A Tradition of Sedition: Journalism for the Public Benefit

Jolyon Sykes
News Research Group, School of Professional Communication,
University of Canberra, Australia

Abstract

The public's right to know has become a mantra, repeated so often that communications commentators have come to believe it is so fundamental to a functioning democracy that it over-rides all other considerations. The principles espoused by John Milton in his Areopagitica, published in 1644 have been expanded from their original context – advocating the widespread distribution of knowledge and understanding – to justifying blatant invasions of privacy and the subsequent publication of defamatory material. Likewise, the principles formalized in the First Amendment to the US Constitution are used to justify baseless speculation, distortion and selective reporting, commentary and opinion.

This paper will provide a genealogy of advocacy journalism since the establishment of a mass media by the introduction of moveable type to the end of the eighteenth century, establishing an historical context for the beginnings of the modern concept of press freedom and thereby illuminating the constraints which that same historical context implies for journalism practice. I hope that this genealogy will make some aspects of journalists' current professional practice a little clearer. Just as a good understanding of media law enables journalists to resist self-censorship, an understanding of the historical context of their unwritten contract with society, or professional covenant, could assist more reflective journalists make decisions about their journalism practices. I believe this could lead to better journalism.

Models of professionalism

In earlier conference papers, JEA 2003 in Sydney and JEA 2004 in Suva, I canvassed the issue of journalism as a profession. I looked at various models arising from the sociology of the professions and tried to apply them to journalism. The trait model, in which a number of traits are designated as indicators of professional status and the subject occupation is then assessed as possessing those traits or not, has limited usefulness. The traits chosen are arbitary and can be selected according to the desired outcome, leading to a series of circular arguments around each.

Talcott Parson's functionalist model presented no such difficulty. Journalists do perform a worthwhile function in society, as spelled out in the preamble to the AJA Code of Ethics:

> Journalists describe society to itself. They convey information, ideas and opinions, a privileged role. They search, disclose, record, question, entertain, suggest and remember. They inform citizens and animate democracy. They give a practical form to freedom of expression.

Functionalism, however, is over-optimistic regarding outcomes. It assumes that society automatically rewards those who fulfil useful functions whereas, in fact, no such mechanism exists. In addition, the trait model and functionalism seem to ignore the historical factors that lead to certain occupations achieving professional status.

Moving on to Terrence Johnson's power model of the professions, I found other difficulties. Johnson believes that professions are organized to

exercise significant power in controlling the tension between the producers and the consumers of a service (1972:51). Historically, journalism has only rarely accepted the need for professional organizations with the ability to mediate the relationship with its audience, the consumers of what journalists produce, as do some established professions. It generally uses an industrial model to mediate the relationship with the media corporations, the employers, and then leaves them to shape the relationship with the consumer.

This has left most journalists powerless to control the manner of their practice – what they produce, how they produce it, and how it is delivered to the consumer. It has also left journalists largely unaccountable in a public sense. This is the hypocrisy that lies at the heart of journalism – journalists pride themselves on holding others to account but are not accountable in any meaningful way. I am therefore left with the conclusion that journalism is not a profession but this may not necessarily prevent individual journalists acting professionally, in the public benefit.

Journalism's Professional Covenant

Journalism's role of representing newsworthy events to the public places journalists in a privileged position in society, a position that, in turn, places a responsibility upon them. Expressions such as freedom of the press, the Fourth Estate, and the public's right to know reflect journalists' privileges and responsibilities, pointing to an unwritten agreement or covenant similar to that which underlies all professions – an obligation to the well-being of society, beyond commitments to employers and clients. Jim Platts, a University of Cambridge civil engineer, sees this covenant as central to professionalism: "It is the task of professional practice to keep the presence of a set of principles alive in society and to ensure they are embodied in society's thoughts and actions". Platts includes journalists as professionals, responsible for the quality of society's communication with and about itself (2003:5). Many journalists are aware of this covenant, and the difficulties it creates in balancing their responsibilities to their sources, their audiences and their employers.

There are indications that people whose stories become news believe that a covenant, or something very much like it, does exist. In other work, I have interviewed over forty people who have experienced a disaster, such as the murder or accidental death of a family member or a larger scale multi-victim disaster, and then became a source for journalists' reports. Overwhelmingly, their expectation is that the news media will report their stories accurately and with a minimum of baseless speculation or sensationalism.

Without the existence of this covenant, it is difficult to argue that the public's right to know gives journalists the right to decide which information will benefit the public and which will not; it is difficult to balance the public's – and the media corporation's – desire for intimate human interest stories against the source's need for privacy; and it is difficult to justify traditional roles of journalism such as holding the institutions of society to public account and advocating for a better society. This paper will take the existence of this professional covenant as a given.

The assertion that democracy implies a blanket freedom of the press does not provide guidance as to what it is free to do and what it is not. The public's right to know has become a mantra, repeated so often that communications commentators have come to believe it is so fundamental to a

functioning democracy that it over-rides all other considerations. The principles espoused by John Milton in his *Areopagitica,* published in 1644, have been expanded from their original context – advocating the widespread distribution of knowledge and understanding – to justifying blatant invasions of privacy and the subsequent publication of defamatory material. Likewise, the principles formalized in the First Amendment to the US Constitution are used to justify baseless speculation, distortion and selective reporting, commentary and opinion.

Ian Richards's recent comprehensive analysis of the state of journalism in Australia traces society's confusion over journalism ethics from the birth of journalism in the Enlightenment, through John Stuart Mill's libertarianism, to the present. Mill's concept of a free market place of ideas has itself been market tested and found wanting, leading slowly to a common acceptance, as Richards says, of journalism's social responsibility – at least as a desirable ideal. Richards rightly identifies social responsibility as the overarching journalistic ideal, corresponding roughly to that other ill-defined concept, journalism's Fourth Estate role (Richards 2005:1ff).

