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Media, Markets, and Morals

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The Business of the Media and the Business of the Market

Introduction

Media organizations in modern societies are typically large commercial organizations, competing in a market. Moreover, the media itself plays an important role in the commercial life of modern society. But, as we point out in this chapter, the norms which govern market activities differ from, and can come into conflict with, the norms which govern the media. In this chapter we explore these norms, show the ways in which they may come into conflict, and argue that when they do, it is generally media norms which should prevail.

Media in the Marketplace

In liberal democratic societies such as the US, Great Britain, and Australia, the market is the central economic institution for the

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production and distribution of goods and services. Producers compete with each other to provide what consumers want; in turn, consumers choose between a range of products. The market is a self-organizing process. Although it is not directed by any central authority it succeeds in providing a vast array of goods to consumers.

One of the striking features of the media in modern societies is the extent of its integration with the market. Most media is produced and distributed by (often very large) commercial organizations; we have on offer to us a huge variety of different kinds of media products, from TV game shows to movies, to gossip magazines, to specialist journals, to serious newspapers. The fate of these products is (to a large extent) determined by commercial considerations: those which appeal to public tastes survive; others perish.

Not only is much of the media produced by commercial organizations and made available to us like any other consumer good, but the media itself plays an important part in oiling the wheels of commerce. Mass media not only provides a forum in which producers can pay to advertise their wares to large audiences, but much of the content of that media consists in presentation and discussion of consumer goods and services. More broadly, the mainstream media plays an important role in setting the parameters of public discourse and opinion, not only in explicit discussion of matters of public policy and the like, but also in its presentation of images of "normal" life in sit-coms, soap operas, and so on. Undoubtedly, that presentation provides a very market-friendly view of the world.

Still, even if much of the media is run by business interests and subject to business pressures, the media (or at least central parts of it) surely cannot be seen as *just* another business. After all, the media is itself typically seen as one of the central institutions of modern society, on a par with the political system, organized religion, the education system, and indeed the market itself. The press (which must now be understood broadly, to include at least a central part of the media industry) is often referred to as "the fourth estate," meaning that it plays a role in the political system that is of

equal importance with that of the three official branches of government, the legislature, executive, and judiciary.¹

More broadly, freedom of the press is often seen as a fundamental, and distinct, mark of a free society. The First Amendment to the US Constitution prohibits Congress making any law "abridging the freedom of speech or the press": the same amendment also prohibits Congress from making laws that restrict freedom of religion, assembly, and the right to petition government for redress of grievances. Although not every liberal democracy provides such constitutional protection, all accept the importance of a free press. A free press is vital to the life of a flourishing democracy in a number of ways. In the first instance it is a conduit for information about politics, economics, and public affairs. This allows members of a society to form informed views about these things; and it provides a bulwark against corrupt and oppressive behavior by the powerful, who are deterred by fear of exposure in the media. The media also provides a forum in which members of a society can express their various views to each other about such matters, and assert and explore their identity.

There is a tension, at least on the face of it, between the two ways of understanding the media implied by the above facts. On the one hand, much of the media consists of, or is controlled by, commercial organizations and is dominated by the logic of the market. On the other, the media has a role independent of, and even at times contrary to, narrow market interests.

Much of the discussion about the morality of the media in general and of media workers in particular reflects this tension. For example, proponents of a free press understand a free press to be simply one which cannot be restricted by the state. Just as anyone should be allowed to open a shop and stock it with whatever goods they want to, so anyone should be allowed to operate a media outlet and use it to express whatever views they wish (within the bounds of legality). On this approach, those who work in such outlets are in the same relationship to the owners of media organizations as shop assistants are to shop-owners. They are agents of the owners, whose function is to further the goals of the owners, provided this does not involve them in illegality or obvious immorality.

Others understand the free press, and consequently the role of those who work within it, in more substantive terms. They see the function of the free press as being defined by the dual goals of informing the public about matters of public interest, and of providing a forum in which the public can express and discuss its views. Correspondingly, the first duty of media workers such as reporters, photojournalists, and editors is to the realization of those goals. This means that they are not simply agents of the owners of the organizations for which they work, but should be granted some degree of independence and responsibility. Professionals such as doctors and engineers who work in large organizations nevertheless retain autonomy over much of their work, autonomy which may on occasion require them to act in ways which may not be in the short-term economic interests of such organizations. Similarly, it is claimed, media workers must retain autonomy over their work, even though the exercise of such autonomy may be contrary to the economic interests of the organizations for which they work or to the ideological stance of the owners of those organizations.

