

The Risk of Freedom Briefing

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Policing and Accountability

When an individual is charged with a crime he is at once under the protection of the courts. His case is sub judice, and cannot be discussed by the media; the police can investigate the evidence, but neither publish it nor use it for any purpose other than the proceedings of the trial. Police conduct is subject to elaborate restrictions, designed to ensure the fairness of the trial and to protect the rights of the accused. And a verdict of 'not guilty' clears the accused entirely, forbidding anyone thereafter from publicly insinuating guilt.

Furthermore, the innocent victim can bring charges against the police of 'malicious prosecution', and the threat of this is a severe restraint on police behaviour. All this conforms to the code of conduct set out by Peter Villiers, and is part of the attempt to ensure that justice prevails, and that the police are guided by its precepts.

When, however, a corporation is accused of an act which is not a crime, by an NGO with an interest in damaging its reputation, none of those constraints apply. The case can be published on the web, and every kind of insinuation can be used to blacken the corporation's name. Libel laws may prevent the worst of false accusations from being published. But libel laws can hardly protect a corporation from malicious insinuations or conjectures. There is no case and no trial, and therefore no opportunity for the corporation to defend itself. And the rule that no judgment should be passed until both sides have been heard can be ignored without penalty. Many corporations now find themselves assailed by regiments of private policemen who ensure that anyone who looks them up on the web encounters factitious scandals and malicious insinuations before learning anything about what they actually stand for.

It is in this way that environmental NGOs have sought to poison the air around the petroleum companies, and human rights groups the air around firms like Benetton and Nike, which pay low wages in parts of the world that — but for Benetton and Nike — would earn no wages at all. Of course, it is right that the activities of large corporations should be scrutinized. In the case of the law, however, the police who watch us are also watched. We have a defence against malice and an opportunity to clear our name. The policing activities of NGOs are subject to no such constraints, and the question raised by Terence — quis custodiet illos custodes? Who will guard

those guardians? — takes on a new urgency. NGOs assume a mask of virtue; but behind that mask resentment, malice and ideological prejudice enjoy a freedom that they cannot enjoy in the lives of individuals. For individuals have to pay the price of their aggressions, and it is a price that most of them cannot afford.

The same goes for trial by media. Just as the big corporation attracts the goody-goody NGO, so does the celebrity attract the self-righteous journalist, exposing 'in the public interest' actions that are neither

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crimes nor torts, but which can be made to look disreputable merely by being 'exposed'. Celebrities are people, with private lives. Seeing them squirm in the spotlight brings surges of triumph into the breasts of those who have always suspected that celebrities were no different from

themselves. Thus it was in the case of Cherie Blair, whose dealings in the property market were made into headline news by inquisitive journalists eager to show that they would never dream of stooping so low. So it has been with the Prince of Wales, whose reputation suffers every time he is displayed as a normal human being, with fads, fantasies and hormones as well as high ideals.

NGOs and the media provide comfortable niches for the busybodies and the witch-hunters. Ensconced in these unassailable fortresses, high above the world where angry emotions can be expressed only at a real cost to the one who feels them, they can indulge their passions to their heart's content, and without fear of redress from their victims. The Press Complaints Commission ostensibly protects the victim of media persecution. But it has proved unable to protect those who really suffer, the celebrities, since it is assumed that they have courted publicity in any case. In the case of the NGOs there is no body that scrutinizes their conduct, and the larger among them have the same ability to evade local jurisdictions as the multinational corporations that they persecute. Moreover they don't have to account for themselves to shareholders or indeed to anyone else.

Do we need a quasi-judicial body, which can call the accusers to account and proceed to an impartial verdict that will place an obligatory constraint on the accusers' publicity? Or would this be just another tier of unaccountable bureaucracy — indeed, another NGO?

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The proper principles of Policing

Peter Villiers

The internal security of the United Kingdom is protected both by private sector companies which emphasize safety and by the various public police forces or services which exist at both local and national level, and which emphasize justice.

The purpose of private security companies is straightforward enough, and their accountability even more so. They provide security for the person or organization that pays them to do so, and are therefore accountable for their services according to the terms of whatever contract has been agreed. They are also accountable to the law in more general terms, and this now includes the Human Rights Act (2000).

The purpose of the public sector police services is rather less straightforward, and their accountability is a much more complex and contentious issue. However, we believe that it is possible to clarify both.

