



Saltire Series No. 2

**FREEDOM OF  
EXPRESSION IN  
THE  
NEW SCOTLAND**

By

Alan Bissett  
&  
Jean Rafferty



## About the Saltire Society

We are;

- An apolitical membership organisation open to all
- An international supporter and patron of the arts and cultural heritage of Scotland
- A champion of free speech on the issues that matter to the cultural life of every Scot
- A promoter of the best of what we are culturally, now and in the future
- A catalyst to ensure new ideas are considered and the best of them are made real

We believe we have an important and unique role to play, as an independent advocate and celebrant of all that is good and important about our cultural lives and achievements. The Society has played a crucial role over the last seventy five years, in recognising our cultural achievements. And while times have changed the need for that independent voice remains.

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In partnership with



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## Editorial Note

In the Saltire Series we have invited individuals to spark fresh thinking, ignite debate and challenge our orthodoxies, through the publication of short commissioned essays. The Editorial note from a pamphlet produced in 1942 is still a strong expression of the proposition.

‘They will express the considered judgements of their own authors, to whom complete freedom has been given; and are not to be taken as representing the policy of the Saltire Society, whose objective is to promote that free and informed discussion without which no sound policy for Scotland’s future can be shaped.’

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## The Authors

**Alan Bissett** is a novelist, playwright and performer from Falkirk. He now lives in Glasgow. In 2011 he was the Glenfiddich Spirit of Scotland Writer of the Year. He is the author of four novels, two of which were shortlisted for the Scottish Mortgage Investment Trust Fiction of the Year prize. His plays include his 'one woman show', *The Moira Monologues*, and *Turbo Folk*, which was shortlisted for Best New Play at the Critics' Awards for Theatre in Scotland. His new Edinburgh Fringe show is *Ban This Filth!* in which he will play radical feminist Andrea Dworkin.

**Jean Rafferty** is a novelist and award-winning journalist who has been nominated in the UK Press Awards on two separate occasions, an unusual honour for a freelance. Her work is wide-ranging, from Satanic ritual abuse for Guardian Weekend Magazine to Thatcher-bashing in the 1980s for the Sunday People. Her writing has been called 'inspirational', 'brave' and 'gutsy,' qualities she was in dire need of following publication of her novel, *Myra, Beyond Saddleworth*, when everything from her morals to her eye makeup came under scrutiny.

## FREEDOM OF EXPRESSION IN THE NEW SCOTLAND

**‘You know, everybody believes in free speech until you start questioning them about it.’**

Larry Flynt, publisher of *Hustler* magazine

### **Introduction**

We live in a democratic country where freedom of expression is sacrosanct. Your right to free expression was never written down, you understand, but existed as a negative right in our Scots and English common law since time immemorial – right?

In 1998 the UK Parliament incorporated the European Convention on Human Rights and for the first time free speech *for all* was enshrined in legislation. Before the Human Rights Act was passed in 1998 only parliamentarians (since 1689 at Westminster) and academics (since 1986) had the right to free expression expressly protected by law.

So, parliamentarians aside, do the rest of us really have equal rights to freedom of expression – here, now, in the Scotland of 2013? As the nation engages in an unprecedented political, social and cultural debate on its constitutional future we are engaging in a process that will redefine us as a people and as a society, whether or not we vote for independence – a ‘New Scotland’ no less. This pamphlet is one of a series published by the Saltire Society at this singular moment in Scottish history. All these works seek to provoke discussion, raise awareness of the issues and spark consciousness of the process unfolding around us in the lead up to the 2014 referendum.

Freedom of expression is always difficult, always vulnerable and always precious. It is a constant struggle to defend and promote its principles here and around the world, but the context of constitutional change intensifies what is already a time of raging debate in Britain. The Leveson Report recommendations for a legislative structure for the press based in England and Wales have been controversial to say the least, while the McCluskey Commission examined those recommendations in the Scottish context and went further still. This begs the question; can the press survive – free or otherwise – in the age of social media? Are punitive



judicial reactions to the various bigots and ba'heids that troll the internet creating dangerous precedents restricting free speech in the future? Does unrestricted expression on the internet or elsewhere threaten to engulf us all in ill-informed tittle-tattle, pornography and propaganda? Does anti-bigotry legislation proposed by the Scottish Government take a sledgehammer to crack a small handful of nuts? And in the midst of this maelstrom, do Scots need to assert and define their own specific constitutional right to freedom of expression?

The Saltire Society very kindly invited Scottish PEN to produce this pamphlet, recognising our long tradition of promoting and defending freedom of expression in Scotland and the wider world. In the following pages two prominent members of Scottish PEN, **Alan Bissett** and **Jean Rafferty** engage in a writers' dialogue to explore free expression as the 'New Scotland' approaches.

Some parts of their dialogue might surprise or even shock you, but if they get you talking and thinking and writing and blogging and discussing and debating free expression, then that's all right. Isn't it?

Drew Campbell  
President, Scottish PEN

## **FREEDOM OF EXPRESSION IN THE NEW SCOTLAND** **a dialogue by Jean Rafferty & Alan Bissett**

**Jean:** Is freedom of expression under threat in Scotland 2013?

The general consensus seems to be that because we're part of 'one of the great democracies of the world', the United Kingdom, we're dedicated to free speech. As we move forward to a new Scotland – and the process of self-examination will make it new regardless of whether the people vote for independence or not – it's worth considering where we are on this most fundamental topic

In fact the UK stands at only twenty-ninth in the world on the Press Freedom Index, marginally ahead of the USA at thirty-second. But where America has moved up fifteen places over the last year, we've slipped down one. The idea that the British Government might accept the Leveson Inquiry's proposal for statutory regulation of the press brought condemnation from around the world, not least because around the world many took us at our own evaluation and thought the UK was a bastion of free speech.