The market and the media are, then, at the same time closely intertwined in practice, and yet conceptually distinct. Any exploration of the role morality of those who work in the media, of the kind we undertake in this book, must consider the relationship between these two important institutions. This is our task in the rest of this chapter. First, we make some general remarks about the nature of fundamental institutions in pluralist societies. Then we consider the distinctive features of the institution of the market, on the one hand, and of the media on the other. Finally, we consider the implications the differences and relationships between these institutions have for the role morality of media workers.

Pluralism

Modern liberal democracies such as the USA, Australia, and the United Kingdom are pluralist societies. They are typically pluralist

in at least a couple of ways. First, they contain a number of different ethnic and social groups, which may have quite different lifestyles and values. Second, they are composed of a range of relatively autonomous basic institutions such as the family, the political system, organized religion, the education system, the market, and so on; so understood, pluralist societies face two kinds of challenges: (1) The various ethnic and social groups which constitute pluralist societies must find a way of living together in a just and respectful way. (2) They must establish and promote the right kinds of relationships between the various basic institutions.

Here we focus on the issue of relationship between basic institutions. The first question we must address is: how do we identify and distinguish such institutions? Following the American philosopher Michael Walzer (1983), we suggest that each of the basic institutions constitutes a "sphere of justice," that is, a domain within which a distinctive good is (or should be) distributed according to principles of distributive justice which are specific to that domain. Consider the example of health care. The principle according to which such resources as hospital beds, medicine, and so on should be distributed is the need for health care. We would find it outrageous if a hospital bed were occupied by a healthy person at the expense of someone who is sick, for example. Or take the example of political power. In a democratic society, we believe that political power should be a function of popular support, as expressed in fair and open elections, rather than of, say, family lineage, as it was in aristocratic societies. In the case of the market, economic goods, including wealth itself, are distributed on the basis of the laws of supply and demand. Those who have goods which are in high demand and short supply – including their own labor power – are able to gain higher prices for them than those who possess goods in less demand.

Since each of the basic institutions has its own principle(s) of distribution, it follows that whether someone is entitled to goods in one institution, according to the principles of distribution specific to that institution, does not have any relevance to the question of whether they are entitled to goods in another. Possession of large

amounts of money, for example, should not by itself allow a wealthy person to gain more political power than a poor person, since wealth is not a criterion for the distribution of political power. Conversely, possession of political power should not put someone in an advantageous position for gaining wealth, since political power is not an appropriate criterion for the distribution of market goods.

Notwithstanding, in many societies, pre-eminence in one particular sphere has often been translated into pre-eminence in a number of other spheres. In an aristocratic society, for example, the "well-born" gained not only social status, but also disproportionate political power, preferential access to education and desirable jobs, and so on. Similarly, in a theocratic society, religious leaders are favored. Walzer calls this phenomenon, where there is one sphere whose goods give access to the goods of other spheres, "dominance."

Over the past century or so, there have been two main forms of dominance. In socialist countries, such as the USSR and its satellite states, politics dominated other spheres, with political power translating more or less directly into wealth, prestige, preferential access to educational opportunities and other social goods for family members, and so on. In capitalist countries, on the other hand, it is the market which has tended towards dominance. Wealth has given those who possess it access to a range of other goods, especially political power – which in turn can be used to entrench the advantages of the wealthy. Many electoral innovations, such as public funding of political parties in proportion to their share of the vote, requirements for disclosure of political donations, restrictions on the amount of such donations to individual candidates, and so on can be understood as attempts to prevent, or at least limit, the translation of wealth into political power.

The answer to the question of whether market power is inappropriately dominating the workings of other basic institutions in modern societies is often complicated by the large degree of overlap between the market and those institutions. Above we mentioned health as an example of an institution whose defining good is

distributed according to the principle of need. However, the institution of health care is deeply enmeshed in the market. Pharmaceutical companies, for example, are huge corporations, with turnovers in the billions, making immense profits. Similarly, skilled medical professionals such as surgeons charge high prices for their services, and earn large salaries.