Sedition and the Journalism of Advocacy

Advocating for or against particular causes has long been an important part of journalism. In particular, journalism has played a pivotal role in advocating against oppression, in furthering the eternal struggle for forms of government more satisfactory to the governed, and in exploring the Enlightenment's conviction that the principles of beneficence can unite people in happiness and freedom. This science-based credo threatens and has always threatened existing institutions, based as they often are on property, power, inheritance and tradition. Advocating Enlightenment principles must therefore be seditious to some extent. The differences between sedition and the related offences of heresy, defamation and treason are, so far as those who offend in writing are concerned, minimal, depending mostly upon the nature of the governing power against which they are inciting discontent. To incite discontent against a religious power might be labelled heresy; against an individual, defamation; against a tyranny or oligarchy, treason; and against a representative government, sedition.

According to the Macquarie Dictionary, "sedition" is a word that has come to mean "incitement of discontent or rebellion against the government; action or language promoting such discontent or rebellion". This meaning has developed from Middle English, circa 1500AD, as the first printing presses were set up in England, when it meant "rebellious disorder" (Macquarie 1981:1558). This change, from the rebellious disorder itself to the mere incitement or promotion of discontent, is obviously legally significant but is also significant in that it reflects the development of advocacy journalism and acknowledges its ability to challenge and alter the way authority is expressed within a society. Journalism's success in advocating for a better society by inciting discontent has resulted in moving culpability from the perpetrators of rebellion to those who are arguing for change. Inciting discontent in 2006 has acquired the same *gravitas* as the rebellious disorder that might result from it had 500 years ago.

Humanist ideas concerning the role of education in moral development and government, developed during the Renaissance, combined with the power of the media that was demonstrated by the Reformation movement in the Christian Church to generate the resurgence of secular thought and

scientific analysis known as the Enlightenment. They also gave rise to a new form of journalism, advocacy journalism, that went beyond the retelling of news as parodied in Ben Jonson's *The Staple of News* (1626), where journalism was represented by four characters: Mirth, Tattle, Expectation and Censure. Advocacy journalism interprets the Humanist philosophy that people are capable of influencing and improving their governments and themselves. In the Enlightenment tradition, it advocates for particular causes or issues with certain specific intentions – improving some aspect of society, creating better forms of government, or assisting the moral development of individual citizens. In order to attempt to achieve these objectives, advocacy journalism has relied upon sedition and must continue to practice it in some form. Sedition is an essential component of society's continued progress.

Gutenberg and the Renaissance

By 1500, printing using Gutenberg's movable type had become well established in Europe, displacing the more labour intensive production methods of wooden page-blocks and hand copying. Businessmen like Vespaniano da Bisticci, who had employed scribes to produce books for libraries and who despised the new technology, had gone out of business (Man 2002:252–3). Taking the cost of typesetting into account, the new technology seems to have established an economically viable print run of 500 to 1,000 copies but, in order to sell or distribute this quantity of books into a largely illiterate market, the publisher, or stationer, required a network of agents to carry the title and to return the proceeds.

One who realised this, and possibly the first media tycoon, was Anton Koberger. He had two dozen presses, a hundred skilled operators and agents all over Europe. With this organization, he was able to reduce prices and increase print runs from around 200 to over 1,000. Like later publishers, he was socially ambitious, marrying an aristocrat and cultivating the upper classes (Man 2002:222). By the year 1500, approximately a thousand printing works in 236 towns across Europe employed 10–20,000 people (Man 2002:226–7).

The potential of this technology to influence political thought and shape future events was obvious and one reformist group, the Humanists, was quick to take advantage of it. In 1486 Pico della Mirandola published *Oration on the dignity of man,* arguing that people are moulded in God's image, possessing elements of divinity that individuals can either nurture or ignore, thus becoming as an angel or as a beast. Humanists believed that people have the ability to improve themselves and that proper education and training can help release this ability (Greengrass et al 1993:17). Concepts such as this, in combination with the ideas of the Reformation movement that followed, led to an increase in the influence of secular thought that became known as the Enlightenment and to the rise of advocacy journalism as practiced in the eighteenth century by people like Daniel Defoe, François-Marie Arouet (Voltaire), John Zenger, Tom Paine, the founding editor of *The Times* John Walter (Heren 1985:19), and in the nineteenth century by Thomas Cooper and William Hone, who successfully defended charges of sedition and blasphemy by claiming the journalist's right to free expression (E.B. 2004). All of these people and many others stood trial at some time for sedition or related offences.

A committed republican, Niccolo Machiavelli published *The Discourses* between 1513 and 1519, after the Florentine Republic was overthrown and

the Medici family reinstated, putting him out of work. *The Prince* was published posthumously in 1532 (Greengrass et al 1993:81). Machiavelli had held a high office in the Florentine Republic for nearly fifteen years, 1498 – 1512. An empirical commentator rather than a political scientist, Machiavelli drew on this experience in formulating his secular, humanist philosophy. He believed, as did other humanists, that people could influence and even improve their governments, that social change is cyclical, societies rising towards perfection and then decaying, and that representative government was more durable and satisfying to those governed by it than despotic government (Plamenatz 1962:57ff).