What worries people is that if a Western democracy like ours could muzzle the press, what hope of free speech did the tinpot dictatorships of the world have? Phenyo Butale, of the South African Freedom of Expression Institute, was alarmed at the possible consequences for his own continent. 'African governments have shown they are uncomfortable with free press acting as a watchdog, holding them to account,' he said. 'A move to statutory regulation in the UK would really be a gift for them.'

South Africa is one of the few countries to have a constitution enshrining the right to free expression. Yet in April 2013 its parliament voted through a secrecy bill with the potential to stifle dissent. Cynics might say this was for the benefit of the country's polygamist president, Jacob Zuma, accused of racketeering and money-laundering after a 1999 arms deal. The charges were dropped but suspicion of the president lingers. He certainly needs a large income to support his collection of four current wives and twenty-one children.

Freedom of speech activists in South Africa have promised to continue campaigning against the secrecy bill by challenging it in the courts. Alt-

though it has been diluted from its original form with the insertion of public interest clauses, whistleblowers can still be jailed for up to twenty-five years on charges of 'espionage' and 'hostile activity.'

If that's the case in a country with a constitution protecting free speech, how much more careful do we have to be in Scotland, where we have no constitution and no formal commitment to freedom of expression?

**Alan:** I think the answer to that question, Jean, is: very careful indeed. Governmental reaction to the Leveson Inquiry, as you rightly say, will be copied around the world. While there have clearly been outrageous abuses of media power, often in the spurious name of 'freedom', it was also a free press which exposed these abuses. A judiciary was able to punish within the limits of existing law. Murdoch's media have long held sway over politicians; politicians have taken their chance to reverse the position. Power functions accordingly. But two wrongs do not make a right.

I say this as a supporter of Scottish independence and (more cautiously) of the SNP, but the Offensive Behaviour at Football & Threatening Communications Bill which the Scottish Government enacted in 2012 does worry me. Comparisons with South Africa are probably misplaced, and I'm prepared to accept that the Bill was a well-meaning attempt to deal with Scotland's sectarian problem. The consequences, however, are damaging to free speech. While one might think some of the songs sung by Rangers and Celtic supporters ugly, and opprobrium is fine, it is not the place of government to circumscribe which political slogans can and can't be sung by adults. That this is the one issue to unite Old Firm fans in recent decades speaks volumes about the government's unwelcome interference. We have the right to criticise, say, the Catholic Church or the actions of the IRA, in whichever terms we like. We also have the right to defame the Monarchy or the legacy of British imperialism. These are ideological positions, open to challenge. We have the right to assert our Irishness or our Britishness. These are identities. We run into immediate problems of censorship when the government decides which ideologies are unchallengeable and which identities beyond reproach. We should be much more cautious when it comes to race, as skin colour is not an intellectual or emotional choice. But race is not at the heart of this Bill.

If the SNP wish to enshrine freedom of speech into the constitution of an independent Scotland – and I'm sure we both believe they should – they will find themselves up against their own policy, and their own stand on Leveson, for that matter.

The 'free speech'/independence issue reared its head again recently, in quite a different context, with the Radical Independence Campaign's picketing of Nigel Farage on the High Street of Edinburgh, and various cries of 'fascist' (hilariously) against the protestors. We can talk about that if you like.

Like you I'm not convinced that the United Kingdom is one of the 'great' democracies of the world. While direct censorship is a last (albeit available) resort, political debate is 'managed', and radical ideas excluded, in all sorts of subtle ways by the corporate media. Media ownership should most definitely be a question for a newly independent Scotland, since it is arguably as dangerous for vested, wealthy interests to circumscribe political debate as it is for government to do so.

**Jean:** That's why freedom of speech is too important to be left to politicians and their parties. Even when they're well-intentioned, their motives are about social control, not democracy. And it's often stretching it to call them well-intentioned. In Mexico, for example, twenty-eight journalists have been killed since 1992, with not a single perpetrator brought to justice, because of corrupt governments either afraid of the drugs cartels or in bed with them. In Turkey, the recent mass protests (June 2013) started because of a proposed office development in a park, but they have now become about freedom and the Turkish government's attempts to suppress ethnic and religious minorities such as Kurds, Sunnis and Alawis. 'All that happened in the past were provocations,' said one Kurdish protestor. 'It didn't matter how many divisive statements the politicians made. The people won't lose their solidarity, and that's the important thing.'

In Scotland we're the opposite. The government is trying to prevent us being at each other's throats. The Offensive Behaviour at Football & Threatening Communications Bill is interesting because according to the government's website, 85 per cent of Scots agree 'sectarianism' should be a criminal offence and an even higher proportion (91 per cent) support stronger action to counteract it. This suggests the bill has popular sup-

port – except that the government didn't actually ask the people any questions about it.

It's pretty obvious there's too much sectarianism surrounding football in this country, but who decides where to draw the line between sectarianism and strong comment? What brave chief of police is going to give the word to arrest thousands of people at an Old Firm game if they decide to sing *The Famine Song*? It's a charter for disaster. (By the way, I love the idea of a bill to cover regulated football matches...whereas you can presumably say whatever the hell you like at an unregulated one.)

Not only is the 2012 Act unworkable in practical terms, it's quite unnecessary. Our current laws are already equipped to deal with comment when it tips over into hate speech. In 2009 William Walls was convicted at Kilmarnock Sheriff Court of a racially and religiously aggravated breach of the peace for singing *The Famine Song* at a Rangers away game. Walls appealed under the European Convention on Human Rights on the grounds he was entitled to free speech, but the appeal court judges ruled against him, deciding the song was clearly racist. Lord Carloway, the senior judge, said, 'The court does not consider that the lyrics of this refrain bear any reasonable comparison to those of *Flower of Scotland* or indeed *God Save the Queen*. Rather they are racist in calling upon people native to Scotland to leave the country because of their racial origins. This is a sentiment which... many persons will find offensive.'

So the other songs are racist, but apparently not so much. *The Famine Song*, though, is deeply offensive, calling on the Irish to go home because they've brought nothing but 'trouble and shame' to this country and evoking the historical memory of the 1840s Potato Famine (*An Gorta Mór*, the Great Hunger) when a million people died and another million left Ireland.