But to say that health care is deeply involved with the market does not mean that it has simply become part of the market. Allowing market forces to operate in the area of health care may, as it happens, be the most effective way of producing and distributing many health care goods. Pharmaceutical companies, for instance, have commercial incentives to produce better and cheaper medicines. But, on the approach being advocated here, as soon as the workings of the market do not allow for the distribution of health care goods according to the principle of need, it should be overridden or supplemented. For example, in many societies (for example, Australia and the UK) where much health care is provided through market mechanisms, there is nevertheless a socially provided safety net, which guarantees that even those who lack the financial resources to buy their health care on the market can get the help they need when they are sick. Moreover, the behavior and self-understanding of many of those who are involved in the provision of health care can be understood only by reference to values that are internal to the sphere of health, rather than those of the market. For example, medical associations often forbid their members from using their medical expertise in a variety of ways which are held to be contrary to the goal of health, such as assisting in torture, even when such torture is legal and doctors are given substantial financial incentives for participation.

The Market and Its Norms

To understand the appropriate relationship between the market and the media we need to look more closely at the distinctive

features of each. We begin with the market. For a market to exist there must be a number of interacting *market actors*, who are held to:

- come to market with pre-existing wants – to be fed, clothed, etc.;
- possess resources – money, goods, etc.;
- be rational, that is, act in a way that most effectively satisfies their wants;
- be self-interested, that is, not desire to satisfy the wants of others in the market;
- be independent, that is, no one can or will force another to give them what they want.

Given the existence of these features, the only way in which any market actor will be able to satisfy her wants is by means of trade – by mutual, voluntary exchange of goods. A market (for a good) occurs when there are market actors who are sellers and buyers; these are people who have reason to engage in trade with each other. Sellers always prefer to sell for more rather than less, and buyers always prefer to buy for less rather than more. A properly functioning market depends on the existence of a number of competing sellers, and a number of different buyers. Competition between sellers motivates them to find ways to offer more attractive (cheaper, more effective) goods to buyers, while competition between buyers for scarce goods tends to drive prices up to the point where sellers can make a profit.

Understood in this way, there are a number of attractive features of markets. First, they tend to be effective means for the production and distribution of economic goods. Producers are provided with incentives to produce goods which consumers want, and only those goods. The major modern alternative to markets has been so-called command economies, in which decisions about what gets produced and who gets the goods which are produced are made by centralized bureaucracies. The history of such economies in places such as the former Soviet Union showed them to be far inferior to markets in satisfying the desires of consumers.

Second, there are moral reasons to approve of markets. We should allow people to participate in market transactions out of respect for their autonomy. Above, we pointed out that market transactions take the form of trades, in which rational individuals freely choose to exchange goods with each other. Respect for autonomy requires that rational individuals be allowed to do what they want, provided that they do not hurt others in so doing. Since trades involve mutually agreeable behavior, it follows that there is a strong presumption that they should be respected.

We should also allow people to participate in market transactions because the world is likely to be a better place if they do so. Because both parties to a trade are, by hypothesis, rational, self-interested, and independent, they will enter into a trade only if they have good reason to believe that they will be more satisfied after it than before. Since a world in which there is a greater amount of satisfaction is in itself better than one in which there is less, a trade has the seemingly magical property of increasing the value in the world while leaving unchanged its material elements.

Market actors tend to internalize and act according to what we might call *market norms* – attitudes and modes of behavior that govern the production, circulation, and valuation of economic goods. Only in a group in which such norms are accepted are we likely to have a functioning market. The most important of these norms (based on Anderson 1993, 143–147) are:

- *impersonality* – the only features of individuals that matter are economic – social status is abolished in the market;
- *egoism* – individuals pursue their own interests, independent of consideration of the interests of others;
- *exclusivity* – purchase of a good gives exclusive access to its benefits;
- *want regardingness* – production responds to “effective demand,” irrespective of reasons for that demand – this means, for example, that food producers should provide less nourishing but more palatable food, if that is what consumers want;

- orientation to "exit" rather than "voice" – if a consumer is unhappy, for whatever reason, with some commodity or transaction they will simply "exit" – go elsewhere in the market – rather than engage with the provider in attempt to get them to change their product or behavior (in other areas of our life, such as family relationships or political association, by contrast, we engage in dialogue to try to influence each other – we make use of our "voice").