Machiavelli differed from the thinkers of his day in that he did not concern himself with the relationship between Church and State or, in medieval terms, between the Spiritual Power and the Temporal Power. In England, or rather Scotland, this relationship was stated towards the end of the 1500s by James VI of Scotland, later James I of England, in his *True Law of Free Monarchies.* James claimed absolute power, including the power to punish Members of Parliament for what they might say in debate (Plamenatz 1962:301). Machiavelli ignored this relationship, leaving the Spiritual Power out of his considerations as to what people desire or need from government and how to achieve it. His view was that government was stronger when citizens participated in the decision-making process. His model was Florence, which in 1494 had a population of 90,000, 3,200 of whom were citizens – artisans, rich merchants, small traders and people with an interest in good decision-making (Plamenatz 1962:36ff).

In order to participate, citizens must have the right to state their views, a right that is withdrawn as the participatory base for discussion narrows under an oligarchy and disappears under a tyranny. Under the mildly tyrannical rule of the Medici family, the right to state one's views, even in print, existed in some form, evidenced by the fact of Machiavelli's printed works, which were enormously influential during the Enlightenment. By the modern definition, these were seditious in that they incited discontent against the government but they fell short of actual rebellious disorder. Neither the Spiritual Power nor the Temporal Power had yet realized that Gutenberg's invention had made the link between incitement and rebellion – cause and effect – more direct. Machiavelli was punished for his views themselves, however, rather than for disseminating them; he never succeeded in securing government employment again, writing his four major works and a number of plays, short stories and comedies during a long enforced retirement (Greengrass et al 1993:81).

Before the mass media, difficult communication severely limited the physical size of a state embodying Machiavelli's ideal of participatory government. Gutenberg's innovation would enable informed participation by a vastly greater number of citizens, but when that was denied, it would also enable far more effective incitement of discontent. Generally, those so incited were those denied participation by the Spiritual or Temporal Powers.

Martin Luther's media campaign
Neither Pico della Mirandola, Niccolo Machiavelli nor any of their humanist contemporaries incited discontent to the extent achieved by an insignificant German monk and bible lecturer, Martin Luther. In 1515, while Machiavelli was writing his *Discourses*, Pope Leo X, who was a member of the Medici family, authorized the printing of an indulgence in order to raise money. An

indulgence, once duly paid, could save the purchaser the pain of purgatory and the printed slips of paper were retailed across the Holy Roman Empire. Many German Electors of the Holy Roman Empire resented the constant flow of funds to Rome that this trade generated, an example of the medieval conflict between Spiritual and Temporal Power. One of these was Luther's sovereign, the Elector Frederick the Wise of Saxony, who banned the sale of indulgences in Wittenberg, where Luther was teaching at the new University. To avoid the ban, an indulgence seller commenced operating just over the border, provoking Luther into making a formal complaint in the form of 95 theses, or propositions, covering a range of issues far wider than the sale of indulgences (Man 2002:264–9).

The story that Luther nailed the 95 theses to the wooden doors of the Wittenberg castle church on All Saints Day in 1517 may have been invented after his death. The forensic evidence, namely a few significant nail-holes, was destroyed in a fire in the nineteenth century. More importantly, the theses were leaked to an enterprising printer and appeared simultaneously in Leipzig, Basel, Nuremberg and, almost certainly, Wittenberg, conveniently translated from Latin into German. Luther's name became synonymous with incipient rebellion against the somewhat tenuous rule of Rome and with a new German nationalism. The details of the leak remain a mystery; Luther always professed surprise at the speed with which his cause became popular but historian John Man favours Luther's friend Hieronymus Schultze, the bishop of Brandenburg, as a likely culprit (Man 2002:268–72).

Luther continued his campaign against the sale of indulgences and other Church practices he considered corrupt and, predictably, the Church responded in defence of Papal authority. Luther refused to go to Rome to answer charges of heresy and Frederick the Wise refused orders to have him bound and taken there, offering him protection instead. German printing presses, the media of the day, became a vital part of Luther's campaign, producing hundreds of thousands of pamphlets, so-called *Flugschriften* or flying writing, containing his sermons and tracts – the forerunner of the modern flyer. The financing and organizing of this is outside the scope of this paper but its size and effectiveness is not. To quote Man: "At least two of Luther's sermons ran through twenty editions in two or three years. According to one estimate, a third of all books printed in Germany between 1518 and 1525 were by him." His manifesto, *Address to the Christian Nobility of the German Nation,* appeared on 18th August 1519 and sold 4,000 copies in Wittenberg alone, making the printers rich, and subsequent editions continued to sell over the next three years (Man 2002:273–6).

The Church excommunicated him in January 1521, after he supervised the burning of the *Canon Law* in Wittenberg. As this document represented the laws of the Church, its burning was closer to rebellious disorder than merely inciting discontent. The final confrontation took place a few months later in the bishop's palace at Worms, where the people welcomed him ecstatically and his books were piled high in the shops; posters banning them had served merely to boost sales. The edict confirmed the ban, declared him an outlaw, and also forbade defamation. As an outlaw, his movements were curtailed but this had little effect on the campaign. The edict against defamation soon backfired. It had not limited defamation to criticism of the Church or its officials and pro-Luther authorities in Strasbourg seized a book by a satirist opponent of Luther (Man 2002:277–81). It is ironic that in this

highly successful media campaign, Luther and his followers employed two of the tactics often used to suppress such campaigns – book burning and labelling satirical comment as defamation. Nevertheless, it was Luther who helped establish the precedents that were to be followed by many authoritarian regimes.

Luther went into hiding, translating the New Testament of the Bible into German in 1522 and the Old in 1524. He deliberately chose language that all Germans would understand regardless of dialect. His Bible spoke directly to the people in their own language and remains a model of comprehensibility. His reformist ideas served as a model in other countries for opposition to the Pope and the rule of the Emperor, promoting notions of sovereignty and national identity. By the time of his death, his Reformation had spread into every country in Northern Europe under leaders such as Calvin in France, Zwingli in Switzerland, and Knox in Scotland (Man 2002:282). It remains an exemplar of a successful political mass media campaign and had far-reaching effects on the Christian Church and, indirectly, on national identities and medieval concepts of sovereignty.

