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1

THE PROBLEM AND THE PRINCIPLES

THE PROBLEM

THE Commission set out to answer the question: Is the freedom of the press in danger? Its answer to that question is: Yes. It concludes that the freedom of the press is in danger for three reasons:

First, the importance of the press to the people has greatly increased with the development of the press as an instrument of mass communication. At the same time the development of the press as an instrument of mass communication has greatly decreased the proportion of the people who can express their opinions and ideas through the press.

Second, the few who are able to use the machinery of the press as an instrument of mass communication have not provided a service adequate to the needs of the society.

Third, those who direct the machinery of the press have engaged from time to time in practices which the society condemns and which, if continued, it will inevitably undertake to regulate or control.

When an instrument of prime importance to all the people is available to a small minority of the people

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only, and when it is employed by that small minority in such a way as not to supply the people with the service they require, the freedom of the minority in the employment of that instrument is in danger.

This danger, in the case of the freedom of the press, is in part the consequence of the economic structure of the press, in part the consequence of the industrial organization of modern society, and in part the result of the failure of the directors of the press to recognize the press needs of a modern nation and to estimate and accept the responsibilities which those needs impose upon them.

We do not believe that the danger to the freedom of the press is so great that that freedom will be swept away overnight. In our view the present crisis is simply a stage in the long struggle for free expression. Freedom of expression, of which freedom of the press is a part, has always been in danger. Indeed, the Commission can conceive no state of society in which it will not be in danger. The desire to suppress opinion different from one's own is inveterate and probably ineradicable.

Neither do we believe that the problem is one to which a simple solution can be found. Government ownership, government control, or government action to break up the greater agencies of mass communication might cure the ills of freedom of the press, but only at the risk of killing the freedom in the process. Although, as we shall see later, government

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has an important part to play in communications, we look principally to the press and the people to remedy the ills which have chiefly concerned us.

But though the crisis is not unprecedented and though the cures may not be dramatic, the problem is nevertheless a problem of peculiar importance to this generation. And not in the United States alone but in England and Japan and Australia and Austria and France and Germany as well; and in Russia and in the Russian pale. The reasons are obvious. The relation of the modern press to modern society is a new and unfamiliar relation.

The modern press itself is a new phenomenon. Its typical unit is the great agency of mass communication. These agencies can facilitate thought and discussion. They can stifle it. They can advance the progress of civilization or they can thwart it. They can debase and vulgarize mankind. They can endanger the peace of the world; they can do so accidentally, in a fit of absence of mind. They can play up or down the news and its significance, foster and feed emotions, create complacent fictions and blind spots, misuse the great words, and uphold empty slogans. Their scope and power are increasing every day as new instruments become available to them. These instruments can spread lies faster and farther than our forefathers dreamed when they enshrined the freedom of the press in the First Amendment to our Constitution.

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With the means of self-destruction that are now at their disposal, men must live, if they are to live at all, by self-restraint, moderation, and mutual understanding. They get their picture of one another through the press. The press can be inflammatory, sensational, and irresponsible. If it is, it and its freedom will go down in the universal catastrophe. On the other hand, the press can do its duty by the new world that is struggling to be born. It can help create a world community by giving men everywhere knowledge of the world and of one another, by promoting comprehension and appreciation of the goals of a free society that shall embrace all men.

We have seen in our time a revival of the doctrine that the state is all and that the person is merely an instrument of its purposes. We cannot suppose that the military defeat of totalitarianism in its German and Italian manifestations has put an end to the influence and attractiveness of the doctrine. The necessity of finding some way through the complexities of modern life and of controlling the concentrations of power associated with modern industry will always make it look as though turning over all problems to the government would easily solve them.

This notion is a great potential danger to the freedom of the press. That freedom is the first which totalitarianism strikes down. But steps toward totalitarianism may be taken, perhaps unconsciously, because of conditions within the press itself. A technical

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society requires concentration of economic power. Since such concentration is a threat to democracy, democracy replies by breaking up some centers of power that are too large and too strong and by controlling, or even owning, others. Modern society requires great agencies of mass communication. They, too, are concentrations of power. But breaking up a vast network of communication is a different thing from breaking up an oil monopoly or a tobacco monopoly. If the people set out to break up a unit of communication on the theory that it is too large and strong, they may destroy a service which they require. Moreover, since action to break up an agency of communication must be taken at the instance of a department of the government, the risk is considerable that the freedom of the press will be imperiled through the application of political pressure by that department.