The Media and Its Norms

Now let us consider the distinctive features of the media. Here our focus is on what we might think of as the "serious" media, concerned with what John Stuart Mill called "the business of life," such as morality, religion, politics, and social relations (Mill, 1999, ch. 2). It is a mark of such media that they claim to provide true information (as discussed in Chapter 2) about, and well-informed and reasoned discussion of, these issues. Of course, these activities of information and discussion are very much part of, and of fundamental importance to, our ordinary life. At least in part, then, the media functions as an extension and supplementation of activities which would occur anyway. Similarly, we need to look at the importance we attach to these activities to understand the role and status of the media.

Of particular importance to the role and self-understanding of the modern media is the doctrine of *freedom of the press*. This is often seen as an extension of the notion of free speech, applied to the activities of the press. Here we look at this notion of free speech, before considering its implications for the role of the press.

Any modern discussion of free speech must start from the influential defense of free speech by the nineteenth-century philosopher John Stuart Mill, especially as found in his work *On Liberty* (1999). For Mill, the value of free speech was itself derived from the more fundamental importance of freedom of thought. In turn, freedom of thought was to be valued because thought guides action. It is only if we have accurate, well-grounded, and properly informed beliefs that we are likely to be able to act in ways which

will actually advance our interests. (As we saw in Chapter 2, moral theorists such as Alan Gewirth hold that we all have rights to freedom in virtue of our nature as purposive agents.) Freedom of speech is, according to Mill, "practically inseparable" from freedom of thought. It follows that, for Mill, freedom of thought does not simply mean being allowed to think what you want. It involves the freedom to strive towards a well-founded, internally consistent, and satisfying body of beliefs. Discussion is of fundamental importance in achieving such a body of beliefs. Having discussions with others is necessary to gain information, to develop critical capacities, and to clarify and critique one's own views. So freedom of speech means more than being able to say what you like. Indeed, freedom of speech, in the sense in which Mill used the term, is probably more accurately called freedom of discussion.

Mill presented two kinds of interrelated reasons in favor of free speech, so understood. First, he thought that it was more likely to allow the truth to emerge. Given our limited experience and intellectual capacity, and our tendencies to wishful thinking, self-delusion, and conformity, our beliefs are more likely to be reliable if they have been subject to a process of testing and contestation. As Mill puts it:

Complete liberty of contradicting and disproving our opinion is the very condition which justifies us in assuming its truth for purposes of action ... The beliefs we have the most warrant for, have no safeguard to rest on, but a standing invitation to the whole world to prove them unfounded ... This is the amount of certainty attainable by a fallible being, and this is the sole way of obtaining it. (Mill 1999, ch. 2)

Second, the exercise of free speech is necessary for the development of our critical faculties, which help us to be able to discriminate between more and less justified claims to truth. A society of freely interacting, critically competent truth-seekers, in which a variety of different views are presented and vigorously contested, is one in which true beliefs are more likely to be generally held.

There are, then, two conditions for free speech, understood in something like Mill's sense (we here follow Lichtenberg 1987.) First, people must be protected against interference – they must have an effective and reliable right against being prevented from saying what they believe and testing their beliefs against others. In the first instance, then, the right to free speech is a so-called “negative right” – that is, a right against interference. It is important to note that even though *others* do not have a right to prevent us from doing what we want to in some area of our life, it does not follow that we should think we are permitted to do whatever we feel like doing. In the case of free speech, for example, others should not prevent us from speaking as we wish, but this does not mean that *we* should not feel any constraints on what we say – far from it. Arguably, we should not even engage in idle gossip about others, even if the subject matter of the gossip is not malicious, where doing so indicates a lack of respect for the people we are gossiping about.

While the assurance of non-interference is a necessary condition for free speech, it is not sufficient. Mill himself was a keen observer of the rise of “mass society” in the nineteenth century, with the rapid urbanization and homogenization of British society fostered by the forces of industrialization and economic development, including what we would now refer to as the mass media. Mill thought that these forces tended to push people towards a sameness of thought and behavior. Where such a deadening conformity occurs, non-interference by itself will not guarantee true freedom of speech.

The second condition for freedom of speech is the existence of a multiplicity of divergent but interacting voices. Where such voices do not arise spontaneously, or cannot be heard where they do arise, respect for freedom of speech may require more than simply not interfering with people's speech. In such a case, freedom of speech may also require actively intervening to ensure that a diversity of views is presented and seriously discussed – in, say, the education system, or if needs be, in the popular media. It *may* – whether it actually *does* is a matter for decision on a case-by-case basis.