The Reformation in England

In England, the use of printing to promote a political cause was not yet so advanced. In 1471, at about the same time as Edward IV was crowned after the brief reign of Henry VI during the Wars of the Roses, diplomat and cloth merchant William Caxton bought a press and employed a German assistant, Wynken de Worde, to produce the first printed book in English, Caxton's own history of Troy. This was probably in Cologne, and he may have been testing the commercial possibilities of publishing in English. A few years later, in 1476, he arrived in London with a printing press. The hundred titles he produced included Chaucer's *Canterbury Tales* (1477, 1483) and showed him to be motivated more by literary ideals than political (Greengrass 1993:205; Man 2002:243–4).

These were dangerous times; England was a feudal oligarchy in which Parliament had become almost irrelevant (Blake 1982:92). In 1483, after Edward IV died, the child Edward V and his brother were killed, probably by their uncle, who became Richard III. Within two years, Richard III was in turn defeated and killed at Bosworth by Henry VII, who ruled until 1509. There seems little evidence that Edward IV used his friendship with Caxton or other printers to advance his cause in the Wars of the Roses and without the media, the general population did not become engaged. It was a war fought by the nobility to rid itself of an incompetent monarch, Henry VI (Blake 1982:71–2). After Henry VII managed to get the crown's finances in order, and to dispose of rival claims to the throne, the humanist movement flourished in England for the last fifteen years of his reign (Greengrass 1993:206).

Henry VIII, seventeen years old, was initially welcomed by Thomas More, then a Member of Parliament, as one who would reverse some of the policies of his father, especially the taxation of the nobility (Starkey 1991:37). Instead, Henry would change England radically and irrevocably, revive the power of Parliament, redistribute the assets of the monasteries, and isolate the country from the rest of European culture (Blake 1982:92). For the purposes of this paper, I will now look at the course of the Reformation in England under the Tudors and their cousins, the Stewarts.

The Reformation arrived in England in the person of William Tyndale, an anti-corruption reformist in the tradition of John Wycliffe and the Lollards of

the previous century. After permission to do so was refused by the Bishop of London, he had his English translation of the New Testament printed in Worms and smuggled into England. Humphrey Monmouth, a wealthy merchant, distributed the first 3,000 copies, printed on octavo-sized paper for ease of smuggling. The motive was to bring about the reform of the Roman Catholic Church in England, a public benefit rather than a monetary profit. Tyndale's retail price was four shillings, perhaps six weeks' wages, while the hand-copied versions (in Latin or Greek) cost 150 times that sum. This form of heresy was more akin to sedition, as an English bible would reduce the power of the priests and incite discontent against the Spiritual Power. It was also risky; Monmouth was arrested and two of his agents, Robert Necton of Norwich and William Garrard of Oxford were executed. The Bishop of London helped sales – and publicized the cause – by burning hundreds of copies; the Tyndale New Testament sold 18,000 copies over six editions (Man 2002:285ff).

It drew sharp criticism from Thomas More, by this time Henry's Master of Requests and a member of the Privy Chamber, who published *Dialogue* in 1528, directed mainly against Tyndale. More's *Utopia* had been published in Latin twelve years earlier when he was a Member of Parliament. Its hero, searching for the best form of government, hears that in Utopia (no-where land), communism (from the Latin *communis,* the same word from which House of Commons derives) or communal ownership of property is the general law, the education of men and women equally is a national responsibility, and all religions are tolerated. An English translation was not published until 1551, during the slightly less tyrannical reign of Edward VI, the son of Henry VIII and Jane Seymour. From a journalism point of view, More's account of the murder of the two princes in the tower, also not published till 1543, is also interesting as it was probably based on a reliable source, Cardinal Morton, in whose household he lived less than ten years after the murders (Drabble 1995:678).

More and Tyndale kept up a lively exchange of views through pamphlets and more direct correspondence and one is tempted to believe these two educated protagonists believed they could settle their differences in debate and were looking forward to doing so. Such was not to be; sedition was not to be tolerated by either side. More was executed for high treason in 1535, the same year that Tyndale, working on the Old Testament in the Netherlands, was captured by imperial agents, imprisoned and executed for heresy (Drabble 1995:678, 1021 and 1029). More's crime was that he refused to acknowledge the English government's, effectively Henry's, sovereignty in England, maintaining that the Pope had ultimate authority. The idea that a government, even an oligarchy or dictatorship, has sovereignty within its borders is now taken for granted. Machiavelli had also assumed it but, to More, the Spiritual Power held sway over the Temporal.

On or about the 25th January 1533, Anne Boleyn, pregnant, and Henry VIII were secretly married (Starkey 1991:106). Educated in France, Anne was an Evangelical, a believer in the Reformation and that the scriptures themselves, rather than priestly interpretations, were the word of God. She arranged for the importation of Bibles in English, probably Tyndale's New Testament, and helped to promote Thomas Cranmer to Archbishop of Canterbury, where he remained until condemned to death for heresy in 1556 during the reign of Henry's daughter Mary – an Evangelical to the end and yet

another punished for promoting discontent against his government (Starkey 1991:92).

The effect of Henry VIII's erratic and profligate rule, so far as Parliament was concerned, was to greatly enhance its power. He needed the consensus of Parliament; he encouraged it to exercise powers previously allowed to atrophy and it became his willing accomplice as he removed papal supremacy, dissolved the monasteries and confiscated their property. It financed his debts and his wars and helped him deprive his opponents of their lands and their lives (Blake 1982:92-3). Henry died at 2.00 a.m. on 28th January 1547 but the powers and precedents his despotic rule bequeathed to Parliament would, ironically, provide a firm basis for constitutional, representative and even participatory democracy.