*Well the famine is over  
Why don't they go home?*

So far, so crass, but in the third verse, the song descends into repellent and irrational mud-slinging:

*Now they raped and fondled their kids  
That's what those perverts from the dark side did.*

This is so far beyond reasonable discourse it clearly comes from very deep wells of hatred, and that's the problem with proscribing speech. Words signify emotion as much as literal meaning and no government can control emotion. You can only hope that society itself comes to recognise and condemn its own unjust attitudes. When I was growing up, corner shops run by Asians were called the 'Paki's', with no suggestion of malice, in much the same way I was called a Jock during my many years of living in England. I didn't take offence, but had the word been linked with 'Go home!' I might have thought differently. It's the intention behind the words that makes them offensive or not.

Over the years, we've slowly come to realise it's not acceptable to go for a 'Chinkie' or nip round the 'Paki's' for some late night chocolate. The same will happen with football sectarianism. When it's recognised that something is so wrong it often leads to change and we don't need governments to bludgeon us into it. There's a clip on YouTube showing an Orange marching band singing *The Famine Song* outside a Catholic church in Belfast. When they realise they're being filmed, the cameraman is attacked and the clip breaks up. If there's no shame in the performance, why get so angry that it's being recorded?

That may sound overly optimistic but look what happened to William Walls' defence counsel, the man who claimed a football game is an 'organised breach of the peace' and that 'an exchange of pleasantries in the form of abuse is part and parcel of going to the game'. Donald Findlay QC was utterly disgraced when he was recorded singing sectarian songs at a Rangers Scottish Cup victory party in 1999. Findlay loved Rangers and loved being part of the club, but the story forced him into resigning from the board and he later said he was so depressed he contemplated suicide.

No one would advocate trial by media, but the key thing here is the story *was* reported, in the *Daily Record*. The resulting public outcry made it clear society in general thought Findlay's behaviour – and by extension that of many football fans – was unacceptable. No government bill could do that. It's too distant and authoritarian a measure to create this level of public opprobrium. That has to come from people themselves and, for me, that's why it's so important that the press remains free.

**Alan:** I'm largely in agreement with everything you say, and I certainly think what seems to you and I (and a judge, clearly) believe racist sloganeering should be banned. But there were some interesting results when I took this debate to Twitter. Someone argued hate speech is hate speech regardless of whether it takes place in a football stadium, online, or in the street. As another tweet pointed out, however, singling out the example of *The Famine Song* could be the thin end of the wedge. Once you start deeming a particular song or slogan illegal you introduce a censorship culture, and everything comes back to the question of who decides what is offensive, to whom, and why. Some on Twitter felt that *The Famine Song*, while highly objectionable, was not as offensive as songs where both sets of the Old Firm sing about actually killing the other side. Should the sentiment, 'We're up to our knees in Feinian blood / Surrender or you'll die' (from the notorious *The Billy Boys* song) be made illegal? Its sentiments are arguably more terrifying than anything found in *The Famine Song*, and yet I'd argue that at least this song emerges from the context of an actual war. No such justification can be found for *The Famine Song*, which is simply, at its heart, saying 'Irish go home'.

There's a fine distinction between 'Fenians' and the Irish in general: the first is a political and religious identity, the second is an ethnic one. Once we start to say that political or religious beliefs cannot be challenged in the form of song (however distasteful or aggressive that song is) we enter into dubious territory. I'm alarmed that a Celtic fan was charged with 'religiously aggravated breach of the peace' in 2008 for wearing a T-shirt that said 'Dirty Horrible Huns' on it. The prosecution argued 'Hun' was an offensive term for a Protestant. I'd argue it's used more commonly to describe Rangers fans in general. Even so, while the T-shirt was in very poor taste, why shouldn't this man have the right to say this about Protestants? Protestantism and Catholicism are, basically, idea systems about where the universe comes from, how we should live our lives, and what happens to us after we die. Other religions, or atheists, should be able to lampoon or even, yes, 'hate' these religious identities to whatever degree (short of violence) they like.

This is why I get worried about discourse around 'Islamophobia', 'anti-Catholicism' and 'anti-Semitism'. As an atheist, I'm against all religions, and should be allowed to say so. The problem comes when we find ourselves being against, say, Asian immigrants, the Irish people or

the Jewish race (as opposed to the religion of Judaism). People are born with a racial identity they did not choose and cannot reject, and so no such challenge to this is defensible. Saying the Irish ‘rape and fondle their kids’, as opposed to highlighting the abuse of particular members of the Catholic Church, is simply unacceptable. For this reason, I’d condone the illegality of *The Famine Song* but not *The Billy Boys* or the word ‘Hun’. Outrage might be appropriate, but not censorship. In the case of Donald Findlay, which you pointed out, he was found guilty in the ‘people’s court’ of the media, but wasn’t charged with breaking the law. This is as it should be.

Other Tweeters pointed to the double-standard of the Scottish government’s stance on, say, songs about the Irish Republican Army. Even Rangers fans would find it difficult to argue logically that a song about Bobby Sands was qualitatively different from the 1980s pop hit *Free Nelson Mandela*. Let’s not forget that Mandela was also labeled a terrorist by the British and US governments.

Would the Scottish government contemplate issuing a ban on slogans in support of the African National Congress? It’s highly unlikely. Were I a Celtic supporter, I might wonder what makes Irish resistance to oppression so different.

This is the minefield we enter once a government tells adults which political expressions are and aren’t acceptable. It’s why we should be very worried about the British government’s current crackdown on the ‘hate speech’ of Islamic ‘fundamentalists’. Theresa May and David Cameron want to charge Islamists with incitement to violence simply for engaging in rhetoric which is angry but stops short of calling for actual violence. What Orwellian madness is this? When we have a reactionary government defining the definition of ‘extremist’, ‘hate speech’ or ‘fundamentalist’, then deeming them illegal, everyone who cares about freedom of speech must immediately stand to attention. We could find ourselves, very quickly, living in a country where Muslim condemnation of, say, the invasion of Afghanistan is punishable by law. How easily this could morph into a situation where any sort of political expression the state deems threatening is declared illegal. May already wants to extend the rights of the security services to read the e-mails and text messages of British citizens, even although the same forces have said this would not have prevented the murder of



Lee Rigby in Woolwich.