From a Millian justification of free speech – as an indispensable means to the attainment of the truth – we can derive a justification of

freedom of the press in a democratic society, which can be understood as free speech in a particular institutional setting. In a large and complex modern society, the press is of fundamental importance as a means to allow us to gain information, to develop critical capacities, and to clarify and critique our own views about matters of social significance. As noted above, these provide the bases for the value of free speech, so any attempt to prevent the press from playing this role of providing information and discussion is an attack on the freedom of the press.

It is important to emphasize that the right to a free press (like other rights) imposes limits on what *others* may do to interfere with the choices made by the media (to publish or not, how information is presented, and so on). But from the fact that others (especially the government) should not forcibly constrain the press, it does not follow that the press should not constrain itself, or that it cannot be criticized for its actions. It is simply a mistake to think that because we have a right to do something, it is right for us to do it. So, just as the right to free speech does not mean that we cannot be criticized for anything we say, freedom of the press does not license the press to print anything it judges the reading public may find interesting. Freedom of the press no more justifies the retailing of salacious gossip about public figures, for instance, than freedom of speech justifies doing the same about our neighbors.

On the one hand, part of the role morality of the media is to provide information to people about things that are of interest to them and, it seems, there is a good deal of interest in the private lives of public figures. On the other hand, the persistent intrusion of the press into people's private lives, and the broadcasting of the (true and false) details of their personal affairs, clearly constrains their capacity to enjoy their rights to freedom and well-being, rights which are part of universal public morality. But since, as we argued in Chapter 2, universal public morality trumps role morality when the two conflict, the media is not justified in printing such gossip. Similarly, it is at least arguable that the newspapers which published the so-called "Muhammad cartoons," which portrayed the prophet Muhammad as a terrorist, were not justified in doing so: the cartoons gratuitously

offended the religious sensibilities of a group which was already feeling marginalized and vulnerable, and predictably provoked militant responses. (This case is discussed further in Chapter 6.) The newspapers that published the cartoons can be criticized for gross disrespect of the beliefs of others, as well as irresponsibility. The response to criticism by appeal to freedom of the press is simply beside the point, since it was not generally being claimed that the newspapers had exceeded their legal rights, but rather that they should have used those rights more responsibly.

Just as freedom of speech implies a right of non-interference, so does freedom of the press. There is a strong presumption against the press being stopped from publishing what they wish. But just as non-interference is not the whole of freedom of speech, neither does it exhaust the meaning of freedom of the press. Again, freedom of the press also implies the presentation of a multiplicity of divergent but interacting voices.

As with freedom of speech in general, one important justification for valuing the representation of as wide a range as possible of different voices in the press is that this helps discover and promulgate the truth. But in a democratic, pluralist society there are also specifically political reasons for such representation. In a democracy, every person is supposed to be considered of equal value. While it is impossible for each individual to be given a forum for the expression of their views in the press, it is not so for each significant group – classes, ethnic groups, and so on. In being given such a voice the existence and value of such groups is, in effect, being affirmed both to their own members, and to society at large. Conversely, if the beliefs and attitudes of only some groups are represented in the mainstream press, the implicit message is that it is only these groups which really matter.

We are now in a position to outline the norms that do (ideally) guide the press. From our discussion of free speech it is clear that the fundamental norms are those of:

- *Truth-valuing.* The press should try to discover the truth, and present it in an accessible form. (The general justification for this

is given in Chapter 2 – insofar as truth is a necessary condition of information, the media are committed to the norms of truth-valuing and truthfulness.)

- *Objectivity.* The press should be objective in its presentation of material. Objectivity includes but is wider than truth-seeking. For in matters of opinion, such as views about the merits of different political ideologies or moral stances, it is arguable that there is no straightforward fact of the matter. Nevertheless, the discussion of such views should still be objective, in that they are presented as fully and fairly as possible.
- *Representativeness.* The press should be representative, both of the range of views held in a society, and of the existence of the various social groups which constitute that society.

