

MEDIA ACCOUNTABILITY IN A LIBERAL DEMOCRACY

AN EXAMINATION OF THE HARLOT'S PREROGATIVE

The full text of the thesis can be found at:

<http://eprints.infodiv.unimelb.edu.au/archive/00002967/>

The transcript of an interview on ABC Radio National's Media Report about the issues raised by the thesis can be found at:

<http://www.abc.net.au/rn/mediareport/stories/2005/1444760.htm>

CHAPTER SYNOPSES

INTRODUCTION: AIMS AND METHODS

[The press exercises] power without responsibility – the prerogative of the harlot throughout the ages.

–Rudyard Kipling

How can the media most effectively be made accountable for meeting their obligations to society without violating the core democratic value of free speech? This is the central research question for this thesis.

The media's obligations to society have two dimensions – an ethical dimension, which concerns the way the media ought to behave, and a performance dimension, which concerns the quality of media content. The case for media accountability rests on three broad justifications. First, the

media have been entrusted to discharge certain public-interest functions essential to a democratic society and, by conferring this trust, society is entitled to judge whether it is being honoured. Established press theory holds that in Western liberal democracies, the media enter into an implicit compact with the societies they serve. Under this compact, the media promise that in return for the freedom to publish, they will meet certain core functional obligations: be a watchdog over government and others in positions of power; provide information on which citizens can rely in making decisions as voters and as participants in the economy; provide a forum for the exchange of information, ideas and opinions; provide entertainment; be independent enough to resist pressure from rich and powerful interests, and generally promote the public interest over private or sectional interests. The terms of this compact are embodied in the Social Responsibility theory of the press. They may be thought of as ethical or “soft” obligations, not enforceable at law, as opposed to “hard” obligations, which are. The “soft” obligations require attention to be paid to issues that are central to recurring controversies about media performance: bias, invasion of privacy, dishonest or careless presentation of information, violations of standards of public taste, suppression of material which it is not in the publisher’s interest to publish, and incapacity to penetrate public-relations “spin”.

The second broad justification for demanding media accountability concerns the nature of the media’s work. The literature on professional ethics and accountability reveals that in addition to two overarching considerations – the social contract and the advancement of the public interest – it is the existence of three characteristics within a profession that creates the circumstances in which society demands accountability: power, privilege and potential for harm. It will be argued that the media possess all these characteristics and that therefore it is proper that the media should submit to public accountability.

The third broad justification is that the media should confront an uncomfortable truth:

Lots of people are in the accountability-holding business – either because their jobs give them this responsibility or because they have simply assumed it. Of course, journalists believe it is their constitutional mission to hold everyone accountable.¹

And who holds the journalists accountable? Where the “soft” obligations are concerned, the answer – in Australia -- is no one in particular, but a few fragmented and disconnected agencies

¹ Robert D. Behn, *Rethinking Democratic Accountability*, Washington DC, Brookings Institution Press, 2001, p.3.

whose effectiveness is exposed here as severely limited. No truly external and independent mechanism of non-legal accountability exists. Instead, accountability for behaviour and performance is largely in the hands of agencies that one way or another are bound into the media industry. It will be argued that this is against the public interest. By extreme contrast, the primary form of legal accountability, the defamation laws, are oppressive. This too is against the public interest.

It is conceded that there can be overlap between the two dimensions of media accountability: publication is a function, decision-making prior to publication is a behaviour, so deciding to publish something false and going through with that decision is a failure both of function and behaviour; of both ethics and performance. Even so, it is argued that there is sufficient separation to make the distinction useful. It is easy to think of circumstances in which publication of certain information is in the public interest but where the behaviour of the media in obtaining it is unconscionable or, at the very least, questionable.