We should see this for what it is: the British political class's exploitation of one senseless murder to grab greater surveillance and punitive power.

Which brings us to the Leveson Inquiry...

**Jean:** Yes, Leveson is simply the latest in a long line of attempts by successive governments to stamp out scrutiny. Of course we were all (including many tabloid journalists themselves) shocked by the hacking of Milly Dowler's phone, but there are laws in place to deal with this, as Rebekah Wade and Andy Coulson have discovered. It remains to be seen whether they'll be convicted or whether they'll manage to push blame downwards, but at least the charges of press phone hacking will be considered in open court, which is more than you can say for other forms of it.

The press in this country has too many unacknowledged constraints on it, mostly economic. They range from the pressure of advertisers trying to control what copy sits next to their shiny cars and obscenely expensive watches to our punitive libel laws, which prevent serious investigation of well known figures. Yes, we all know Hugh Grant has two children by a woman who's not his partner or that David Beckham used to be a serial shagger. Such gossip may add to the gaiety of the nation but it can hardly be said to be in the public interest. George Orwell said, 'Journalism is printing what someone else does not want printed: everything else is public relations,' but we only find out about the really important stories long after they've happened. The idea that governments would impose even more constraints on the media is downright unacceptable. We need more freedom of speech, not less.

I have to admit I don't find the sentiments of the other songs you mention as irrationally hate-filled as *The Famine Song*, perhaps because representations of killing have become so commonplace in our culture that they've lost their power to shock. The Hollywood of the screen goddess has morphed into that of the action hero, . I loathe these macho anthems, including the supposedly acceptable *Flower of Scotland*, which I don't think has any place in a multicultural Scotland.

Like you, Alan, I'm an atheist, but my one religion would be pacifism. I don't think war is ever the way to solve human problems.

Your reading of the child abuse lines in *The Famine Song* is different from mine. I didn't take it as a comment on the Irish history of cover-ups given the Catholic Church's worldwide suppression of abuse claims; it's hardly unique in that. I understood it as the common conflation of rural people and incest. Perhaps it's both.

I certainly take your Twitter correspondent's point that it's invidious to single out one song. My point was that there is already a law adequate to deal with race hate and we don't need more on top of it. In fact Lord Carlway may have been inappropriately draconian given that William Walls didn't even sing the whole song on the day of the offence and the judge simply assumed that his listeners would know the words. But it's clear that the Offensive Behaviour at Football & Threatening Communications Bill is overbearing and unnecessary – we already had quite enough provision for overbearing and unnecessary judgements!

It's this extra layer of surveillance and control I find so worrying. As a journalist I've always believed in H.L. Mencken's dictum, 'Journalist is to politician as dog is to lamp-post.' – a phrase now officially a cliché after being in every article ever written about the Leveson Inquiry – but it's crucial to freedom of expression. To cite another cliché, 'Power tends to corrupt and absolute power corrupts absolutely...' and we simply cannot allow politicians, governments, the Establishment to walk free from scrutiny. As far as I'm concerned, the more provocative and irreverent that scrutiny is the better. Yet Leveson proposed that journalists be subject to the control of politicians through legislation. Although he said governments should have no say in what goes into newspapers, Leveson also wanted a new press regulatory body, to be backed by legislation, which could impose massive fines.

Basically, I don't think you can trust governments. They're too busy protecting business interests and their own existence to care about free speech. Earlier this year, editors from the newspaper industry were in talks with David Cameron's government to find a formula for a regulatory body that would suit all parties, yet the discussion ended abruptly in March after a group of ministers and opposition politicians met with the lobbying group, Hacked Off, whose activities are funded by celebrities and wealthy businessmen. Following the meeting, the government

brought in a Royal Charter with proposals rejected by most newspapers: they included compulsory arbitration for complaints and punitive fines on papers who don't sign up to the Charter – now there's a democratic solution to press regulation if ever I heard one!

I vividly remember 1991 when David Mellor threatened the tabloid press that they were 'drinking in the last chance saloon.' John Major's government had made the tactical blunder of espousing 'family values,' so the press took great glee in exposing Mellor as a sexual cheater who had betrayed his wife with an unknown actress called Antonia de Sancha. The details were exquisitely funny. He was said to enjoy sucking Ms de Sancha's toes, spanking and, most delicious of all, dressing up in a Chelsea football strip during sex. The fact none of these eccentricities were true – probably – didn't deter anyone from headlining and even illustrating them; De Sancha said they were and that was reason enough to publish. She was paid handsomely (£35,000) for betraying her lover. Mellor could have used Britain's notoriously strict libel laws to contest her allegations but obviously preferred to ignore the accusations in the hope it would all die down. (Some hope – they're still remembered more than twenty years later!)

The basic thrust of what the press said was, after all, true: he *had* been unfaithful to his wife, Judith, who posed with him for pictures to show what a loyal wife she was despite the shattering of her eighteen-year-old marriage. The de Sancha bombshell was followed by the revelation both Mr & Mrs Mellor had been taken on holiday to Marbella by Mona Bauwens, whose family had connections to the Palestine Liberation Organisation. That was the end of Mellor's career as a minister; he resigned from his job as minister for the Department of National Heritage (now Culture, Media and Sport) in September 1992. His marriage survived a little longer; the Mellors divorced in 1995 after he announced he had become 'extremely close' to Penelope, Lady Cobham, and intended to remain so.

None of this would have been anyone's business but their own had it not been for the Major government's trumpeting of 'traditional moral values', the supreme hypocrisy of which was shattered not just by the Mellor revelations but years later when Edwina Currie revealed in 2002 that she and John Major himself had had a four year extramarital affair.