These norms are fundamental in that it is by reference to them that we develop and apply more fine-grained guidelines about media ethics. For instance, it is by reference to the norm of truth-valuing that we decide whether, and how, photojournalists are entitled to manipulate images. The norm of representativeness may be useful in deciding whose views a journalist should seek out in the course of researching a story about, say, the impact of illegal immigration, in judging the performance of a newspaper over a period of time, in evaluating the merits of proposed legislation to prevent cross-media ownership, and so on.

Of course, this is not to say that the press always acts in conformity with these norms, or even always aims to. No doubt journalists often write stories which are simply paraphrases of press releases, with no attempt to ascertain their veracity or to canvass a range of views. And, clearly, media proprietors often use their position to promote their own interests, or those of their class or favored political group (detailed examples of this are given in Chapters 5 and 6). But to call these norms ideals is not to identify them as simply pious wishes, which bear only an accidental relationship to the behavior of the media, and to the responses such behavior generally provoke. Rather they underlie the media's self-understanding and our attitudes to the media. Think what happens,

for example, when credible claims are made that an important report in a reputable news outlet has been based on fabricated materials or radically incomplete information. There will be public concern, even anger: the news organization will try to show that the claims are false or, if they are proven to be true, respond with apologies, disciplinary action against offending journalists, actions to prevent a repetition, and so on.

A famous case which demonstrated the workings of these norms and exemplified the nature and importance of the freedom of the press was that of the Pentagon Papers.

The Pentagon Papers

In 1967, against the background of increasingly bitter domestic opposition to the Vietnam War, US Secretary of Defense Robert S. McNamara commissioned the Department of Defense to prepare a history of the United States' politico-military involvement in the war. The huge (47-volume, 7,000-page) secret report made it clear that the American people had been deceived by their leaders at every step: about the reasons for US escalation, about the way in which the war was being fought, and about the prospects for success. One of the authors of the report was Daniel Ellsberg, a brilliant scholar and former Marine. Ellsberg had been a committed supporter of US involvement, but had slowly become convinced that the war was unwinnable, and that the US people had to be told the truth about a war in which almost 60,000 of their soldiers were eventually to die. Dismayed by the refusal of his political masters to even contemplate the option of a US withdrawal, and frustrated by the unwillingness of anti-war politicians, to whom he had given sections of the report, to make their contents known, Ellsberg decided that he had no option but to use the press.

Ellsberg provided a full set of what became known as "The Pentagon Papers" to *New York Times* reporter Neal Sheehan. The *Times* published excerpts on June 13, 1971, with the promise of

more to come. On June 15, the US government obtained a temporary court injunction that stopped the *Times* from publishing more of the papers. Ellsberg made copies of the papers available to others newspapers, and on June 18, the *Washington Post* began publishing excerpts. The *Post* was enjoined. Excerpts then began appearing in the *Boston Globe*, the *Chicago Sun-Times*, the *St. Louis Post-Dispatch*, and so on. Eventually, excerpts were published in 17 newspapers.

Meanwhile, legal maneuvers continued, leading inexorably to the Supreme Court. The US government argued for continuation of the injunction, claiming that publication would cause "irreparable injury to the defense interests of the United States." A majority of the Court ruled against the government. Importantly, they did not deny the government's claim that publication would harm the national interest. Justice White, for example, wrote that:

I do not say that in no circumstances would the First Amendment permit an injunction against publishing information about government plans or operations. Nor, after examining the materials the Government characterizes as the most sensitive and destructive, can I deny that revelation of these documents will do substantial harm to public interests. Indeed, I am confident that their disclosure will have that result.

Similarly, Justice Stewart stated that:

We are asked, quite simply, to prevent the publication by two newspapers of material that the Executive Branch insists should not, in the national interest, be published. I am convinced that the Executive is correct with respect to some of the documents involved.

Nevertheless, they held that since publication would not result in "direct, immediate, and irreparable harm" (as, say, publishing the sailing schedule of a troopship in a time of war might), the presumption in favor of allowing the press freedom to decide what to publish must prevail. Stewart reaffirmed the role of a free press in the life of a democracy and its special importance in matters of national defense:

In the absence of the governmental checks and balances present in other areas of our national life, the only effective restraint upon

executive policy and power in the areas of national defense and international affairs may lie in an enlightened citizenry – in an informed and critical public opinion which alone can here protect the values of democratic government.

