

REVIEW OF 88

There is a point in some chemical reactions when a slow process that previously has been unobservable suddenly crystallises in a swirling show visible to all who look that way. So it has been with threats to free speech in Britain in 1988.

For several years now, there had been signs. Norman Tebbit's bullying, in October 1986, of the BBC over its coverage of the bombing in Libya was an early warning, as was Leon Brittan's successful pressuring of the BBC Board of Governors, in July of 1985, to cancel broadcast of the programme *Real Lives*, which contained interviews with defenders of violence in Northern Ireland. And, of course, the many absurd, and worrisome, ramifications of the *Spycatcher* affair had been trundling on since September 1985, when the UK Attorney General first went to New South Wales to seek an injunction against publication of Peter Wright's MI5 memoirs.

But 1988, with the conclusion of the *Spycatcher* proceedings, the passage of Clause 28, the introduction of the broadcasting ban on interviews with terrorists and their supporters in

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Northern Ireland, the decision to commercialise television, and, to conclude the year, the publication of a strict new Official Secrets Bill, has brought worries about free speech in Britain into public discussion here and around the world.

It is useful to distinguish between direct and indirect restraints in public discussion. Direct restraints are powerful legal impediments, including court-ordered 'prior-restraint' injunctions, such as those which stopped the BBC from broadcasting

The Sound Of Silence

The age-old British disease of official secrecy took a more virulent course in 1988. At stake is our basic democratic right to free speech, as Matthew Hoffman explains



the Radio 4 series *My Country Right Or Wrong* in December 1987; and legislation, such as the proposed changes to the Official Secrets Act, which would make disclosure of any authorised phone taps a criminal offence.

Indirect threats to free speech are those where the state withdraws support which it had previously given to a particular activity. Clause 28, for example, falls in this category. Indirect threats are serious, in that government has a responsibility to facilitate education and cultural life. But direct threats to free speech, in my opinion, raise deeper constitutional questions, as they have to do with rights that by anyone's analysis have been fundamental in Britain for centuries. It is arguable whether government has an obligation to encourage the development and continuation of serious current affairs coverage. That it has no business interfering with a free society's desire to keep itself informed about

the business of government, in my view, is not arguable.

The year began with two important holdovers from December 1987. One was the banning of the Radio 4 series about the security services, *My Country Right Or Wrong*. The second was the posting of 500 'Christmas cards' by Anthony Cavendish, containing his *Inside Intelligence* memoirs of his postwar secret service work in the Middle East and the Baltic. On the other hand, there had also been a liberal and principled High Court decision refusing permanent injunctions against publication by British newspapers of the *Spycatcher* allegations. (There would be appeals to come in 1988 and a final adjudication from the House of Lords.)

One of the government's first decisions in 1988 was to not prosecute Anthony Cavendish. However, it did seek injunctions against media reporting of the contents of *Inside Intelligence*. This had been made possible by a Law Lords decision during the *Spycatcher* saga,

that it was acceptable for the courts to order the entire media not to publish what it considered timely news, while the law pursued its long and expensive ways.

In July 1988, the literary magazine *Granta* sought to publish the full text of Cavendish's Christmas card in its US edition. But even this was stopped when the government threatened legal action against the UK publisher, Penguin, which is financially linked to the American publishers of *Granta*. In the end, *Granta* was forced to publish an expurgated text with unexplained blacking-out of single words and entire sections.

The circumstances of this minor repetition of the *Spycatcher* affair tell us something about the government's attitude to secrecy. A 'secret' would normally mean something that must not be known by certain people. For example, the United States has no equivalent to the catch-all Section Two of the Official Secrets Act. It does, however, have three specific laws protecting particular secrets. It is an offence in the United States to name undercover agents of the security services, to divulge military and intelligence cipher codes, and to publish the recipes for making nuclear bombs. Those are secrets by any reckoning.

To the British government, however, a secret is anything it does not want discussed in public. This is, in literal fact, censorship. While *Spycatcher* was available at airport bookstalls around the world, for any travelling foreign spies to read at their convenience, the government continued to try to stop publication in the UK.

In March and June 1988 the series *My Country Right Or Wrong* was finally broadcast but only after the BBC had been forced to hand over transcripts to be vetted by government. The vetting of scripts, together with the original 1987 prior-restraint injunction, sets the most alarming precedent. What could be a more paradigm

case of censorship than being compelled to obtain official approval of texts before publication or broadcast?

By the middle of the year, the situation had become sufficiently serious to provoke two international groups to sound warnings that were much-reported abroad. In May, *Article 19*, a newly-formed pressure group for international allegiance to freedom of speech, said of the situation in Britain: 'None of the old principles are safe against the adventitious dilution or breach. Philosophical principles cut no ice and short-term considerations are dominant.' And in September, the free-speech monitoring organisation *Index on Censorship*, surprised readers, both in the UK and abroad, by devoting an entire issue of its magazine to chronicling restrictions on

liberty in Britain.

But neither warning proved much use in heading off the coming storm. For as we end the year, the new broadcasting ban and the bill for reform of the Official Secrets Act display, if anything, an increased disregard for the autonomy of the press.

The broadcasting ban on interviews with advocates and defenders of terrorism in Northern Ireland was announced by Douglas Hurd, the home secretary, in October. Although there have been protests, none of the television companies has chosen to test the ban in court. Lord Scarman has stated that he believes the ban exceeds the authority of the home secretary, and the free speech provisions of the European Convention on Human Rights also provides a testing ground, but cowardice, or prudence, has en-

sured a meek following of orders by our tv executives.

The final Law Lords judgement on *Spycatcher* in October ruled that the book *could* be distributed and discussed by the media in Britain. If this was a victory, the new Official Secrets Bill, put to parliament in December, is meant to foreclose it. There will be no defence for former spies who reveal the contents of their work, no matter how innocent or important their revelations. The bill is a direct response to an earlier private members' bill introduced by the Conservative MP Richard Shepherd. That measure, which would have allowed a public-interest defence for leakers, received so much parliamentary support that the government had to promise its own bill in order to defeat it. There is of course no public-interest defence in the December bill.

Described by the Home Office as a liberalising measure, in fact the bill makes it easier, not harder, for government to prosecute successfully. Even more importantly, this legislation will increase editors' uncertainty about just what they can publish.


1988 will be remembered as the year in which the president of South Africa quoted a British ban on broadcasting to justify his own silencing of the critics of apartheid. The essence of a democracy is that government does not control the flow of information. There is no other way of checking the activities of our rulers than by knowing what they are up to: if they control that knowledge, democracy is impossible. Either the current government does not understand that truth, or it is indifferent to it. I suspect it is a bit of both. •

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