CONCLUSION: UTILISING A HUMAN RIGHTS FRAMEWORK

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INTRODUCTION

The overarching theme of this book has been freedom of expression and the media, in particular, the application of legal standards to journalistic practice. Contributors have considered a variety of issues concerning media practice, media regulation and freedom of expression from different perspectives, and from this four sub-themes emerge. First, the question of whether or not the media should be regulated at all. Second if we are to accept some regulation of the media, the problems inherent in determining where to draw the line. Third, the difficulties involved in regulating a new and changing media. And finally, a discussion of how it is possible to ensure that all voices, who would like to be heard, are being heard. A connecting theme throughout has been the utility of applying the right to freedom of expression to all of these issues, and generally, the influence of a human rights framework to the work of the media. This chapter will conclude with a discussion of how the right to freedom of expression, and other important human rights, apply to all of these themes and rather than inhibiting media freedom, can, as some contributors have suggested, help achieve goals which might otherwise be difficult to realise.

SOME REGULATION OF THE MEDIA IS ACCEPTABLE

The first theme is the issue of regulation itself. All of the contributors to this book would seem to accept that there is a need for some regulation of the media. All would also accept the value of freedom of expression and the important role played in our society by the media. What separates them is determining where the line should be drawn. This is not an unusual conundrum. Regulation is fraught with risk and in some cases danger because regulation in a liberal democracy is both a first resort and a last resort. As a first resort, regulation can be used to promote a merit good that must be legislated for, such as public sector broadcasting. But of more concern is the use of regulation as a last resort where
it is used to ameliorate media unaccountability with regard to their actions.

Tom Gibbons has set out the case for statutory regulation of the media as necessary to freedom of expression. He states that there “appears to be justification for at least some state interventions in speech activity, whether it is a matter of purposive policy, or of positive action to prevent interference with speech.” An unregulated market might, for example, place media proprietors in a position to censor the flow of information and deny an outlet to particular information and opinions. He reminds us of the strength of media power—it has proved itself capable of gross invasions of privacy, bullying, discrimination and defamation. Other contributors share this concern to ensure that powerful voices do not dominate public discussion. Feintuck and Barnett highlight the role of impartiality requirements, whilst McGonagle and Gross have discussed issues of minority access to the media.

However, if regulation of the media is to be continued and expanded, there is need for caution as Peter Noorlander has warned in his chapter. There is always the danger of regulation, introduced for what seems like an acceptable purpose, being abused and used by the State in a way which was not envisaged—to stifle the dissenting views of journalists, in the name of national security for example. Also, once some regulation is in place and accepted, the path to more regulation is slightly easier. Certain events, such as a terrorist attack, might encourage the adoption of more regulation to meet a particular objective such as the “prevention and detection of terrorism”. Experience has shown that the UK is not immune from such measures and many will remember the statutory ban imposed in the 1980s on the broadcasting of words spoken by persons representing terrorist organisations, such as the IRA. Whilst this is no longer in place, there is now the offence of the “glorification of acts of terrorism” contained in the Terrorism Act 2006. As Noorlander has explained, this had a profoundly negative impact on the journalist Shiv Malik who was ordered under the Terrorism Act 2000 to produce material he had gathered in relation to a book he was writing about an individual suspected of terrorist offences.1 It is clear that regulation should be regarded with some caution leading to the second theme, the problems with regulation and getting the balance right.

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