The motivation of the newspapers in publishing the Pentagon Papers was clearly to give the American public information on a matter of vital concern, information which would have been withheld from them if it were not for the action of the newspapers. They went ahead and published in the face of government opposition and threats of legal action, and despite the fact that doing so would predictably upset significant sectors of their readership. The publication of the Pentagon Papers had a lasting impact on the national debate over the war in Vietnam. It stands as a clear example of the press acting in accordance with what we have identified as the fundamental norms of the media, and of the value of a free press.

The Media and the Market

We have pointed out that much of the media is, as business, governed by market norms, and at the same time, governed by its own (media) norms. We are now in a position to understand more clearly where the points of tension arise between these two sets of norms, and so better placed to see whether, and how, such tensions can be resolved.

First, we should note that there is in principle no reason why the media cannot act in accordance with the media norms outlined above, and at the same time be a thriving business enterprise. Indeed, if we compare the record of media organizations in the Western world, most of which have been run as businesses, with that of their counterparts in former communist states, which were an arm of the state, there is no question that the Western media did far better in behaving according to media norms. This is not surprising. In a healthy democratic society, there is a demand for

reliable information and access to a range of opinions, which media organizations compete to provide.

That said, the reality of course is that often the media, driven by business considerations, do not act according to media norms. Moreover, the trend towards greater concentration of media ownership, and the assimilation of serious media organizations into giant vertically integrated corporations, generate concerns that the media is more likely to be driven purely by commercial considerations, even when these conflict with media norms.

Let us consider some of the ways in which the norms of the market and those of the media can come into conflict. First, whereas a business is legitimately motivated only by what is in its own interests ("egoism"), the media must be motivated by concern for the public interest, since each of the media norms has a base in public interest. Second, and relatedly, businesses should aim to provide only what customers want ("want-regardingness"), since it is by so doing that they will most effectively achieve what is in their (commercial) interests. The media, on the other hand, may have duties such as to report certain facts, or to allow particular points of view to be put, because it is in the public interest that such things are aired, even if most of their consumers would prefer not to be confronted by those facts or points of view. Third, market norms are oriented to "exit" rather than "voice" – if a potential transaction is perceived by one of the parties not to be in their best interests (because for example, they can get a better deal elsewhere), then they have no obligation to the other party to continue to deal with them. On the other hand, since one of the basic functions of the media is to provide a forum for the expression of diverse views, media norms are oriented to "voice" rather than "exit."

There is a strong presumption that media norms should prevail when they conflict with market norms. (As we explain in more detail below, this presumption may be defeasible on those rare occasions when the very survival of a media organization depends on giving priority to a market norm.) The rationale for this can be explained in terms of means and ends. First, let us make some

observations about the nature of means and ends. There are some things or activities that we value *only* as a means to a distinct end. So we engage in housework as a means to having a clean house (our end or goal). There are some things which we value not simply as means to ends, but also as ends in themselves. We may eat both because it is something we enjoy doing (it is an end in itself) and because we believe we need to be nourished (and eating is a means to this end). Finally, we may value some things as ultimate or final ends, that is, things which we value in themselves and which serve no further purpose. One of the marks of rational activity is that there are the right kinds of relationships between our various ends and the means we use to achieve them – for example, that we use means which are actually likely to allow us to achieve our goals.

Now let us consider the different kinds of norms that may apply to standard commercial organizations as against those that apply to media organizations. Consider, first, a standard business such as a carpet manufacturer. Clearly, the carpet manufacturer will have as one of its ends the making of carpets that are attractive to potential customers. Thus, the manager might decide to introduce a new range of carpets. The introduction of the new range is a means to producing carpets that are attractive to potential customers. However, the end of producing carpets that are attractive to potential customers is itself a means to a further end, that is, to make profits. Making profits is in fact the ultimate end of the business: it is by reference to this end that decisions about what it does should be made.

Now consider a media organization. Again, one of the ends of the media organization is to make a profit. Accordingly, many of the decisions that the organization takes, such as changing the layout of a newspaper to make it more eye-catching, or hiring a popular columnist, will be explained as means to that end. But unlike the carpet manufacturer, the making of a profit is not the ultimate end of the organization. Rather, the discovery and transmission of information and the provision of a forum for the expression of opinions are the ultimate ends of the organization. Since the end of making a profit is subordinate to (i.e., is itself a means to) these ends, when there is a conflict between acting in a way that will

gain more profit and achieving the ultimate ends of the organization, the organization should not act in the way that will lead to the gaining of more profit. In other words, when market norms and media norms come into conflict, it is the media norms which should prevail.