The Enlightenment and English Journalism

One of the members of Elizabeth I's House of Commons, Francis Bacon (1561–1626) drew together many of the threads of Humanism, the Renaissance and the Reformation into what became known as the Enlightenment. His work, including *The Advancement of Learning* (1605) and his unfinished *New Atlantis* (after More's *Utopia*) foreshadowed the work of the great scientists and philosophers of the seventeenth century – Thomas Hobbes, Isaac Newton, Robert Boyle and John Locke – and influenced them profoundly (Drabble 1995:57–8, Greengrass 1993:219).

John Milton was diverted from his original intention of becoming a clergyman by the political events surrounding the English Civil War, which followed Charles I's refusal to cede further powers to Parliament. Milton had published a series of pamphlets opposing the dominance of bishops in the governance of the Church and, in 1643, separated from his wife by her family's Royalist sympathies, he produced four more on the subject of divorce. *Of Education* and *Areopagitica,* his defence of press freedom, appeared in 1644. *Eikon Basilike* (Royal Image) purporting to be Charles I's personal thoughts, appeared at about the same time as Charles's execution, 30th January 1649 and became so popular that Parliament commissioned Milton to write a reply. His *Eikonoklastes* (Image-breaker) was later banned when Charles II was restored to the throne in 1660. Milton was arrested after the Restoration but released with a fine when two of his friends interceded (Drabble 1995:313 and 662).

Most of the political aims of Parliament were conceded by Charles I to the Long Parliament by September 1641. The problem was that Members of Parliament did not trust the King not to go back on his word as he had earlier, after agreeing to the 1628 Bill of Right. Rather than rule themselves, they wanted to make it impossible for the king to rule badly. Charles refused their nineteen propositions, which would have put Parliament in control of all executive positions, in June 1642 and proceeded to raise an army. These were additional demands; the measures already agreed were sufficient to ensure that England could never again be ruled without parliamentary agreement. Among them was the abolition of the prerogative courts, including the Court of Star Chamber (Plamenatz 1992:303–7).

The Stationers' Company, established by Mary Tudor, had continued as part of the activities of the Star Chamber under Elizabeth, James I and Charles I, but Parliament now took over its censorship (or prior restraint) function and made an order to that effect in 1643. *Areopagitica* was based on an argument Milton put to the Long Parliament not to exercise this power so

as to inhibit the flow of information and knowledge. Truth is stronger than falsehood, he argued, and a "gross conforming stupidity" more to be feared than new opinions. He made three main points: licensing was practiced by the Papacy and the Inquisition whereas Protestants require freedom in the pursuit of learning; reading widely, testing knowledge and diversity of opinion are necessary for the growth of virtue and knowledge; and attempting to keep out evil by licensing was like trying to "pound up the crows by shutting the park gate" (Drabble 1995:40).

So far as political pamphleteering was concerned, Milton's appeal was irrelevant. Parliamentary abolition of the Star Chamber had already ushered in the age of the pamphlet, the number published rising from 22 in 1640 to 1,996 in 1642, well before *Areopagitica* (Briggs 1994:148). Parliament's order to "pound up the crows" would have been too late to reverse their flight. When the monarchy was restored, Parliament delegated its censorship function back to the crown, an arrangement that persisted for thirty years when, after the bloodless coup of 1688 and the publication of John Locke's two *Treatises on Government* in 1690, Parliament failed to renew the enabling legislation and brought prior restraint in England officially to an end (Knowlton 1997:40).

In 1644, Milton was an Anglican addressing an Anglican parliament and exempted "tolerated Popery" from the flow of information. It has been argued (e.g. Knowlton 1997:17) that this shows his religious intolerance but it is more likely to reflect the Reformation's idea of sovereignty and the humanist idea of participatory government. If Catholics owe allegiance to a foreign power, their stake in good decision-making by an English government is reduced, and therefore the information and knowledge they wish to distribute is less relevant to England and its government. From this, it also follows that Milton was primarily concerned with informing those citizens with a stake in good decision-making by government, rather than in a general public right to know. If this interpretation of Milton's *Areopagitica* is correct, it was reinforced by James Harrington's and John Locke's ideas regarding obtaining society's consent to be governed.

Milton was not calling for a free press in the sense today demanded by some journalists and media proprietors. His press freedom is heavily qualified by citizenship, and by the public benefit that might derive from the dissemination of information, informed opinion – and even sedition.

The Levellers and their Legacy

The period between Oliver Cromwell's death on 3rd September 1658 and Charles II's return to London on 29th May 1660 was one of intense debate over the future government of England. Absolute or limited monarchy, democracy, republicanism, religious tolerance or uniformity, a written constitution, changes in the distribution of wealth – all had their advocates and all advocates had developed and sharpened their rhetorical and pamphleteering skills since the end of the Civil War. One such was James Harrington, a Member of Parliament, who had published *The Commonwealth of Oceana* a few years earlier. Cromwell had disliked the book for much the same reason that Luther disliked Machiavelli's – its secular analysis (Plamenatz 1992:316–7). He had allowed its printing, however, saying "Let him have his book. If my Government is made to stand, it has nothing to fear from paper shot" (Lloyd 1988:8).