If modern society requires great agencies of mass communication, if these concentrations become so powerful that they are a threat to democracy, if democracy cannot solve the problem simply by breaking them up—then those agencies must control themselves or be controlled by government. If they are controlled by government, we lose our chief safeguard against totalitarianism—and at the same time take a long step toward it.[1]

[1] A third possibility is that government itself may come into the field with an alternative system of communications. The Commission has given little consideration to this possibility, except in international

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Freedom of the press is essential to political liberty. Where men cannot freely convey their thoughts to one another, no freedom is secure. Where freedom of expression exists, the beginnings of a free society and a means for every extension of liberty are already present. Free expression is therefore unique among liberties: it promotes and protects all the rest. It is appropriate that freedom of speech and freedom of the press are contained in the first of those constitutional enactments which are the American Bill of Rights.

Civilized society is a working system of ideas. It lives and changes by the consumption of ideas. Therefore it must make sure that as many as possible of the ideas which its members have are available for its examination. It must guarantee freedom of expression, to the end that all adventitious hindrances to the flow of ideas shall be removed. Moreover, a significant innovation in the realm of ideas is likely to arouse resistance. Valuable ideas may be put forth first in forms that are crude, indefensible, or even dangerous. They need the chance to develop through free criticism as well as the chance to survive on the basis of their ultimate worth. Hence the man who publishes ideas requires special protection.

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communications. Yet the example of Station WNYC, controlled by New York City, suggests what government may do in domestic communications if it regards private service as inadequate.

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The reason for the hostility which the critic or innovator may expect is not merely that it is easier and more natural to suppress or discourage him than to meet his arguments. Irrational elements are always present in the critic, the innovator, and their audience. The utterance of critical or new ideas is seldom an appeal to pure reason, devoid of emotion, and the response is not necessarily a debate; it is always a function of the intelligence, the prejudice, the emotional biases of the audience. Freedom of the press to appeal to reason may always be construed as freedom of the press to appeal to public passion and ignorance, vulgarity and cynicism. As freedom of the press is always in danger, so is it always dangerous. The freedom of the press illustrates the commonplace that if we are to live progressively we must live dangerously.

Across the path of the flow of ideas lie the existing centers of social power. The primary protector of freedom of expression against their obstructive influence is government. Government acts by maintaining order and by exercising on behalf of free speech and a free press the elementary sanctions against the expressions of private interest or resentment: sabotage, blackmail, and corruption.

But any power capable of protecting freedom is also capable of endangering it. Every modern government, liberal or otherwise, has a specific position in the field of ideas; its stability is vulnerable to critics in

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proportion to their ability and persuasiveness. A government resting on popular suffrage is no exception to this rule. It also may be tempted—just because public opinion is a factor in official livelihood—to manage the ideas and images entering public debate.

If the freedom of the press is to achieve reality, government must set limits on its capacity to interfere with, regulate, or suppress the voices of the press or to manipulate the data on which public judgment is formed.

Government must set these limits on itself, not merely because freedom of expression is a reflection of important interests of the community, but also because it is a moral right. It is a moral right because it has an aspect of duty about it.

It is true that the motives for expression are not all dutiful. They are and should be as multiform as human emotion itself, grave and gay, casual and purposeful, artful and idle. But there is a vein of expression which has the added impulsion of duty, and that is the expression of thought. If a man is burdened with an idea, he not only desires to express it; he ought to express it. He owes it to his conscience and the common good. The indispensable function of expressing ideas is one of obligation—to the community and also to something beyond the community—let us say to truth. It is the duty of the scientist to his result and of Socrates to his oracle; it is the duty of every man to his own belief. Because of this

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duty to what is beyond the state, freedom of speech and freedom of the press are moral rights which the state must not infringe.

The moral right of free expression achieves a legal status because the conscience of the citizen is the source of the continued vitality of the state. Wholly apart from the traditional ground for a free press—that it promotes the "victory of truth over falsehood" in the public arena—we see that public discussion is a necessary condition of a free society and that freedom of expression is a necessary condition of adequate public discussion. Public discussion elicits mental power and breadth; it is essential to the building of a mentally robust public; and, without something of the kind, a self-governing society could not operate. The original source of supply for this process is the duty of the individual thinker to his thought; here is the primary ground of his right.

This does not mean that every citizen has a moral or legal right to own a press or be an editor or have access, as of right, to the audience of any given medium of communication. But it does belong to the intention of the freedom of the press that an idea shall have its chance even if it is not shared by those who own or manage the press. The press is not free if those who operate it behave as though their position conferred on them the privilege of being deaf to ideas which the processes of free speech have brought to public attention.

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But the moral right of free public expression is not unconditional. Since the claim of the right is based on the duty of a man to the common good and to his thought, the ground of the claim disappears when this duty is ignored or rejected. In the absence of accepted moral duties there are no moral rights. Hence, when the man who claims the moral right of free expression is a liar, a prostitute whose political judgments can be bought, a dishonest inflamer of hatred and suspicion, his claim is unwarranted and groundless. From the moral point of view, at least, freedom of expression does not include the right to lie as a deliberate instrument of policy.