The quest for media accountability is entirely consistent with contemporary democratic development. Increasingly in democratic societies, those who wield power are expected to account for the way they use it, and the political science literature is replete with works devoted to the subject. Public demand for accountability has been described as “an unquenchable thirst” that cuts across the political spectrum.² The research for this thesis shows clearly that accountability by the media to the public in Australia falls well short of slaking the “unquenchable thirst”. Media performance is poorly regarded, and on questions of ethics the media and the public are significantly out of step with each other. At the same time, the mechanisms of accountability are not only weak and fragmented, but virtually invisible to the public eye.

The challenge is to find ways of exerting accountability that more adequately meet the demands of a modern democratic state without trespassing on the principle of a free press. Freedom of the press has a long lineage. It was forged in controversies spanning three hundred years in England, and given eloquent expression in the Constitution of the United States. Its existence is regarded as a *sine qua non* of a democratic state, whether or not it is embodied in a written constitutional provision. In Australia it is recognised by the common law inherited from

² Mark H. Moore and Margaret Jane Gates, *Inspectors-General: Junkyard Dogs or Man's Best Friend?* Russell Sage Foundation, 1986, pp.2, 1.

England, augmented from time to time by case law. Processes by which the media are brought to account should not violate this freedom. Yet that cannot be an excuse to do nothing.

Scope

The scope of the thesis is confined to the three main media for news and current affairs – that is, newspapers, radio and television. As the research for this thesis shows, these are the main providers of the information which fulfil the public-interest functions of the media. For all the attention being paid to online media at the time this research was carried out, only two per cent of voters surveyed for this thesis relied on online sources for the kind of information relevant to the media's public-interest functions.

Issues concerning online media are dealt with as they arise from discussions of the three main news media and form part of the discussion in the final chapter, but online media are too immature to be capable of examination within the research model adopted here. That model assumes a substantial history, established legitimacy, a considerable body of ethical literature, and entrenched mechanisms of accountability. It is by the examination of these facets of media that the thesis arrives at its conclusions. Lessons that may be applicable to online media are dealt with in that light. The scope does not extend to books, periodicals, film, video, CD or other media beyond newspapers, radio and television.

The focus is firmly on accountability for ethics and performance, and not on media effects.

The new research conducted for this thesis was confined to Australia, and much of the discussion concerns media accountability in the Australian polity. However, there is considerable comparative analysis in the literature reviews that begin the chapters about legitimacy, performance and ethics. The comparative data come from the United States, the United Kingdom, Canada and New Zealand, all English-speaking countries which share similar media traditions with Australia. There are also some comparative data from Germany on journalists' attitudes to questions of ethics and performance.

Overview

The thesis is in five parts. Part I begins by examining the issue of media legitimacy. Chapter One describes how this legitimacy took root and for what reasons. It traces the development of the "free press" ideal from the earliest days of printing, and discusses this ideal in the context of

contemporary Western political life. Chapter Two traces the rising demand for accountability, and attempts to distil a workable definition of what this slippery term means when applied to the media.

Part II is devoted to an examination of the two dimensions of media accountability. Chapter Three focuses on the ethical dimension. It describes the development and content of the ethical framework within which the media work in Australia and in some similar countries, and presents new data from Australia on media ethics from the perspectives of media professionals and the public. It also presents some comparative data from the US, Britain, Germany and a benchmark Australian survey on a number of ethical issues. Chapter Four focuses on the performance dimension. It reviews the performance of the media, particularly over the past half-century, in relation to what is expected of the media under relevant press theory, and presents new data from Australia on media performance from the perspectives of media professionals and the public.

Part III presents a detailed exposition of the various non-legal “external” media accountability mechanisms that exist in Australia, that is, the mechanisms that exist outside individual media organisations, to deal with the media’s “soft” or ethical obligations. Even though they are called “external” to distinguish them from the mechanisms that exist inside individual media organisations, none of them stands completely outside the media industry. They are the Australian Broadcasting Authority (a statutory co-regulator), the Australian Press Council (funded by the newspaper publishers), and the ethics panels of the Media, Entertainment and Arts Alliance (the journalists’ trade union). There is a chapter for each which outlines its history, describes its complaints process, and analyses the type of complaints received. Each chapter also records the outcomes of these complaints, and reveals patterns which show the media’s shortcomings as perceived by complainants. Those responsible for these mechanisms are interviewed about the way they function and about their effectiveness. New data from Australia show attitudes towards these mechanisms from the perspectives of media professionals and the public.