Major's government was full of these hypocrites and I see no reason to doubt that any other government is different. Tim Yeo, Minister for the Environment and Countryside, fathered a love-child; and Steve 'Shagger' Norris had five mistresses over a period of twenty-five years, while poor Stephen Milligan died with a plastic bag over his head and an orange in his mouth as a result of auto-erotic asphyxiation. But the sexual stuff was nothing in comparison to the flouting of parliamentary morality, such as Northern Ireland Secretary Michael Mates lobbying on behalf of the businessman Asil Nadir, who later went to prison for corruption, or Jonathan Aitken's conviction for perjury in 1995.

Aitken had been investigated by both the *Guardian* and *World in Action*, who had uncovered evidence of his dealings with the Lebanese arms dealer, Mohammed Said Ayas, an associate of Saudi Arabia's Prince Mohammed. Aitken tried to prevent publication, dramatically declaring, 'If it falls to me to start a fight to cut out the cancer of bent and twisted journalism in our country with the simple sword of truth and the trusty shield of British fair play, so be it. I am ready for the fight.'

He should have known better. He was, after all, the great-nephew of Lord Beaverbrook, one of the most tenacious and pugnacious proprietors in the history of journalism. Neither the *Guardian* nor *World in Action* backed off and Aitken sued. He lied and lost and was sentenced to eighteen months in prison. It was a moment of vindication for the press, but the pressures on them at the time were tightening. There were two inquiries into their activities by Sir David Calcutt (later Lord), whose 1990 recommendation led to the formation of the Press Complaints Commission.

While most journalists would accept that the PCC has been toothless and self-serving, its existence is a reflection of the constant pressure from governments trying to curb the media. This stuff has been going on for over twenty years. People talk about it mostly in terms of corporate interest and the power of the big media players, but it filters down to individuals too. At the same time as the *Sunday People* was investigating David Mellor's extracurricular activities, I was doing an undercover story for the paper on old people's homes. I lied about who I was to get a job, and lied about my employment history, betting that the owners of the home would be too mean to make a long distance phone call to check me

out.

I worked in three homes in Stockport and discovered shocking cruelty to the old people. I didn't have to work long: the abuse was casual and constant, taken for granted. It was one of the most upsetting stories I ever worked on because the old people were so vulnerable, so bewildered.

You hope with a story like that the staff will be sacked, the old people will be saved, and the home shut down. But it came out the same week as the Mellor and De Sancha revelations. They had been obtained by taping the couple, a ploy legal at the time as their landlord owned the house and gave permission (no doubt for a fee). My editor, Bill Hagerly, was a fine and brave journalist but he told me he wouldn't be able to use the actual names of the homes involved as he'd been advised not to fight on two fronts legally. My name was passed on to the local council as a potential witness but no case ever came to court; eye witness evidence from one person was not enough.

On the one hand, I was deeply disappointed, but it was obvious the Mellor story was profoundly important in challenging government attempts to control the media. It would be comforting to think politicians do this because they want to protect the public, but I think it's far more to do with their wanting to control information. After all, last year's *News of the World* phone hacking scandal now looks like amateur hour compared to the US intelligence service's Prism programme, which has hacked millions – yes, that's millions – of Google and Facebook accounts of their own citizens as well as those of people all over Europe.

The European Commissioner for Justice, Viviane Reding, is said to be satisfied that this is 'mainly an American question' as the US claimed it didn't collect European data in bulk but only where they suspected terrorism or cybercrime. European citizens' rights are 'non-negotiable,' according to Reding – though in this case all that would seem to mean is we have the right to sue.

Information is the most precious commodity in the modern world, used by businesses for commercial purposes and by governments for political purposes. Idealists such as Bradley Manning and Edward Snowden have risked their liberty for it, as have many police whistleblowers in

this country, and the newspapers obviously pay a fortune for it.

Yet for all the information we're bombarded with daily, for all the facts and figures, the information and misinformation floating round cyberspace, we still can't be sure the important stuff gets to us. Peter Wright, a former editor at Mail Newspapers, criticised the Royal Charter proposals when he gave evidence to the Commons Culture, Media and Sport Committee:

‘I certainly think that if I were the editor of the *Daily Telegraph* and I was offered the MPs' expenses (computer) disc under this regulatory regime, I would think a great deal longer and harder about doing stories based on it than I would have done two years ago.’.

In Scotland we've gone even further than Leveson. Despite the presence of actual journalists on the panel (who you'd hope would fight for freedom of speech) the McCluskey report into press regulation proposed a compulsory regulator, not the voluntary arrangement suggested by the Royal Charter. Fortunately, the SNP government was alarmed by the proposal and refused to endorse it. Fiona Hyslop, Cabinet Secretary for Culture and External Affairs, told Holyrood's culture committee that the report had exceeded its remit and that her first reaction to it had been ‘concern about the compulsory element.’

We have the most varied and robust press in the world, but our freedom of speech has been eroded for years. State regulation would be the final nail in the coffin.

**Alan:** ‘Basically, I don't think that we should trust governments.’ Well, hello anarchism, nice of you to enter the fray! Governments, we should always be aware, behave in exactly the same way as all large organisations do, accumulating power to themselves rather than abrogating it from themselves. This basic principle applies as much to the UK government as it does to the US government, the former Soviet Union, China, or, for that matter, Tesco. All sizeable power structures, in their different ways, purport to be representatives of ‘the people’. This is the first, most basic act of propaganda: to rule over the masses you must promise them you are, in fact, emblematic of their ‘freedom’. You will claim to be the common will of an electorate (governments), or a figurehead for national sovereignty (the monar-

chy), or the true voice for a religious faith (the church), or a guarantor of peace between nations (the European Union), or a provider of goods desired by consumers (business), or a protector of the realm (military), or the guardians of free speech (the media). In some cases, and at certain times, this may even be true. When threatened, however, the mask of benevolence drops and all of these entities act with an amoral, self-interested precision: austerity programmes; the use of force; incarceration; smears.