The right of free public expression does include the right to be in error. Liberty is experimental. Debate itself could not exist unless wrong opinions could be rightfully offered by those who suppose them to be right. But the assumption that the man in error is actually trying for truth is of the essence of his claim for freedom. What the moral right does not cover is the right to be deliberately or irresponsibly in error.

But a moral right can be forfeited and a legal right retained. Legal protection cannot vary with the fluctuations of inner moral direction in individual wills; it does not cease whenever a person has abandoned the moral ground of his right. It is not even desirable that the whole area of the responsible use of freedom should be made legally compulsory, even if it were

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possible; for in that case free self-control, a necessary ingredient of any free state, would be superseded by mechanism.

Many a lying, venal, and scoundrelly public expression must continue to find shelter under a "freedom of the press" built for widely different purposes, for to impair the legal right even when the moral right is gone may easily be a cure worse than the disease. Each definition of an abuse invites abuse of the definition. If the courts had to determine the inner corruptions of personal intention, honest and necessary criticisms would proceed under an added peril.

Though the presumption is against resort to legal action to curb abuses of the press, there are limits to legal toleration. The already recognized areas of legal correction of misused liberty of expression—libel, misbranding, obscenity, incitement to riot, sedition, in case of clear and present danger—have a common principle; namely, that an utterance or publication invades in a serious, overt, and demonstrable manner personal rights or vital social interests. As new categories of abuse come within this definition, the extension of legal sanctions is justified. The burden of proof will rest on those who would extend these categories, but the presumption is not intended to render society supine before possible new developments of misuse of the immense powers of the contemporary press.

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THE PRINCIPLES IN THE PRESENT SITUATION

The principles we have attempted to state are those general truths which are valid as goals for all civilized societies. It must be observed that freedom of the press is not a fixed and isolated value, the same in every society and in all times. It is a function within a society and must vary with the social context. It will be different in times of general security and in times of crisis; it will be different under varying states of public emotion and belief.

The freedom we have been examining has assumed a type of public mentality which may seem to us standard and universal but which is in many respects a product of our special history—a mentality accustomed to the noise and confusion of clashing opinions and reasonably stable in temper in view of the varying fortunes of ideas. But what a mind does with a fact or an opinion is widely different when it is serene and when it is anxious; when it has confidence in its environment and when it is infected with suspicion or resentment; when it is gullible and when it is well furnished with the means of criticism; when it has hope and when it is in despair.

Further, the citizen is a different man when he has to judge his press alone, and when his judgment is steadied by other social agencies. Free and diverse utterance may result in bewilderment unless he has access—through home, church, school, custom—to

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interpreting patterns of thought and feeling. There is no such thing as the "objectivity" of the press unless the mind of the reader can identify the objects dealt with.

Whether at any time and place the psychological conditions exist under which a free press has social significance is always a question of fact, not of theory. These mental conditions may be lost. They may also be created. The press itself is always one of the chief agents in destroying or in building the bases of its own significance.

If we now fix our problem in space and time and look at the press in the United States today, we see that the conditions of our society and of the press in our society require new applications of the principles we have stated.

The aim of those who sponsored the First Amendment was to prevent the government from interfering with expression. The authors of our political system saw that the free society they were seeking to establish could not exist without free communication. As Jefferson put it: "The basis of our governments being the opinion of the people, the very first object should be to keep that right; and were it left to me to decide whether we should have a government without newspapers or newspapers without a government, I should not hesitate a moment to prefer the latter. But I should mean that every man should receive those papers and be capable of reading them."

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Our ancestors were justified in thinking that if they could prevent the government from interfering with the freedom of the press, that freedom would be effectively exercised. In their day anybody with anything to say had comparatively little difficulty in getting it published. The only serious obstacle to free expression was government censorship. If that could be stopped, the right of every man to do his duty by his thought was secure. The press of those days consisted of hand-printed sheets issuing from little printing shops, regularly as newspapers, or irregularly as broadsides, pamphlets, or books. Presses were cheap; the journeyman printer could become a publisher and editor by borrowing the few dollars he needed to set up his shop and by hiring an assistant or two. With a limited number of people who could read, and with property qualifications for the suffrage—less than 6 per cent of the adult population voted for the conventions held to ratify the Constitution—there was no great discrepancy between the number of those who could read and were active citizens and those who could command the financial resources to engage in publication.

It was not supposed that any one newspaper would represent all, or nearly all, of the conflicting viewpoints regarding public issues. Together they could be expected to do so, and, if they did not, the man whose opinions were not represented could start a publication of his own.

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