Part IV deals with the “internal” mechanisms -- those set up inside media organisations. The three dealt with here are those of the national broadcaster, the Australian Broadcasting Corporation, and of Australia’s two main newspaper companies, Fairfax and News Ltd. Chapters Eight and Nine describe the internal accountability mechanisms and, where data exist, present patterns of complaints and their outcomes.

The examination of the accountability mechanisms is augmented by three case studies. One – in Chapter Five – examines the cash-for-comments cases involving various commercial radio broadcasters, and concerns the ethical dimension of accountability. The second – in Chapter Eight – examines a case of bias, and concerns the performance dimension of accountability. The third – in Chapter Nine – describes a unique experiment in Australian media accountability, the “Who Is Right?” project at *The Sydney Morning Herald*.

Part IV also considers the primary legal mechanism for holding the media to account for their “hard” or legal obligations. Chapter Ten describes and analyses the defamation laws, including contemporary attempts at reform. It discusses the so-called “chilling effect”, and canvasses the opinion of legal experts, journalists and the general public on remedies for wrongful harm to reputation.

Part V consists of conclusions and recommendations. Chapter Eleven contains the conclusions from the research and proposes a new theory of the media, more responsive to today’s demands for accountability while not trespassing on the freedom to publish. It also proposes new institutional structures to make media accountability more effective.

Methods

The detailed methodology for the entire research is set out in Appendix A. However, it is outlined here to explain the origins of the material presented in the main body of the thesis. There were four elements to the research methodology. These were desk research, qualitative research, an online quantitative survey of journalism professionals (practitioners and students), and a quantitative survey conducted by telephone of a random sample of voters in Victoria. No comparable research has been carried out in Australia or in any of the English-speaking jurisdictions with which Australia shares its media traditions.

The desk research consisted firstly of an examination of the functioning of the three “external” mechanisms of media accountability, and secondly of the internal accountability mechanisms at three major Australian media organizations.

The qualitative research consisted of 13 in-depth interviews with:

- ❑ people responsible for administering the various complaints mechanisms, external and internal;
- ❑ individuals who had been involved in relevant occurrences, such as the “Who Is Right?” experiment at *The Sydney Morning Herald*, or the 1990s review of media ethics;
- ❑ experts in media law, and
- ❑ editors and editorial managers at the three media organizations referred to above.

Those responsible for administering the various complaints mechanisms were asked to describe how those mechanisms worked in practice, as well as to describe the process and the rationale for it.

Media law experts were asked about the interaction of the various non-legal complaints systems, about the effects on the media of the existing defamation laws in Australia, and about contemporary efforts to develop a uniform defamation law.

Editors and editorial managers were asked their views about media performance, ethics and accountability generally. They were asked to assess their own organisation’s performance in these areas, and about the various accountability mechanisms existing at present.

The quantitative survey of journalism professionals, being practising journalists and journalism students, consisted of a self-completion survey delivered online to practitioners and in hard copy to students, with the concurrence of the practitioners’ employers and, in the case of the students, the RMIT University. Participation was voluntary and anonymous. A self-selecting sample of 168 respondents was achieved, with controls to detect and eliminate multiple responses.

The fourth element of the research was a quantitative survey among voters in Victoria. This was conducted in May and June 2004 and consisted of a telephone survey of a stratified random sample of 300 residents of Victoria who were eligible to vote.

These two surveys had a core of common questions dealing with media performance, ethics, and accountability. They also dealt with the credibility of the media as “truth-tellers”.

The qualitative and quantitative instruments are given in Appendix B, and consolidated quantitative analyses of the two surveys are given in Appendices C and D. In addition, both qualitative and quantitative data relevant to the various chapters of the thesis – particularly

Chapters Three to Ten -- are presented within those chapters. It is intended that this should give the chapters a degree of cohesiveness and completeness that would be lacking otherwise.