At least, this is generally true. However, matters are complicated by the fact that making a profit is not simply a means to achieving the ultimate goals of a media organization, but a *necessary* means to its achievement. Where media organizations are businesses, they cannot survive without remaining commercially viable. And if they do not survive, they cannot fulfill their function as media organizations. So it is perfectly legitimate, indeed desirable, for media organizations to take commercial considerations into account in decision-making. It may even be that on particular occasions there should be compromises between business and media norms. For example, a newspaper is perhaps justified in pandering, at least up to a point, to the public's appetite for celebrity gossip, in order to boost its circulation and advertising revenue, and in providing less hard news where this is necessary to allow it to survive, or to have sufficient resources to go on collecting news at all. It may be justified in so doing, but if it is, the justification cannot simply be that it helped make profit – it must be that the newspaper would be unduly handicapped in its media role if that profit were not generated.

The argument we have been making here about the relationship between market and media norms depends of course on the truth of the claim that the media organizations are more than simply businesses. And that claim might be denied – and sometimes (apparently) is. But if media organizations *are* simply businesses it is hard to see what force claims about the freedom of the press can have. Why should the press be treated any differently from any other business if in fact that is all it is? Whenever a media proprietor or editor resists government interference or regulation in its workings by appeal to the freedom of the press, they are, at least implicitly, acknowledging that the media is an institution in its own right, not just a part of the market.

Conclusion

In this chapter we have looked at the relationship between two of the major institutions of modern societies – the media and the market – which differ in function and guiding norms. As a matter of fact, the two institutions are intertwined, with the media deeply involved in the market in a variety of ways: the media support and facilitate the market; much of the media are, or are controlled by, commercial organizations. This creates the potential for the norms of the market to come into conflict with media norms within media organizations – should the truth be published, for instance, if doing so is likely to alienate readers and advertisers? As we have pointed out, the two sets of norms are not intrinsically incompatible: there is a market for accurate information and diverse opinion. However, as a matter of fact they often do come into conflict. The question then becomes which should prevail. The burden of our argument in this chapter has been that we find the answer to that question by coming to a proper understanding of the notions of free speech and the freedom of the press. Free speech is fundamental to the development of autonomous individuals and to a functioning democratic society. As such, it must be protected and fostered by any decent society. The media plays an essential role in the “speech” of large, complex societies of the kind we live in, so “freedom of the press” is a particular expression of the broader notion of free speech. Freedom of the press protects the media from interference by governments or other powerful bodies, but it also obliges the media itself to act in ways which are consistent with the underlying rationale for that freedom. In particular, it obliges them to be guided by what we have identified as media norms, even when doing so may not maximize profits.

Chapter study questions

1. Do you think that the media industry should be less subject to government control and regulation than other industries? If so, why?

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2. Outline two arguments for freedom of speech which also support freedom of the press.
3. Would Mill think that the mere fact that the press is not subject to censorship and is (mostly) controlled by private interests mean that it is truly free? If not, what else would be required? Do you agree?
4. In his judgment in the Pentagon Papers case, Justice White accepted that publication of the papers could harm public interest. Nevertheless, he did not support banning their publication. Why not? What do you think?
5. "A shop-owner can tell their staff what goods to stock. Similarly, a newspaper proprietor is entitled to tell his or her editorial staff what line to run and what news to report." Is the proprietor so entitled?

Note

1. While this is the sense now typically given for the term, when "fourth estate" was first used to refer to the press, in eighteenth-century France, the three other "estates" were the nobles, clergy, and commoners.

References

- Anderson, Elizabeth (1993) *Value in Ethics and Economics*. Cambridge, MA: Harvard University Press.
- Lichtenberg, Judith (1987) Foundations and limits of freedom of the press. *Philosophy and Public Affairs*, 16(4), 329–355.
- Mill, John Stuart (1999) *On Liberty*. Peterborough: Broadview. (Originally published 1859.).
- Walzer, Michael (1983). *Spheres of Justice*. New York: Basic Books.

Further reading

- Rudenstine, David (1996) *The Day the Presses Stopped: A History of the Pentagon Papers Case*. Berkeley: University of California Press.