The anarchist position would be that where we have large organisations we have remoteness between the 'representatives' and the 'represented', allowing unaccountability to flourish. Such hierarchies will inevitably have self-interest at their heart. The leadership will make decisions for the benefit of themselves at the expense of those lower down. They will pretend that these decisions are being made for the good of the organisation – 'the people' – as a whole. A business must make redundancies in order to remain 'efficient' and 'competitive', euphemisms for the protection of upper-management income, shareholder dividends or the stakes of investors. A government must read the private e-mails and Facebook messages of its citizens as a matter of 'security'. But how 'secure' do people feel knowing that their communications are being intercepted in this way? Perhaps that's the point: a generally-present ambience of paranoia works wonders to keep people in line. 'If you have nothing to hide you have nothing to fear,' runs the dictum from our 'representatives', William Hague being the latest example. By this logic, you could justify placing security cameras and bugging devices inside people's homes. Let's see if Hague volunteers for that.

This is why – and while I agree we must be highly suspicious of governments using Leveson to push their advantage – there is no getting away from the fact that the media works in exactly the same way. Yes, we need a press to expose the expenses scandal, the misdeeds of moral hypocrites, or, indeed, cruelty in old folks' homes but it's also deeply disturbing to know that they were hacking the private voicemails of the public for salacious stories. Our hearts will bleed more, obviously, for the parents of the murdered Milly Dowler than for Hugh Grant or Charlotte Church, but celebrities are human beings first and foremost. Why should the fact they have a film to sell mean photographers have the right to follow them wherever they go, or listen to their private messag-

es? When a spurned lover pursues someone in this way it is called harassment. When a government does so it is called state surveillance. When a paparazzi or a dirt-digging journalist does so it is called 'press freedom'. It's one thing to catch out a philandering politician, but the sex lives of ordinary people have been offered up as sacrifice – without consent – on the front pages of many a Sunday tabloid. Large sections of the press have acted with an arrogance, selfishness and impunity for several decades, and Leveson, if nothing else, must have been a sobering experience for them.

However, we should be careful of trying to overplay the idea corporate media and the government are somehow natural enemies. As twin pillars of the ruling class they have more ideological similarities than differences. A key agenda of capitalism is to make us wary of people's organisations. This has neatly dovetailed with the negative attitude of every government since Margaret Thatcher to public ownership. The rapacious demand for privatisation means that, say, the NHS, trades unions, public-sector 'quangos' and the BBC are routinely portrayed by the right-wing media as swollen, Stalinist monstrosities, staffed by apparatchiks on the make. While there can sometimes be a degree of truth to this, there are also severe dangers to the public sector from the private one, which it is a function of the corporate media to either mask or normalise. The right-wing media pressurises the democratic process by massaging public opinion about the benevolence of 'business' in public life, meaning parties who play ball – desperate for re-election – will reap the benefit of positive press. It's worth remembering that just before the hacking scandal broke Culture Secretary Jeremy Hunt was prepared to waive legislation through parliament allowing ever-more concentrated ownership of the media by individuals. The most obvious beneficiary of this would have been, of course, Rupert Murdoch, whose newspapers had backed the Tories during the election. This is symbiosis, not mutual antagonism.

Even when these parties are elected, how serious is the scrutiny placed upon them by the 'free' press? There are, of course, some excellent political journalists who measure up to their responsibilities – Ian Bell, Polly Toynbee, Joyce McMillan, Iain Macwhirter, Owen Jones, and Laurie Penny come to mind – and they are highly cherished precisely because so rare. But how many government memos, press releases and strategically-timed 'leaks' end up recycled in newspapers



as copy? It's possible to argue we do not even have a 'free' press in the strictest sense of the term, since vast sections of our media are owned by rich elites promoting their own agenda under the guise of 'news'. 'Consent' to rule has to be, in a term coined by Noam Chomsky, 'manufactured'. The findings of the Glasgow Media Group and Media Lens, analysing the pro-establishment bias in our news, are illuminating. Their best work is on supposedly left-leaning organs such as the *Guardian*, the *Herald* and the *Independent*, rather than more obvious targets such as the *Daily Mail*. Through careful analysis of language, and the ways in which stories are framed, Media Lens reveal how even the 'liberal' press support the status quo more than challenge it. The BBC's distorted reporting of the Miners' Strike or the Troubles in Northern Ireland – re-editing footage of skirmishes between the miners and the police to falsely condemn the miners, or denying a voice to Gerry Adams and Martin McGuinness – are two of the most obvious examples of a 'neutral' media body aligning itself with British state power.

Similarly, when the state passes legislation which suits the wealthy – and, let's face it, since Margaret Thatcher that's been most of it – a 'critical press' would be a self-defeating concept. Newspapers are businesses. It is not in their interests, therefore, to challenge pro-business legislation; it is very much in their interests to punish politicians who break the deal (however few of those still exist). I've witnessed this on a daily basis in the Scottish referendum debate. Independence is almost always characterised for the public as a risky gamble, the Union as a sanctuary. The reason for this is that independence represents a threat to the integrity of the British state and the British state is a proven creditor for capitalism. In short, the British establishment smells a genuine challenge to its power, which must be crushed in its infancy. This is why our media so rarely report upon deceptions by the British state against the Scottish people, such as the fact – admitted recently by former Chancellor Dennis Healey – that both Tory and Labour governments freely lied to us throughout the Seventies about the true extent of our oil wealth. It is also why the Scottish media defended even the xenophobic and anti-Scottish Nigel Farage (of UKIP) against a non-violent protest from the pro-immigration, pro-gay rights Radical Independence Campaign. Farage is a buttress to the Union; the RIC are opposed to it. For the Scottish press, their enemy's enemy had to

become their friend. Hilariously, some sections of the media criticised the RIC for breaching Farage's right to free speech, forgetting that free speech includes the right to non-violent protest.

The 'free press' then are, ironically, rather selective in their approach to 'free speech', marginalising or minimising the voices which they find most threatening while defending powerful interests.