PART I: CONCEPTS AND GROUNDING

CHAPTER 1: HISTORY AND LEGITIMACY; THEORIES AND FUNCTIONS OF THE PRESS

There was a time when there was no mass media, when the technologies of printing and broadcasting did not exist and therefore the news media did not exist. This chapter sets out the historical development of the media, from both a technological and socio-political perspective. The former shows how the mass media became a practical possibility; the latter shows how this practical possibility was endowed with social and political legitimacy. This legitimacy provides the foundation for the idea of a free media, but for this freedom there is an important rationale. The rationale is that the freedom is necessary to enable the media to perform certain important functions for the society within which it operates. These functions differ from one society to another. The relationships between the media and society have been distilled into four basic theories of the press. Against the backdrop of the two historical perspectives, this chapter describes and discusses these theories of the press. They provide the basic criteria against which media performance is judged. The functions of the press in a democracy, as defined by theorists and practitioners, are described, and the reliance placed on the media by today's citizen is demonstrated.

CHAPTER 2: ACCOUNTABILITY AS A CONCEPT

In modern democracies, the concept of accountability is linked to the possession of power. Those who wield power are expected to answer for how they use it. However, the term "accountability" has multiple meanings. In this chapter, the ideal of accountability is discussed, as are the many meanings given to the term. Interpretations relevant to media power are identified and discussed. Findings from the qualitative and quantitative research conducted for this thesis are presented, demonstrating contemporary thought about how the concept of accountability applies to the media, and showing the attitudes of practising journalists and editors to the concept. This chapter provides a basis for understanding what is meant by the term "media accountability", a necessary pre-condition for analysing the means by which the media are made accountable. These analyses are carried out in subsequent chapters.

PART II: THE DIMENSIONS OF MEDIA ACCOUNTABILITY

CHAPTER 3: MEDIA ETHICS

This chapter sets out the grounds upon which the public may demand accountability by the media, and why an ethics-based approach is necessary. It recounts the history of the development of media ethics in Australia, examines codes of ethics and practice in a number of countries which provide the basis for existing systems of accountability, and discusses their content and limitations. The attitudes of Australian journalists and members of the public on a range of ethical issues are reported, as are those of four editors and editorial managers in major Australian publishing and broadcasting organisations. This research reveals considerable differences in attitudes between media professionals and the public, suggesting an explanation for the low esteem in which the profession is held.

CHAPTER 4: MEDIA PERFORMANCE: QUALITY OF MEDIA CONTENT

Media performance is one of the three main themes of this thesis. We have seen that media legitimacy rests in part on the ideal of a social contract: in exchange for the freedom to publish, the media will discharge certain duties essential to the functioning of a democratic society. Therefore this chapter focuses on issues about media content. This chapter begins with a review of the literature on media performance from a number of Western democracies, including Australia. From this review are derived certain criteria for judging media performance in respect of the obligations laid on them by the social contract. There follows the findings of qualitative research conducted by the author among editors and senior editorial managers in the Australian media on this issue. Finally it reports the findings on media performance from the two quantitative surveys conducted by the author for the purpose of this thesis, one among journalism professionals, and the other among voters in the State of Victoria. Drawing together the evidence from the literature, the qualitative interviews and the quantitative surveys, the conclusion to this chapter makes findings about media performance in Australia, and assesses it against the social contract on which media legitimacy rests.

PART III: EXTERNAL ACCOUNTABILITY MECHANISMS

CHAPTER 5: THE AUSTRALIAN BROADCASTING AUTHORITY

In this chapter The Australian Broadcasting Authority (ABA) is examined as the mechanism of accountability for commercial broadcasters and as a review mechanism for the public-sector broadcasters. First, its history and powers are set out. This is followed by an analysis of the complaints it has dealt with over a defined period of time, and then conclusions are drawn about the ABA's efficacy as a mechanism of accountability. Findings from the qualitative interviews and quantitative surveys, as they apply to the ABA, are then reported. The chapter concludes with a case study concerning the ethical dimension of media

accountability. The case is what became known as the “cash for comments” affair. It should be noted that the ABA was subsumed within the new Australian Media and Communications Authority on 1 July 2005.