Harrington now founded the Rota, the first coffee-house academy for political discussion, and the model for many others. His ideas were prominent

among those proposed to cure the country's ills, as were similar republican ideas proposed by the Levellers. Originating during debates held by soldiers of the New Model Army at Putnam in 1647, the Levellers remained important, despite Cromwell's attempt to suppress them, because they were an important faction in the army, which in turn had significant power in Parliament. In the Parliament of 1659, there were at least fifty convinced republicans, ten of whom were disciples of Harrington. As the tide turned and the restoration of the Stuarts became inevitable, the Rota Club stopped meeting and Harrington stopped campaigning and printing pamphlets. He was imprisoned after the Restoration for plotting to abolish the monarchy but was never brought to trial (Briggs 1994:157; Plamenatz 1992:318). There is no doubt he was guilty of inciting discontent against the government, and probably action or language promoting discontent. He believed the situation demanded sedition and so he provided it.

The idea that governments govern with the consent of the governed, the so-called social contract, originated with the medieval idea that the general acceptance of customary practices implies popular consent to the temporal power (Plamenatz 1992:216). In Harrington's time, before Locke, it had been stated somewhat pessimistically by Thomas Hobbs, whose *Leviathan* (1651) argued that people consented to the constraints of organized society because life in accord with human nature was "solitary, poor, nasty, brutish and short". The survival of society is vital to individual survival, justifying the loss of many natural rights (Knowlton 1997:10–11). Harrington and the Levellers were the first to address the issue of how the consent of the ruled should be obtained. They believed that, for a government to act truly in a national interest, every man who is his own master should have the vote and proposed a system of secret ballots and electoral colleges, together with elaborate checks and balances – rather than strict separation of powers – all bound up in a written constitution that would be superior to ordinary law. They thought that the doctrine of separation of powers led to factionalism and ultimately to conflict, such as the one they had just lived through. Constitutional checks and balances would demand co-operation and compromise. As constitutions came to be written for the new American colonies a hundred years later, their writers turned to the England of Milton, Cromwell and Harrington, 1642 to 1660, rather than the England after the revolution of 1688, for inspiration (Plamenatz 1992:322–330). When the constitution of the United States was first drafted, it failed to recognize the importance of informed comment, advocacy and sedition in retaining the consent of the governed, even in a participatory democracy with the widest possible suffrage, and this had to be remedied by the First Amendment as part of securing the endorsement of the colonies.

Sedition and the rise of Popular Journalism

In the course of the eighteenth century, the pamphlets and coffee shops gave way to the regular publication of magazines and newspapers. On the other side of the Atlantic, British colonial rule was eventually replaced by constitutional government. Advocacy journalism continued to assert the rights of citizens, and even those of minority groups, against the interests of their governments, which retaliated using the laws of sedition and libel. Many journalists and opinion-makers inciting discontent against the governments in England and in the American colonies did so with impunity, others were not so lucky and fell victim to the arbitrary nature of the civil and criminal law. It was the use of legal sanctions of this kind that kindled popular support for the first

ten amendments to the US Constitution known as the US Bill of Rights, which became law in December 1791, four years after the original was signed by George Washington and the twelve state delegates. Popular support for these measures was expressed during debates in the state congresses held to ratify the Constitution. Even with the passage of the amendments, the battle was not over and probably never will be.

One of those who became a victim in the early part of this struggle was Daniel Defoe (1660–1731) but he probably would not have seen it that way. Daniel Foe was 24 years old when he joined Monmouth's rebellion against the succession of James II after Charles II died in 1685. He escaped the vengeance of Judge Jeffries, who executed three of his ex-fellow students of Morton's Academy for Dissenters at Newington Green, by going to Spain and Portugal on business and changing his name from Foe to Defoe. In 1688, he joined William III's forces as they advanced towards England and was a supporter of the consequent 1689 Bill of Rights, from which the US Constitution derived a hundred years later. His first important work, *Essay on Projects* (1697) was written when he was in financial difficulties and included suggestions on a multitude of public issues, demonstrating his concern for the well-being of the nation. His parody (1702) on Queen Anne's proposed laws for suppressing Nonconformists earned him six months imprisonment and some time on the pillory. While in Newgate Prison he planned a journal, *The Review,* which ran until May 1713, when he was again jailed for sedition, and which served as a model for several contemporary and subsequent periodicals. Richard Steele's *Tatler* followed Defoe's lead in 1709, one of many others. Defoe was convicted of libel in 1715 before turning towards fiction, perhaps out of prudence, where he had enormous influence on the development of the English novel.

Because of his innovative blending of the pamphleteering tradition with the concept of regular publication under a masthead, not to mention his continued advocacy of Enlightenment thought, many regard Defoe as the first modern journalist. British diplomat and writer Harold Nicolson said: "He had endless curiosity and a passion for facts and was faithful to what he saw… what more can one ask of any reporter? " (Drabble 1995;265; Morley 1886:v–viii; Heren 1985:7).

In 1726, while Defoe was publishing his final works of fiction, Voltaire was exiled in England for two and a half years, following a second incarceration in the Bastille for ridiculing or quarrelling with powerful people. Voltaire was impressed by English liberalism but shocked by the violence between rival factions, writing later that "Liberty was born in England from the quarrels of tyrants" (Pomeau 2006:3; Times 2000:291). In *Candide* (1759, English translation, 1966) he parodied the English casual acceptance of violence: "…in this country it is found requisite, now and then, to put an admiral to death, in order to encourage the others to fight."

