would fill a separate session. I am tempted to pass this by on the other side of the road, merely repeating a comment I made last year, that Lord Hailsham’s ‘little ewe lamb’ looks like providing juicy cuts for the lawyers for some time to come! But I must make one other comment. The recent case of Jack Lundin, the Observer reporter, illustrates the insecurity of the journalist seeking to protect his sources.

Lundin’s exposure of the Ladbrooke affair led to the prosecution of two Ladbrooke employees and eventually to the loss of the company’s gaming licences. He can be said therefore to have given considerable assistance to the cause of justice, but his reward was prosecution for contempt. He refused to disclose a source during the trial of a policeman on corruption charges arising out of the Ladbrooke scandal. The prosecution case against the policeman failed, but not, it appears, for want of the name of Lundin’s source. Nevertheless, the Attorney-General decided to charge Lundin under the old Contempt Act.

When the case came up, nine months later, the judges found that the question put to Lundin was not ‘necessary in the interests of justice’ and Lundin was acquitted. But one is left wondering how things would have turned out for him if he had been charged under Section 10 of the new Contempt Act of 1981. Although a person refusing to disclose a source is not prima facie guilty of contempt under this Act, he cannot claim protection if it can be ‘established to the
satisfaction of the court’ that disclosure is ‘in the interests of justice or national security or for the prevention of disorder or crime’. How will those phrases be applied in practice? Editors please stand in line to test it!

Finally, I will just mention one other nuisance area: The Criminal Libel Act 1843 (which includes blasphemy). As the principal criterion is the threat to order, truth is not a defence. Thus, the self-styled Bishop of Medway, Roger Gleave, attempted to bring an action for criminal libel against the journalists who exposed his activities. Fortunately, the Attorney-General prevented it from proceeding, but one must wonder whether this is not an archaic piece of legislation which would be best lost.

On top of the legislation there is the ‘quasi sub judice’ barrier. Some of the most difficult cases for editors relate to individuals who allege that they have been wronged, either by statutory authorities or by the forces of law and order. If a case has been formally brought, discussion of an allegation will be ruled out because it is sub judice. But there are other circumstances where an individual alleging wrongs seeks through publicity to draw attention to his case and, as happens quite frequently, seeks publicity at the same time as his case is being investigated. In cases where a police force is itself examining allegations against some of its own people the situation may be more difficult still.

For example, under the Emergency Provisions in Northern Ireland, where terrorist suspects can be taken in for interrogation for a period of up to seven days, there have been many cases where individuals have subsequently alleged maltreatment at the hands of their interrogators. All such allegations are investigated in the first instance by the Royal Ulster Constabulary and, if the Chief Constable concludes there is a possible case to answer, he passes the papers to the DPP. Unless the DPP brings a case the matter is not technically sub judice, although the police will always refuse to comment on a particular case once it is under their investigation. They are not of course debarred from making general comments of principle such as their not condoning the sorts of acts alleged, that they would fully investigate all complaints etc. Some people suggest that, when an individual alleges maltreatment during interrogation, the media should not publish these allegations until such time as the police’s own investigation or the legal process is complete. But such allegations will still be made and discussed locally whether the media publish them or not. Difficult though these decisions may be, editors take the view that they cannot be thus inhibited, nor get out of line with public concerns. They are well aware that, under the provisions for the no-jury courts in Northern Ireland trying terrorist offences, an individual may have a powerful motive for making allegations of maltreatment against the security forces. It is

well known that the Provisional IRA seeks to undermine the credibility of the judicial process and the Royal Ulster Constabulary. It is also recognised that the Diplock Courts depend very heavily upon confessions – evidence given by an individual which might be self-incriminating being admissible under the modified system, so long as it was not obtained under conditions of ‘torture, inhuman or degrading treatment’. Some 80 per cent of the convictions are made on the basis of confessions, so whether or not they were properly obtained is an absolutely crucial question.

I have no doubt that, if publication of allegations were withheld until the process of investigation or legal process were complete, one of two things would obtain: either a situation whereby, the allegations having been dismissed, the editor finds himself publishing allegations which fly in the face of judicial finding; or he ends up publishing only when the judicial process confirms the allegations put to him in the first place. And, given the tempo of the judicial process, many months are likely to elapse between the original events and the eventual finding. No journalist’s credibility would remain intact if he were to condition his decision to publish by the judicial process in that way. Journalistic decisions have to be made independently.

The BBC normally publishes allegations reaching us, either directly or indirectly through a recognised third party, such as a Member of Parliament, a priest, a lawyer etc., unless evidence that they are flawed or motivated is brought to our attention. When we do report allegations conveyed by Members of Parliament, lawyers or others, there is seldom any fuss – the third party whom we are reporting may get criticised but not us. In those circumstances rarely will we have checked out the basis for such allegations. In those cases when we do our own research and satisfy ourselves – if not that we know the full circumstances surrounding an allegation, at least that none of the circumstances of which we are aware demonstrates a flaw or a motivation which renders the allegation suspect – the irony is that we are much more likely to be criticised for ‘rocking the boat’ or ‘undermining the authority of the forces of law and order’.

I have great sympathy for those who struggle in situations such as Northern Ireland to pursue terrorists, very often known terrorists, under the rule of law. I am almost tempted to say ‘under the limitations of the rule of law’ because we have never had a State of Emergency in Northern Ireland. Under the Emergency Provisions the army and the police labour under the disadvantage that they have to proceed under the rule of law, only slightly amended for the emergency situation there. But the media’s role in the matter is by no means to undermine the authority of the security forces. It is to inform the public of what is going on
and to represent those members of the public who feel they are being misused by the forces of authority. Ultimately, I would argue that it is in the interests not only of the public at large but also those who have to administer law and order that their credibility should be tested. If allegations of maltreatment are made against the security forces, it is also vital for them that the circumstances are fully investigated, so that bad apples are rooted out of the barrel and the vast majority do not suffer under the calumny so easily cast by those who want to subvert their authority.

I have quoted Northern Ireland at length mainly because it illuminates the frontier between competing considerations in an area of the UK where the rule of law (and the credibility of the law as much as the media) is under threat both from subversives and the prolonged use of Emergency Powers to deal with them. When democracy does not exist at all or when the normal systems of democracy break down, so that even written Bills of Rights are derogated in more or less degree, the media’s role is more vital than ever. In situations of conflict and of deprivation, real or alleged, the wheels of democracy can quickly grind to a halt without the lubrication of knowledge. In so far as we provide that lubrication, I am sure that the media are essential. And if the media are to be trusted, they must be independent of, even if ultimately accountable to, the other elements of democracy.

Nor do I doubt that in Britain there is an overriding sense of fair play - the various elements of democracy do not pursue their roles to the exclusion of others. Yet, whilst there are the long-standing and wide-ranging presumptions of freedom in this country, the fact is that the plethora of proscriptions of the law that limit these freedoms are in many respects ambiguous and in others highly restrictive in the letter. It is a matter of record that such statutory provisions are seldom invoked to inhibit the proper activities of the media - even when journalists are imprisoned for contempt, having failed to reveal their sources, the sentence is regarded as token rather than punitive. But the fact remains that the media’s freedom in this country depends largely upon the benign administration of the laws as they stand. Whilst it says much for those who are responsible that they have generally drawn the line wisely, it is a sobering thought that in the wrong hands there are statutory instruments which could be used to restrict the activities of the free press very severely. That said, I confess to a depth of faith in the cussedness of the British people and their realisation that the ultimate safeguard against administrative excess lies in public opinion. Such is the interaction between the law, the media and the public. I suspect we are all here this weekend because we value that equilibrium above all else.