CHAPTER 6: THE AUSTRALIAN PRESS COUNCIL

In this chapter The Australian Press Council is examined as the mechanism of accountability for newspaper publishers. First, its history and powers are set out. This is followed by a description and discussion of its complaints-handling procedures and an analysis of the complaints it has dealt with over a defined period of time. Findings from the qualitative interviews and quantitative surveys as they apply to the Press Council are then reported. There is also a report of a complainant-satisfaction survey conducted by the Council itself. Conclusions are then drawn about the Council’s efficacy as a mechanism of accountability, including recommendations for change.

CHAPTER 7: THE ETHICS PANEL OF THE MEAA
AND
MEDIA WATCH

In this chapter the ethics panel system of the Media, Entertainment and Arts Alliance is examined as the mechanism of accountability for individual journalists. First, its history and powers are set out. This is followed by an analysis of the complaints it has dealt with over a defined period of time. Findings from the qualitative interviews and quantitative surveys, as they apply to the MEAA are then reported. Conclusions are drawn about the MEAA's efficacy as a mechanism of accountability.

**PART IV: INTERNAL MECHANISMS OF ACCOUNTABILITY, AND DEFAMATION
LAW**

CHAPTER 8: THE AUSTRALIAN BROADCASTING CORPORATION

This chapter describes and analyses the internal accountability mechanism that exists in Australia's major public sector broadcaster, the Australian Broadcasting Corporation (ABC). The accountability mechanism is described and the incidence and type of complaints over a defined period is set out and discussed, along with the outcomes. A case of bias brought against the ABC by the then Senator Richard Alston, as Minister for Communications in the Howard Government, is used to illustrate how the full battery of ABC accountability procedures played out in a matter relating to the performance dimension of media accountability. This is followed by a discussion of the concept of bias as it relates to the media.

CHAPTER 9: FAIRFAX AND NEWS LTD

This chapter describes and analyses the internal accountability mechanism that exists in Australia's two biggest newspaper houses, Fairfax and News Ltd. The accountability mechanisms are described, but no data exist that allow any analysis to be done of the incidence and types of complaint, nor of the outcomes. The Fairfax segment begins with a case study of an experiment unique in Australian media history: the appointment by *The Sydney Morning Herald* of an external and independent editorial "ombudsman" to investigate complaints against the paper.

CHAPTER 10: DEFAMATION

No examination of media accountability in Australia would be credible or complete without an analysis of the defamation laws. The reason is that in Australia these laws are notoriously complex, imposing themselves as the most severe and uncertain form of accountability to which the Australian media must

submit. Moreover, considerations about defamation infiltrate the very fabric of the existing mechanisms of media accountability, as has been seen in earlier chapters, particularly those concerning the Australian Press Council and the Media, Entertainment and Arts Alliance. This chapter examines the nature of defamation law, the way in which it is applied in Australia, and its effect on media decision-making, including a discussion of the so-called “chilling effect”. It also reports the results of surveys conducted in Australia among journalists and the public on questions to do with defamation and making amends.

The questions canvassed in this chapter are: How do the defamation laws act as a mechanism of media accountability? Are the interests of free speech and protection of reputation from wrongful harm balanced reasonably in Australia? Do the defamation laws have a “chilling effect” in that they prevent the media publishing information which is true and in the public interest? What do journalists and ordinary members of the community – from whom juries are drawn – think about making amends when defamation occurs?