The quotation, "I may disagree with what you have to say, but I shall defend to the death your right to say it" has become one of the mainstays of journalism and used in countless arguments for the right of free speech. It is often attributed to Voltaire but his horror of violence – and of martyrdom – makes it improbable. He hated violence, defending sedition as "incitement of discontent against the government" but probably not as actual "incitement of rebellion", to use the Macquarie Dictionary definition quoted earlier. The quote about defending free speech to the death appears to have originated in a work

called *The Friends of Voltaire* by S. G. Tallentyre, a pseudonym of Evelyn Beatrice Hall, published by Smith Elder & Co in 1906. Hall's summary of Voltaire's philosophy may have exaggerated his commitment to truth. This is confirmed by Voltaire in a letter to d'Alembert: "I am very fond of truth, but not at all of martyrdom" (Times 2000:458). In *Candide* he wrote: "It is noble to write as we think, it is the privilege of humanity". His advocacy of freedom of speech supplemented his chosen themes: "the establishment of religious tolerance, the growth of material prosperity, and respect for the rights of man by the abolition of torture and useless punishments." (Pomeau 2006:7).

Voltaire died in 1778, over a decade before the French Revolution for which he was later – unfairly – held partly responsible (e.g. Keane 1995:391). As a Deist, he had earlier argued against the rise of the extreme materialism that dominated the revolution, as well as romanticism; both were passionate reactions against his reasoned Enlightenment philosophy (Pomeau 2006:6).

Sedition in the USA

Having established a public benefit context for advocacy journalism and sedition in Europe, a tradition that continues to this day, it is time to turn to the United States of America, where a similar context can be established for the First Amendment to its constitution of 1787, commencing fifty years before it was written.

John Peter Zenger, born in Germany, was a naturalized freeman of New York and had been apprenticed to William Bradford, a printer. In 1725, the two began publishing the first newspaper in New York, *The Gazette,* but parted company over ideology: Bradford supported rule by the English Crown while Zenger was a liberal. Zenger began publishing the *Weekly Journal* in New York in 1733 and immediately took up the cause of Rip Van Dam, a tax official who had thwarted a fraudulent claim for back pay by the Crown-appointed Governor, William Cosby, and who was now being victimized. Zenger was arrested and charged with seditious libel but continued publishing the *Weekly Journal* by dictating to his wife through a hole in the door of his cell. At his trial in August 1735, his defence relied on the truth of the allegations he had published, a defence available in England but not then available in the colonies, and turned on the legal ability of the jury to determine not only the fact of publication, which Zenger admitted, but also whether or not the allegations were libellous. Zenger's counsel, eighty-year-old Andrew Hamilton, argued that the polyglot colonial population of New York had the same rights as Englishmen, while the plaintiff (and the judge, Chief Justice Delancey) believed that, in the interests of stable government, the behaviour of the governor should not be challenged. The jury found in Zenger's favour despite strong direction by the judge. A migrant who couldn't speak English very well, he had incited discontent against the government of his adopted country and been vindicated, rather than quietly going back to his country of origin (Gavin 1950:39–62).

The original body of the United States Constitution of 1787 grew out of the English experience with its 1689 Bill of Rights, and discussions concerning the rights of individuals and of governments over the intervening hundred years, to which many journalists and writers had contributed, sometimes by way of sedition. One such was Tom Paine (1737–1809) in Philadelphia, who had published a series of pamphlets beginning with the hugely popular *Common Sense* (1776) and continuing with an extended series of pamphlets entitled *The American Crisis,* articles and other publications. Paine's writings

remain the clearest statement of the Enlightenment tradition in the second half of the eighteenth century. He had begun his public life as a journalist in England, contributing to the *Sussex Weekly Advertiser.* Paine's biographer, John Keane suggests it is likely he wrote a piece, published on 1st April 1771 under the pseudonym "Common Sense", defending the liberty of the press: "[The press] is better to cease to exist, than to cease to be free" (Keane 1995:69).

Unlike Voltaire, Paine accepted a public benefit justification for violence, arguing in *The American Crisis* (1776) that pacifism was the pawn of paternalism and the American war against British tyranny was legitimate (Keane 1995: 143). In a magazine article, "Thoughts on Defensive War" (1775) he warns, however, that violence is a difficult horse to ride; it can easily throw its rider, galloping away from its role as a means and becoming an untamed end in itself. Clarity about the purpose of proposed violence was therefore vital (Keane 1995: 102).

Later, in England in 1792, he would be convicted of sedition *in absentia* after the publication of the second part of *The Rights of Man* in England, his answer to Edmund Burke's *Reflections on the Revolution in France.* His barrister, Thomas Erskine relied on the recently ratified First Amendment to the US Constitution, quoting his client in denying that freedom of expression would lead to rebellion and disorder. "Let men communicate their thoughts with freedom… like gunpowder scattered, they kindle, they communicate; but the explosion is neither loud nor dangerous – keep them under restraint, it is subterranean fire, whose agitation is unseen till it bursts into earthquake or volcano" (Keane 1995:294, 347–8; Drabble 1995:741). This is true Enlightenment thinking – the public benefit of sedition.

Warned of his imminent arrest and possible execution, Paine prudently left the country, his departure from Dover marked by official behaviour that seems to indicate the government wanted to be rid of him but was determined not to elevate him to martyrdom. The hard line previously taken against sedition was perhaps softening under the pressure of Paine's many influential friends in England (Keane 1995:344). He remained in France, firstly as a supporter of the revolution, then as a critic, for which he was imprisoned and almost sent to the guillotine. He became disillusioned with Napoleon's republic and returned to the United States in 1802 during the peace of Amiens (Keane 1995:451).

Possibly as a result of Paine's pamphlets, debate at the state conventions held to approve the 1787 US Constitution revealed significant popular dissatisfaction. As a compromise, twelve amendments were submitted for debate by the first congress of the United States. Ten were ratified, forming the so-called American Bill of Rights, aimed at the federal government and leaving the states free to legislate. Congress refused James Madison's proposed Twelfth Amendment, which would have bound the states to protect religious liberty, trial by jury and freedom of the press. This refusal was consistent with the checks and balances philosophy behind the entire proposed system of government, a system first espoused by James Harrington and the Levellers.