It is sometimes stated that the purpose of the police is to enforce the law: but that does not take us very far. Which laws, when, and with what degree of enthusiasm? What happens if there is a clash of priorities, or if upholding one law encourages people to break another? What happens if law in question has become obsolete, or lacks public support, or is unlikely to be equally respected by the disparate elements of a disparate community? In reality, the police do not set out to enforce the law, but to keep the peace: and enforcing the law may or may not be a means to that end. In that sense, policing is a teleological rather than a deontological pursuit. It pursues goals rather than follows rules. This means that the police need:

Both individual discretion and operational independence in their interpretation of their duties, and a degree of flexibility in the

“They must be impartial, diligent, disinterested and fair in what they do”

patterns of accountability by means of which their performance is judged and their loyalty assessed.

As the police recognize, these freedoms can only be justified if they are seen to act with integrity, common sense and sound judgement. This phrase comes from the police service's own statement of common purpose and values — the closest that the British police have come to articulating a philosophy of policing and an articulation of what it means to police by consent. To this we would add that they must not be seen to be solely accountable to any one particular interest, whether it be local or national. They must be impartial, diligent, disinterested and fair in what they do. They cannot be seen to be ideologically motivated, whether because of their own prejudices or because they are seen to be using their powers in order to enforce the prejudices of others. And because they are accountable to the law they must be punished if they do wrong, just like anyone else.

The police service exists to keep the peace by reconciling the enforcement of the law with the satisfaction of public opinion. An impartial police service, like an impartial civil service, is a guard against unfettered ideology and a necessary part of the fabric of a pluralist democracy.

Peter Villiers is head of human rights at the National Police Leadership Centre, Bramshill. These views, which do not represent an official standpoint, are explored in greater depth in his various publications - see back cover.

Policing the Protests

Aisha Hazari

People with strong beliefs naturally wish to express them, and it is a mark of a free society that they are permitted to do so. But it is also a mark of such a society that the freedom of one person to protest should not jeopardise the freedom of others to go about their legitimate business. Which raises the question of when protest becomes intimidation, and when voicing an opinion becomes shouting abuse. The movement for animal rights has brought this question to a head. The advocates of animal rights are quite unapologetic in declaring their intention to intimidate those they disapprove of — after all, they owe it to the animals. Hence, while ostensibly legal organisations, engaged in peaceful protest against immoral habits, they announce their real intentions in their names: Animal Liberation Front, Hunt Saboteurs Association, and so on. And when the moment comes, it seems, they will take every opportunity not merely to inform their targets of their disapproval, but to administer whatever punishments they can.

Take the case of Huntingdon Life Sciences — which I know well, since my parents now live nearby. A coalition of opponents, named Stop Huntingdon Animal Cruelty (SHAC), has continuously demonstrated, not only at the

Laboratories of HLS, but also outside the homes of employees, often following them to their cars or through the streets, shouting unseemly and (to someone brought up in a Muslim household) quite shocking things as their victims vainly try to stop their ears. By no stretch of the imagination could this be called peaceful protest. The intention is to intimidate employees to the point where they cease to work for HLS, so that the firm goes out of business.

The firm has had recourse to the 1997 Protection from Harassment Act in its defence. This Act was introduced to protect people from stalking, at a time when stalking was all over the news. But it has been used successfully by a London Fur shop to protect its premises against animal rights activists, who were intent on turning all customers away. HLS has gone further, in winning an injunction against SHAC, so that protestors will now face not merely an action for damages in civil law, but a criminal action for contempt of court, should they continue to intimidate employees of HLS. Al-hamdu lillah, say Mum and Dad. But the civil rights group called Liberty is not so pleased, foreseeing the further use of the Act to curtail social and political protest and to erode the freedom of assembly which is supposedly guaranteed under the Human Rights Act.

What is needed, surely, is a clear distinction between protesting and policing. People have a natural desire not merely to protest against things they disapprove of,

but to stop people from doing them and, if possible, to punish them meanwhile. The protestor is a latent policeman, but one who has neither the authority to assume that role nor the accountability that is integral to it. At present there seems to be no legally recognized criteria to distinguish protest from verbal abuse. Maybe we should try to develop such criteria and, while we are about it, clarify the distinction between informing the public of a corporation's doings and inciting others to damage it.

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Inconclusive private policing

Tony Curzon Price

Nike's denial of any engagement in imperfect labour practices; Enron's creative recording of fictitious trades as revenues; the marketing of possibly dangerous natural 'remedies' as cures; a pickle labelled and marketed as 'The impossibility of the idea of death in the mind of someone living'; the therapeutic value of an apple a day ... all of these misleading claims are aimed at promotion and enrichment. But which should be allowed, even celebrated, and which punished by law?