I am tempted to claim a plague on the houses of both the government and the media alike, but, ultimately, governments simply must be scrutinised, and the media, despite my grave misgivings, is still the best available method of doing so. When our press gets it right – as with the expenses' scandal – it is a marvel to behold. Watching Tony Blair's furious dressing down of the BBC in the aftermath of the Iraq War, over the 'sexed-up dossier' about weapons of mass destruction, was a disquieting experience. What happened here was that the BBC broke the unspoken contract between the power elites, and committed the unpardonable sin of letting the public 'in' on the lie. How wonderful the frisson of excitement when we saw behind the Wizard of Oz's curtain! How great the disappointment when the BBC backed down and their Director General, Greg Dyke, was forced to resign.

Westminster punished the BBC to make an example to the rest of the media. I can't help but feel that – after the perceived 'betrayal' by the press over MP's expenses – Leveson is the rest of that example.

**Jean:** Ha – and here was me thinking anarchists didn't take positions! Count me in.

You're right, of course – the big beasts of our society are dedicated to their own survival. But the fact the media is ruled by corporate interests doesn't negate the fact that it is, actually, our principal defender of free speech. That's perhaps because it's not just one big monolithic entity. Within that heading of 'the press' are competing interests. Rarely do the viewpoints of the *Guardian* and the *Daily Mail* coincide.

I'm interested in what you say about the representatives and the represented. Maybe it's because I was a journalist for many years, but I do believe individual journalists designate themselves to represent ordinary people in a way their employers do not. That provides some sort of check against the rampant flourishing of unaccountability. Although, like all capitalist enterprises, pressure comes from the top down, many journalists have a personal sense of conviction and vocation that stands between them and their employers. How else would you account for the *Daily Mail's* pursuit of justice in the Stephen Lawrence case? Editor Paul Dacre is said to have got involved because he personally knew



Stephen's father, Neville, who had done some painting for him at his house, though Associated Newspapers are hardly known for their championing of ethnic minorities.

Newspaper proprietors and management certainly see their readers through the filter of profit. They won't do anything to challenge or upset those who buy their papers. I worked for a number of years on a magazine called *Night and Day*, which came with the *Mail on Sunday*. As I was not in tune with their political beliefs I considered myself the grit in the oyster, constantly rubbing away to create a pearl!

I was sent to Rwanda just after the 1994 genocide, when a million Rwandan refugees were camped on the volcanic rock of Goma, in Zaire. It was a fascinating, if harrowing, experience and when I came back I wrote thousands of words on it. But time went on and the article wasn't going into the paper. I was told that David English, the much-feared editor-in-chief, had refused even to read it. 'I don't want to see that in my paper,' he said. 'Our readers aren't interested in people like that.' People like the Rwandan refugees, many of whom were doctors or teachers and who spoke several languages? Not all were perpetrators of genocide, as the majority of the media portrayed them.

I was distraught and my editor, Jocelyn Targett, who'd come from *Guardian Weekend*, was dismayed. He said we would run it at the end of the year, as part of a special issue, together with a piece about Michael Jackson and the first allegations of child sex abuse, plus an interview with a major politician. Came the end of the year and the issue was split into ten tiny articles. Mine ran at a much truncated length; it had been cut to half and then an advert came in, so they needed to lose another third. I gave up at that point and left them to it. The piece appeared with a quiz at the end: 'How compassionate are you?' It was an idea we'd discussed when the article was supposed to run at length. I'd thought it might be a challenging way to present it to that particular audience, but didn't realise the questions would kick off with 'Do you like cats or do you prefer dogs?'

The trivialising of such an important story was obviously heartbreaking for me personally. More importantly, it reinforced the racist atti-

tudes the paper implicitly endorsed at that time, attitudes I'd naively hoped to break through. So what you say about the media supporting the status quo strikes a real chord with me, Alan. To a certain extent it's inevitable any press will reflect the ideas and beliefs of the society in which it operates. That means in the UK we get an unquestioning belief in Western democracy as the ideal political system and an ignorance and arrogance about developing countries. We're only comfortable with their inhabitants if we're representing them as victims.

The other thing about the media reflecting their society is that we're deeply conformist in this country. So while I don't disagree with you that the Scottish press is covertly supporting the union by labelling Farage protestors 'hooligans', I think it's also to do with a kind of consensus about correct behaviour – the fascism of good manners.

That pressure towards conformity leads to accepted templates of thought dominating our media. I was very surprised to see a reference in a recent *Daily Record* to Ian Brady appearing *kind* in his letters to a fifteen-year-old boy. Normally the tabloid default description would be something like 'evil' or 'monster'. I've personally had quite a bit of abuse just for suggesting he's part of the same species as the rest of us.

Much of it, of course, is driven by economics. Newspapers reinforce their readers' beliefs rather than challenge them, so as to keep their custom. Over a ten year period from the mid-1990s, I wrote many heavily researched articles about Satanic ritual abuse, most of which never saw the light of day because they didn't fit the conventional template. The media preferred the idea of innocent parents being pursued by mad social workers to the idea of children being abused in the most bizarre and upsetting of ways. Apart from anything else it was cheaper, because it didn't entail accusing anyone of anything. No prospect of being charged with libel, no organised campaigns from angry parents. And, as we saw in the Jimmy Savile case, absolutely no protection for children.

For me, that failure to pursue Savile because of his celebrity is the most shameful press failure of recent years, far beyond even the phone hacking scandal, which has turned out to be far more wide-

spread than simply journalists – banks, insurance companies and lawyers all seem to have been busily hacking into people's private lives too, though there's no sign of a Leveson-type inquiry into those industries. The levels of covert surveillance in our society are shocking and oppressive. No wonder one of the most common delusions in the mentally ill is that they're being bugged. They probably are, along with the rest of us.

