Defending Press freedom

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By Alan Rusbridger

THE WAY the laws of a land protect or hinder newspapers in their legitimate work is one measure of how a society regards its freedoms. I sometimes think the freedom of the press is one of those phrases, so ritualistically incanted that it begins to lose its meaning. My complaint is that the very people who are in a position to do something positive to defend the principle they consider so important often do so little in practice.

As a new editor, the last two years have been a bruising introduction to the way the law operates in regard to what we publish in Britain. At the time of publication an editor can have little confidence that an article he publishes in good faith and in the sincere belief that it is in the public interest will receive much, if any, protection from the courts.

He cannot guess what sums the article could cost him, what defence he will be able to mount, what damages might be involved, nor even — now — whether he will be able to argue his case before a jury of his peers. Editors without supportive and well-resourced owners would be foolish to risk their papers on too much robust journalism under these circumstances.

But I don't want this to be an unremitting whinge. It is foolish and unproductive of newspapers simply to sulk and protest. And the problem is much bigger than simply whether a public-figure defence law is incorporated into English law. That is merely an illustration of attitudes to a free Press and free speech. As journalists we should be concerned about the whole balance of laws relating to information.

The challenge for journalists is to accept that the overwhelming majority of people don't generally associate newspapers in Britain with acting in the public interest. A poll for MORI last month showed that 76 per cent of the population does not trust journalists to tell the truth. We do not aim or expect to be loved. But these figures are still a pretty dismal reflection on the public's regard for our trade, and one which ought to cause us pause for thought.

The problem is easily stated. There are, by and large, two classes of national newspaper in Britain. One attempts mainly to inform: to provide reasoned, and thoughtful, coverage of politics, social policy, the arts, business and economics. The other aims mainly to entertain: with serious news increasingly an incidental accompaniment. That is a crude characterisation — and the words broadsheet and tabloid are too blunt to be meaningful distinctions — but most people would, I suspect, acknowledge its basic truth.

The difficulty, then, is making sure that decent serious journalism can flourish in a society without also opening the door to brutalist and intrusive journalism. At the moment the tendency is nearly always to legislate for the worst rather than the best.

There are three main rights to be balanced in any attempt to resolve this conflict: first, the right to privacy, dignity or reputation, however you phrase it; second, the right to freedom of expression; and third, the right to know. Each right is in balance with the next and only by considering all three rights together is anyone likely to get it right. Parliament cannot do this alone, nor can the courts, nor can the newspapers.

because it would have been fatal to concede the merits of, say, a privacy law, without a compensating bias towards easier libel laws or freedom of information.

The result is that we have, effectively, been driven to defend the indefensible. We have stood by and watched a decade of intrusive stories published and meekly held our silence. Bit-part actresses, BBC weathermen, part-time newsreaders, little-known barristers, backroom arts administrators, minor-league sportsmen, inconsequential backbench MPs and even broadsheet newspaper columnists have been dragged in front of us and what should have been private made remorselessly public. Hospital wards have been invaded, widows have been traduced, phones have been tapped, confidences betrayed, interviews invented and lives have been ruined in the name of precisely what public good? Is it inconceivable that journalists ought to be able to admit that some of this is plain wrong? That there is a case for a privacy law, if drafted carefully and interpreted sensibly by a discerning judiciary? That self-regulation has frequently been a fig leaf behind which we have disguised our unease? And that, for perfectly understandable reasons, we have not been good at discussing these issues openly?

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There are other areas which, in a less embattled climate, we might be prepared to consider as a quid pro quo for a more enlightened attitude from politicians and the courts. Why do no British papers carry a regular column, such as American newspapers have for daily corrections and clarifications? Why do we not give more serious consideration of the opportunity — or even right — to reply in contentious cases? French and German newspapers have them, and find them useful devices for keeping the lawyers at bay.

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ment?

Many judges really do give the impression that they believe that the Guardian is indistinguishable from the Daily Star, or the Times from the Sun. Do senior judges ever get out and meet journalists? Do they ever visit newspaper offices and see the conditions in which newspapers are produced? The speed at which decisions have to be taken? The care with which most journalists on serious newspapers approach their work?

Is it, then, right to legislate for all newspapers as though they were the worst nightmares of Rupert Murdoch? Is it proper that — uniquely in civil law — the burden of proof in libel cases should be on the defendant? Is there no variation of a law on qualified privilege which would make it easier for bona fide journalists to write carefully-researched stories about legitimate areas of public concern?

Would they take the trouble to read the excellent research by Professor Eric Barendt, Professor of Media Law at University College London — whose team did bother to speak to journalists — and which proves beyond doubt that the libel laws do have a "chilling effect" in inhibiting reporting of matters of public concern?