Not so Little Platoons

Richard D North

It is a commonplace to celebrate NGOs — campaigners — as the ‘little platoons’ which Edmund Burke characterised as providing the vibrancy and authenticity of democracy. It is now routine to do obeisance to their role in ‘civil society’, the code for the new profession of activism which is licensed to disrespect the formal, democratically-mandated institutions Western government. Actually, Burke — the great theorist of the principle of representative democracy and hence of licensed elitism — would presumably have wondered who these people actually represented and by what virtues they could be regarded as an elite. Yet that is the trick Oxfam, Amnesty, RSPB, NSPCC, RSPCA and a hundred others have pulled off.

NGOs get away with their smoke-and-mirror work because they are run by the sort of people who ought to be investigating them. The politics departments of universities have not produced cool, sceptical analysis of these powerful players (Wyn Grant's *Pressure Groups and British Politics*, Longman 2000, is the beginnings of an honourable exception). The media has been a largely uncritical consumer of their allegations and opinionising. The failure is easily explained: academics and journalists mostly figure themselves as casting a sceptical and even dissident light on the mainstream world of commerce and government, and it is by triangulation with these mainstream twin pillars of society that NGOs also define themselves.

The public seldom notices that most NGOs combine two quite different roles. One we might call ‘practical’ and the other ‘political’. Oxfam tries to help poor people in the third world. Amnesty exposes torture. RSPB owns bird reserves. These are practical, real-world functions whose success can be judged pretty easily. Inefficacy, inaccuracy, inefficiency could be quickly exposed.

It is in the world of policy where we should be far more sceptical, but are less so. Oxfam, for instance, talks dangerous nonsense in its campaign against western pharmaceutical companies. Its anti-capitalism makes it traduce the patent system, instead of campaigning for its place in an arrangement (routine in Europe and the US) which ensures the profitability of drugs producers whilst allowing a flow of discounted drugs to the poor.

We sloppily assume that Amnesty is the fount of wisdom on abusive dictators and so did not demur when it campaigned for the European trial of Pinochet. The point here is that when Amnesty bears witness

against torture and wrongful imprisonment it speaks to obvious and uncontroversial abuses. But whether Pinochet should be returned was not a similar issue. His torturing days were over, he had been granted immunity, and complex issues of sovereignty, legitimacy and international relations were raised by his case. Amnesty had no locus standi to debate the case, and no constitutional entitlement to be heard. Serious people should mind these incursions into territory where Amnesty adds no value.

Amnesty should aim to be trusted because it is brave and true in pursuit of its defining purpose; it should instinctively beware wandering into areas where it displays a lack of impartiality, thereby losing the support of plenty of people of conscience. More recently, both Amnesty and Oxfam came out against the late war in Iraq. That was a perfectly respectable position for crusty old diplomats, for professors of military history and for the man in street. But just because wars set development back, and because injustices are inevitable in the military chaos, that does not mean a conflict ought to be avoided. Still less does it mean that Amnesty and Oxfam were right to parade the prejudices of their staff. We might need both organisations to help fend off the worst off the abuses of war. We certainly did not need them to tell us that war is ghastly.

There is a kind of blackmail here. Amnesty is able to say, in effect: “Our posturing on war is the price you pay for having us keep your conscience informed on torture.” Oxfam says, in effect, “You have to let us parade our idealistic nonsense about the third world because if you don’t, we won’t help with those starving kids”.

The problem is that by campaigning on political issues NGOs avoid the accountability that politicians must bear, while drawing on the fund of public good-will to protect themselves from criticism and to gain unjustifiable influence. From being an expression of our own charitable instincts, they become a profoundly anti-democratic force, seeking to influence decisions in matters over which they have neither expertise nor authority.

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The questionable virtue of our shoemakers is unlikely to lead to the sorts of catastrophes (The Crash of 1929, Thalidomide, Asbestos etc.) that cause the development of expensive truthfulness through regulation. Five years ago, organisations with names like ‘Justice do it’ published evidence that Nike’s Asian sub-contractors mistreat workers. Nike responded with a concerted public relations campaign — this is a company that understands the subtleties of guerrilla marketing — of letters to newspapers, to university authorities and with expert counter-reports posted to its website. Marc Kasky, a Californian consumer activist, filed a suit against Nike, claiming that Nike’s defense amounted to misleading advertising under Californian law.