PART V: THE WAY AHEAD

CHAPTER 11: CONCLUSIONS

This chapter sets out a new normative theory of the media. This theory - a social contract theory - proposes that the media should be held accountable to specific public institutions for specific dimensions of their performance. These dimensions relate to functions and behaviours. The social contract theory goes beyond traditional social responsibility theory by stating that in a modern democracy it is not enough simply to recognise that the media have social responsibilities. There is a right on the part of society to see that those responsibilities are discharged and to hold the media to account for any abrogation of them. Before setting out the new social contract theory in detail, the groundwork is laid by reviewing key points about media legitimacy and the contemporary performance of the media in relation to both function and behaviour. The existence of embryonic online media is acknowledged and certain issues in relation to them are identified. Finally, new institutional arrangements for a more effective accountability structure are proposed.

CODES OF ETHICS AND PRACTICE FOR JOURNALISTS IN AUSTRALIA

Codes of ethics for journalists have been developed to give effect to the professional values journalists have articulated for themselves, to assert a particular conception of what is acceptable and unacceptable conduct by journalists in their professional lives.

The Code of Ethics of the Media, Entertainment and Arts Alliance (MEAA) remains the oldest and most widely disseminated code of ethics available to journalists in Australia.

It may be found at <http://www.alliance.org.au/documents/codeofethics.pdf>

The Code, originally formulated in 1944, has been revised twice, but certain values have remained constant:

Honesty in obtaining and presenting material;

Fairness, for example by publishing without fear or favour;

Integrity, for example in avoiding conflicts of interest or plagiarism;

Respect for confidences, privacy and grief;

Transparency in dealing with people and in disclosing the origins of material, and

Concern for public safety and the welfare of the vulnerable.

In these respects, the Code is not dissimilar to the journalistic codes developed elsewhere in the Western democracies over the latter half of the twentieth century. Although sometimes expressed differently, they are fundamentally identical and cover the same ground.

By way of illustration, the Statement of Principles of the American Society of Newspaper Editors contains a preamble which espouses Responsibility, Freedom of the Press, Independence, Truth

and Accuracy, Impartiality, and Fair Play. Under these headings the conduct and behaviour expected of journalists are set out, and echo many of the values embodied in the MEAA Code of Ethics.

In Australia the print media are entirely self-regulating, and this self-regulation rests partly on the MEAA's Code, partly on the in-house codes developed by the newspaper companies, and partly on the Principles of the Australian Press Council.

The Press Council's principles may be found at:

<http://www.presscouncil.org.au/pcsite/complaints/sop.html>

The Press Council has also developed a set of privacy standards in association with the introduction of the *Privacy (Private Sector) Amendment Act 2001* (Commonwealth). The privacy standards may be found at:

http://www.presscouncil.org.au/pcsite/complaints/priv_stand.html

The electronic media are "co-regulated" in a system supervised by a statutory agency, the Australian Communications and Media Authority. This system too rests on a set of codes of practice developed by the commercial radio and television industries and the public-sector broadcasters (ABC and SBS), and endorsed by the Authority.

As a whole, they deal mainly with standards of behaviour. The codes for broadcasting also deal to some extent with issues of program content.

The code of practice for commercial radio may be found at:

<http://www.acma.gov.au/webwr/aba/contentreg/codes/radio/documents/cra-codeofpractice.pdf>

The code of practice for commercial television may be found at:

<http://www.acma.gov.au/webwr/aba/contentreg/codes/television/documents/codeofpractice-july2004.pdf>

The public-sector broadcasters, the Australian Broadcasting Corporation (ABC) and Special Broadcasting Service (SBS) have their own internal codes. Their complaint-handling processes are also subject to external review, including by ACMA.

The ABC's code is contained in its statement of editorial policies which may be found at:

<http://www.abc.net.au/corp/pubs/documents/edpol07.pdf>

Sections 4 to 7 are of particular relevance to the work of journalists.

The SBS code may be found at

http://www20.sbs.com.au/sbscorporate/media/documents/8487sbs_codes_of_practice_2006.pdf

GAPS IN THE CODES

A close analysis of the code reveals a number of gaps.

Put up overhead 6

We will discuss each of these, and we will use case studies to help us. Remember, the idea is to identify **issues for consideration** in deciding what we do.