Sedition after the First Amendment

Ratification of the first amendment to the US Constitution was completed on 15th December 1791. It seemed unambiguous: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise

thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." but did not prevent the second president, John Adams, and the Federalist party from passing a series of four Acts through Congress in 1798. One of them gave the president executive power to expel foreigners. Another was the Sedition Act, under which it was seditious to write, print, utter or publish any "false, scandalous or malicious" matter against the government, either legislative house, or the president "or to bring them, or either of them, into contempt" or disrepute. Twenty-five indictments for sedition resulted in ten convictions, all journalists known to be supporters of the vice-president, Democratic-Republican Thomas Jefferson. It became obvious that President Adams and the Federalists were not allowing any criticism.

The criticism offered by Thomas Cooper was mild indeed. Cooper was one who, like Daniel Defoe and Tom Paine, fell victim to the arbitrary nature of the law, although vindicated reasonably quickly. He wrote that, when Adams had first become president, "…he was hardly in the infancy of political mistake. Even those who doubted his capacity thought well of his intentions." In another passage, he said, "Nor were we yet saddled with the expense of a permanent navy, or threatened under his auspices with the existence of a standing army. Our credit was not yet reduced so low as to borrow money at eight percent in time of peace, while the unnecessary violence of official expression might justly have provoked a war." He also charged that Adams had intervened in a court decision. Cooper was a respected scientist, educator, and political philosopher, Oxford educated, whose book *Political Essays* had been published in 1799. Denied access to official documents and the ability to subpoena the president in order to prove the truth behind his criticism, he was found guilty of sedition, fined $400 and imprisoned for six months. A pamphlet campaign began, probably at Jefferson's behest and probably written by Cooper, which contributed to Jefferson's narrow victory in the 1800 presidential election.

Cooper later taught at Dickinson College and the University of Pennsylvania and was president of South Carolina College from 1820 to 1833, now the University of South Carolina. After his death in 1839, the $400 fine was repaid to his heirs. In his *Libel and Liberty of the Press* (1830) he advocated the "…right of discussion in its fullest extent, as applied to any and every question, opinion or doctrine, political, theological, moral, metaphysical or philosophical, within the widest range of human enquiry" (Gavin 1950:65–87; Columbia 2001–5).

Journalism's Covenant with Society

Despite their support for the constitutional amendments and their opposition to the Sedition Act, neither Thomas Jefferson, later third president from 1801 to 1809, nor James Madison, president from 1809 to 1817, held idealistic views of the press of their day. In 1786, Jefferson wrote: "I deplore the putrid state into which our newspapers have passed, and the malignity, the vulgarity, and mendacious spirit of those who write them… It is however an evil for which there is no remedy, our liberty depends on the freedom of the press, and that cannot be limited without being lost." Madison wrote: "Some degree of abuse is inseparable from the proper use of everything and in no instance is this more true than in that of the press. …to the press alone, chequered as it is with abuses, the world is indebted for all the triumphs which have been gained by reason and humanity over error and oppression…" (Lewis 2004)

The historical context of the struggle for press freedom reveals the nature of the covenant between journalism and society and the limits placed on that freedom. Whether or not the media in Australia today is more or less putrid than the American press at the time of Jefferson and Madison is debatable but to argue it has the right to be putrid is clearly fallacious. Without a demonstrable and over-riding public benefit, the media freedom acquired in the past five hundred years does not extend to deliberate libel, publishing salacious gossip or unfounded speculation, inventing facts, invading privacy, suppressing contrary views, or the biased reporting of news. Based on Voltaire's rejection of violence and Paine's cautious and selective advocacy of it, I would also argue that journalism's covenant does not extend to advocating violence except in very rare circumstances. Journalists who misbehave and then claim freedom of the press based on the public's right to know are frauds. They are trying to draw cheques on a bank account built up by others, those advocates who were prepared to take great personal risks for the benefit of society.

Journalism's covenant extends to public debate and the formation of public opinion. Charles Taylor (1995:261), following Jurgen Habermas who documented the transformation of the "opinions of mankind" into "public opinion", finds that public opinion should (1) be the product of reflection, (2) emerge from discussion, and (3) reflect an actively produced consensus. Tollefsen (2000:297–8) says this gives journalism two roles: as a forum for discussion and deliberation and as a shaper of that discussion and deliberation. This is not an argument for or against press neutrality or objectivity, but proposes a model that can be both partisan and objective. Like all other institutions in society, a media corporation is a participant in public life and may decide to support a particular issue. When it does so, it moves from enabling social deliberation to becoming one of the deliberators. Tollefsen sees the manner of persuasion from that point on as crucial. Blocking dissent, using empty rhetoric, and making personal attacks on the motives of dissenters are tactics used by partisan deliberators, but when used by journalists are in breach of their covenant. They "violate the nature of the press as a common space for public impersonal deliberation" (Tollefsen 2000:298).

As Cooper said, the media has the right to discuss any and every question but in granting that right, society implicitly assumes that the media will honour its side of the covenant. This includes discussing all issues in their fullest extent, not just to the extent allowed by government, media proprietors, other journalists and media commentators; not doing so is equally a breach of the covenant. Attempts by governments, media proprietors, or other journalists and commentators to limit discussion by enacting laws such as the Sedition Act, or by threatening individual journalists with imprisonment, fines, loss of employment, or ridicule, while personally challenging for a conscientious journalist attempting to work in the interests of a better society, in the end must be revealed as irrelevant as attempting to "pound up the crows".

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