The Californian Supreme Court ruled that Nike’s statements were indeed ‘commercial speech’ rather than free speech, and therefore were subject to California’s very stringent laws against misleading advertising. Nike appealed, and the US Supreme Court refused to rule on the case on technical grounds. Nike succeeded in settling the case out of court by donating

\$1.5m to a workers’ rights organisation (the Fair Labour Association) over which Nike has considerable control. This outcome has encouraged other activists to file misleading advertising suits in California. Peta, for example, is suing the dairy association for a cheese campaign that depicts happy cows. The mystery is why Kasky and his legal team accepted a settlement that amounts to just one day’s advertising expenditure for Nike. Did they now, five years on, have doubts about their conviction?

This is an unfortunate outcome. It is true that Nike’s every action, including its statements about its labour practices, should be assumed to be commercial. Faced with the possibility of the full publicity of the court room, Nike’s instinct was to stop the argument at the earliest settlement date. The court action has now deprived all of us who are interested in the substance of the ethical questions — for example the impact of Western corporations on world poverty — from having Nike contribute to the debate in the heated, fragmented, and inconclusive fora of civil society: the press, chat rooms, dinner

party conversations. These are the right places for difficult debate when the consequences of being misled are not catastrophic. If I had purchased a gym shoe from Nike believing their claims to virtue, I would be slightly, rather than catastrophically, harmed. If Nike is illegally harming poor workers, it should be attacked: not for its pronouncements about its workers’ treatment, but for the treatment itself.

Kasky’s case eventually silenced Nike on any issue of substance because of the company’s fear of exposure. It is easy to see the sort of regulation that would have been needed to extract the truth from this context: ethical auditors signing statements about their client’s (Nike’s) behaviour; a body to qualify the auditors; published and binding regulatory standards for ethical audit; a public body charged with examining the proper functioning of the ethical reporting institutions. The ethical content of our basket of goods is not weighty enough for us to want any of this.

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Who Guards the Guardians?

Many industries are now tracked by accusatory NGOs. This accusatory stance might perform a useful purpose: for sometimes corporations need to be coerced into obeying legal and ethical norms. Often, however, a firm will gain nothing in the eyes of the vigilantes by responding to their criticisms. For the vigilantes also belong to an industry — the accusation industry — which loses market share when the victim places itself beyond reproach.

In endeavouring to respond to criticism the victim may seek advice and recommendations from Public Relations firms, or consultants in the comparatively new field of 'corporate social reponsibility' (CSR). This response is not merely good business sense. It is also just and reasonable. There is no point in a corporation mending its ways if it does not seek to persuade the public that it has done so. Moreover, by seeking to persuade the public it sets a standard to which it must adhere.

The self-appointed vigilantes will have none of this. For them all attempts to address criticism are merely PR, and PR is further proof of the offence complained of. Indeed, the PR industry is a target of the same implacable persecution as the industries that make use of it. An internet site, PR Watch, now exists expressly to scrutinize and where possible to undermine the attempts by afflicted corporations to rectify their image.

A good example occurred when BAT, the world's second largest tobacco conglomerate, decided to devise a strategy for CSR that would go as far as the corporation could go in meeting criticisms while still remaining a legal business. BAT invited the anti-tobacco NGOs to meet it and to put their case. The NGOs decided that they could not accept the invitation. To do so would be to recognize the tobacco industry as legitimate — something that would bring their own business to an end. PR Watch then mounted an attack not only on BAT for daring to answer criticisms, but also on the consultants — such as Durham Ethics and EQ — that were helping it to do so.

This case illustrates a growing trend in corporate policing. The policeman (itself a corporation, though self-sanctified as an NGO) is determined both to amplify its accusations, and to allow no reply to them. The principles of natural justice simply don't apply, since the accusation industry is an industry like any other, devoted to sustaining and if possible enlarging its market.

For suppose that the NGO, faced with its victim, were compelled to admit that some of its accusations are unfounded, others capable of being met, others morally, politically or legally over-demanding. Its self-righteous posture would be in ruins. The NGO would then have to embark on a radical make-over of its image. It might even have to hire a consultant in CSR. Take a look at PR Watch, with its unbending stance of paranoid suspicion, and the first thought that will strike you is: here is a corporation badly in need of PR.