I have to say I don't think the situation in Scotland has ever reached the grotesque levels it did in England, where phone hacking appears to have been the norm in various tabloid newspapers. Our papers have never had the wealth of those down south, nor the power, so the competitiveness of the industry up here hasn't quite reached the levels of insanity as in the London titles. Although as a nation the Scots' readership of papers used to be one of the highest in the world, our papers sell far less than UK titles, unsurprisingly given their relative value for money. One of the most popular newspapers, the *Daily Mail*, regularly runs to as many as eighty-eight pages, while the *Herald* can be less than half that.

Scottish journalists, though, are under just as much stress as those down south, with a constant pressure to produce more words for less money, and a consequent loss in standards. It's cheaper to cut and paste stuff off Google than to finance travel and accommodation for someone to go and actually interview someone or follow up an investigative lead. The lack of finance to fund basic journalistic activity is one of the biggest crises facing freedom of expression in Scotland; real journalism is expensive. In our profit-driven age, how do we pay for it?

**Alan:** It's fascinating for me to read about the inside workings of newspapers, Jean, which both confirms and denies some of my own claims about them. The pressure from profit and an unwillingness to upset the readership leads to the 'framing' of reality in certain ways and the heartbreaking 'chopping up' or vanishing of important stories, which you describe. But you are still right to mistrust government motives. You see the media for what it often is, while recognising it as vital to democracy. This perspective makes your vociferous opposition to the McCluskey Report so knowl-

edgeable and vital.

As we were working on this pamphlet, curiously enough, a ‘freedom of speech’ issue arose for me. I’m working on a show which will open at the Edinburgh Fringe this August, entitled *Ban This Filth*, in which I play the late radical feminist and vociferous anti-pornography campaigner, Andrea Dworkin. In the piece, I will be exploring the ubiquity of porn culture, as well as Dworkin’s impact upon me as a male. However, some members of a Facebook group entitled Stop Porn Culture – which I’d naively expected to be supportive of the show – were outraged that a man was presuming to portray a radical feminist icon. There was much heated discussion about me on their Facebook page, which eventually spilled onto mine and became highly abusive towards me. They wanted the cancellation of the show. Rightly or wrongly, I refused to engage in debate with them, except to remind them that they had not seen the play, that it would speak for itself, and that I had the creative freedom as an artist to portray onstage whoever I liked. This last assertion riled them more than anything else: my ‘artistic freedoms’ did not, for them, trump women’s rights as a historically-oppressed group to prohibit an ‘offensive’ performance by a privileged male. They asked if I would dare, as a white person, to play Malcolm X, Martin Luther King or Mahatma Gandhi?

They should perhaps take that up with the Academy of Motion Picture Arts, who in 1982 awarded an Oscar to Ben Kingsley, a white Englishman, for brilliantly playing Gandhi onscreen. As it happens, I would not rule out playing Malcolm X or Martin Luther King onstage. I wouldn’t black-face up to do so, but if it was a matter of adopting their words, mannerisms or accent in order to creatively engage with their impact upon me as a white person, I would absolutely think that legitimate. Everything stands or falls on the interpretation of an artwork – its lack of integrity may be exposed in the viewing of it – but are there certain limitations, choices of material or casting decisions that artists *must* strictly observe for fear of offending? Of course not. Artists must always have the freedom to challenge or explore, and once we give way to pressure groups who seek to quash that right, for whatever reason, we enter halcyon days for philistines, reactionaries and conservatives.



This is not to say that art itself is closed to challenge. I support the right of radical feminists to protest against my own show or to say anything about me (that is not libellous). This is all part of social dialogue, the ebb and flow of ideas throughout a culture that creates a mature democracy. In this way we arrive at the aggregate 'meaning' of an artwork, its success or failure, its contribution or its damage to society. To say that the artwork must not exist, however, is dangerous.

This is why, if we are to have a new Scottish constitution, freedom of expression for both writers and the media, must be enshrined there. Scots will have to observe very carefully the actions of a new Scottish government, and no artist or campaigner I know wants the SNP, or any party, simply to have the run of the place after independence. In this respect, when we look at the Scottish Government's Offensive Behaviour Bill or the McCluskey Report we experience trepidation. Otherwise, the signs are positive. We might contrast, for example, the views of Fiona Hyslop, our aforementioned Culture Minister, with those of Westminster, which is that the arts must be cost-effective and thus bolster the economy (a Tory rationale if ever there was one). In a recent speech Hyslop made a passionate case for 'art for art's sake' and, most encouragingly, asserted that:

‘Art is not always comfortable. It does not need to be easy or ‘feel good’. I want us to cherish what’s difficult, what’s challenging and what’s uncomfortable. It is the very measure of the health of our democracy to welcome and embrace the role of artists to challenge our expectations, to nudge us from our comfort zones and encourage us, individually or collectively to reflect on how we could do better and be better.’

Most governments are afraid or suspicious of the arts, since artists so often hold power to account. The nascent ‘new Scotland’ would appear to be taking a different tack.

We must not take our eyes off the ball, not for a second. But in this situation, we must also be hopeful.





## **About Scottish PEN**

PEN International was founded in 1921 by a small group of Poets, Essayists and Novelists including Catherine Amy Dawson Scott, Joseph Conrad, John Galsworthy, George Bernard Shaw and Scottish journalist Elizabeth Craig. Before the end of the decade PEN had grown into an international writers association defending and promoting free expression in some thirty centres across the world.

Then as now PEN stands for ‘the principle of unhampered transmission of thought within each nation and among all nations, and members pledge themselves to oppose any form of suppression of freedom of expression in their country or their community.’ .

The Scottish PEN Centre was established in 1927 by – amongst others – Edwin Muir, Naomi Mitchison, Robert Cunningham-Grahame and its first President, Hugh MacDiarmid. If you would like to find out more about the work of Scottish PEN, please visit our website at [www.scottishpen.org](http://www.scottishpen.org)

Full membership is £25 per annum and is open to published and performed writers, editors, translators and academics. Associate membership is £15 per annum and open to publishers, literary agents, librarians and teachers, as well as students studying subjects likely to lead to writing professionally.

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