Might it be worth adapting the principle of slander, where damages are only awarded if the plaintiff can prove actual damage? How will judges interpret the European Convention on Human Rights now it is to be incorporated into our law? Will they regard it as giving our courts a democratic mandate to weigh free speech against other aspects of the public interest?

Could judges ask themselves whether trial by jury ought not to be considered a fundamental right, especially when the plaintiff is a public figure himself and truthfulness is the issue? Will they look at the new reporting restrictions which continue to be introduced at every level of the judicial system? If protection is given to newspapers which write about powerful public figures, should legal aid be available for people who are not rich and not in public life?

Finally we would ask of the politicians that they live up to their promises on freedom of information. Remember Tony Blair's words only last year when he described a Freedom of Information Act as "not some isolated constitutional reform, but a change that is absolutely fundamental to how we see politics developing in this country."

Resist the temptation to use Article 8 of the European Convention on Human Rights as a backdoor method of introducing a privacy bill. Resist a privacy bill altogether unless it is accompanied by an enlightened reform of the defamation and information legislation. Look at the whole swatches of public life where the flow of information has dried up and local democracy has been driven into the shadows. Examine your own system of privileges. Be watchful about the implementation of data-protection legislation and allow proper exemptions for responsible media organisations. I will no doubt be criticised by some of my colleagues for conceding the slightest grounds for privacy legislation. They will cite the name of Maxwell and tell me that any privacy law is unworkable. I can only say that I would happily sacrifice the freedom to expose the love life of a BBC weather forecaster to 11 million prurient eyes if it meant that the courts would give greater protection to papers or broadcasters reporting corruption or dishonesty

to get it right.

Parliament cannot do this alone, nor can the courts, nor can the newspapers. But there ought to be an opportunity to do something now to balance these three rights and mould them into a coherent approach to information which would take us into the new millennium.

We have a new government, a new prime minister, a new Lord Chancellor, a relatively new Lord Chief Justice and plenty of new thinking in many areas of public life. If lawyers, editors, broadcasters and politicians could only get together in a spirit of openness, we could surely produce some thing which is good and lasting. Let me briefly suggest how this new coherent strategy on information could be forged.

Journalists first: let us confess that we are used to living in the bunker. We have, for as long as I have worked in this business, assumed — often with justification — that there was a conspiracy to make our working lives as difficult as possible. We have lived with ludicrous official-secrecy laws, anachronistic D- Notice committees, manipulated lobby systems and one of the most draconian libel laws in the civilised world.

We have lived with the threat of privacy laws, attempts to make us reveal our sources and, lately, the uncertain menace of data-protection legislation. The result is that a generation of editors felt that they had to stand shoulder to shoulder

As I say, it was difficult for British journalists to indulge in this kind of soul-searching in a climate in which we felt under threat. But there is another reason: we do not, as a profession, take ourselves very seriously in this country, indeed, we cannot really decide if we are a profession or a trade. Unlike our American colleagues we are happy to call ourselves hacks. We do not have an effective lobbying group of British editors. Defamation Acts are passed with scarcely a whimper from the Press. We leave it to the lawyers.

Our inability to take ourselves very seriously is, in many ways, the most attractive quality of British journalists and the journalism they produce. The danger is obvious: that others will not take us seriously either.

Then there are challenges for the lawyers. I have already said that there are enlightened solicitors, barristers and judges who have played an honourable part in fashioning a coherent philosophy of free expression. Often they have taken the lead. But they seem to me and to many of my colleagues to be in the minority.

Is it too much to ask that judges should develop a more sophisticated view of the Press than Lord Ackner's in a debate in the House of Lords: that there are only two types of newspapers — those who invent facts and those who distort them, and that both are deserving of punish-

broadcasters reporting corruption or dishonesty in public life.

But privacy legislation only works in a context in which all aspects of information are reviewed calmly and openly. The courts moving on defamation. The government moving on freedom of information. And the media moving on intrusive journalism. A new set of rights: the right to privacy, the right to free expression, and the right to know. It has to be planned as a coherent information policy instead of what we have at present: a ragbag of laws and conventions based on privilege, precedent and prejudice.

We should be able to defend the freedom of the Press: no ifs, no buts. and we should all think it our duty to nurture it. It is; I think, sad that we are forced to look so longingly to America when once there were writers and judges here who understood these principles. We should be true to our own history — but at the same time we should wake up to the fact that freedoms wither unless they are defended.

I think the climate is right to do that: to do something to ensure that the freedom of the Press is more than another bit of Heritage Britain — another one of those things we used to do terribly well.—*Dawn/Guardian Service*

(The writer is editor of Daily Guardian, London. The article is based on a lecture delivered by him recently.)