Arnold Schwarzenegger, film-industry heart-throb and Republican candidate, stands accused of sexually harrassing women by a women's peace group called Code Pink. The grounds of the charge are gossip, rumour, and insinuations that have never been made in court. Code Pink believes that it has the right to parade its speculations at every public appearance of its victim, and thereby to sabotage his political campaign. The women demonstrate outside venues where he is scheduled to speak with banners announcing 'Arnold, You're Terminated' and 'Groper for Governor'.

Karen Pomer, a main organizer of Code Pink, told the Washington Post that she intends a series of protests at well-publicized events. She explained: 'I waited to see if people in Hollywood would speak out when Schwarzenegger made his announcement. No-one was coming forward to say anything, though the stories about him are notorious.'

Wait a minute Ms Pomer: are you saying that Schwarzenegger is notorious because of the stories, or that the stories are notorious because nobody seems willing to confirm them? Are you saying that in this case there is no need for proof, since it is you that are doing the accusing, or that the facts speak for themselves, when a man is so attractive that women queue up to be — well, groped by him? Ms Pomer's justification is: 'I want people to know who this man is. Then, if they still want to vote for him, that's their decision. But at least it's an informed decision.' But informed by what? Lies, disinformation, speculation, gossip — or the truth? As private policeman Ms Pomer clearly feels that such questions are none of her business.

In Orwell's 1984 language is carefully policed by the totalitarian authorities, so that views antithetical to the ruling ideology could no longer be expressed. The attempt to criticize the system had to use the language of the system, and the language — Newspeak — allowed no alternative to the system. This state policing of language has occurred under communism, which was the main inspiration for Orwell's fantasy. More surprising, and in a way more alarming, is the *private* policing of language, in the interests of ideologies that are intrinsically contentious. In her recent book *The Language Police*, Diane Ravitch shows the extraordinary extent to which words, phrases and thoughts have been banned from American books, and in particular from schoolbooks, by the self-appointed censors of political correctness. 'Actress', 'Cattleman', 'Chick', 'Sissy', 'Swarthy' are among thousands of words proscribed in the interests of 'sensitivity' and 'inclusivity'. The censors are librarians, teachers unions, school boards, and the publishers themselves, who do not dare to offend the police, for fear of losing their sales. Even if it means rewriting a classic (doesn't the word 'nigger' occur over and over again in *Huckleberry Finn*?), the policemen (sorry policepeople) will insist on having their way.

Publications

Wyn Grant's *Pressure Groups and British Politics*, Longman 2000, an assessment of the power and accountability of NGOs.

Police Leadership in the 21st Century: Philosophy, Doctrine and Developments, Waterside Press, Winchester (2003) ed. Peter Villiers and K R C Adlam. Also *Without Fear of Favour: Policing a Changing Democracy*, Peter Villiers, Unison Education, 1995. Two analyses of the principles guiding police in their role as 'keepers of the peace'.

'Policing Nature' by Tyler Cowen *Environmental Ethics*, vol 25, Summer 2003 pp 169-182 questions whether guarding animal rights requires us to go further and police nature.

The Language Police, Diane Ravitch, Alfred A Knopf, 2003. A guide to the words proscribed from text books in state schools in America.

WWW.

Boris Johnson, writing in the *Daily Telegraph* (13/6/03) regards the Regulation of Investigatory Powers Act (UK) as an unprecedented threat to liberty and foresees all personal records being freely available to anyone with a friend in a public office. See: <http://www.telegraph.co.uk/opinion/main.jhtml?xml=/opinion/2002/06/13/do1302.xml>. Meanwhile, in response to the US federal surveillance system, Terrorism Information Awareness (TIA): <http://www.darpa.mil/iao/TIASystems.htm> two academics from Massachusetts Institute of Technology have developed a counter website, called Government Information Awareness (GIA) at <http://opengov.media.mit.edu/>, as part of the Open Government site. GIA holds information on national and local politicians and allows people to post further information, without any verification and while preserving their anonymity. Which kind of policing is the greatest threat — that of the State or that of the private watchdog?

www.prwatch.org

Part of the Center for Media and Democracy, this specialises in investigative journalism and corporate criticism. See also www.corporatewatch.org

www.nader.org flagship 'public interest' site. Contributing editor Ralph Nader (presidential candidate and founder of Public Citizen), made his reputation defending the consumer interest against corporations. His article 'Corporate Socialism' in the *Washington Post* 18/7/02 outlines what he sees as the corporate control over democracy and regulators.

www.saigon.com for **Boycott Nike** and Justice do It Nike www.citinv.it/associazioni/CNMS/archivio/strategie/nikeboycott.html