

# David FLINT

## **Chairman of the Australian Broadcasting Authority**

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Why is media freedom, freedom of the press, so important? How can it best be assured? The answer to both questions is, I believe, this. Both freedom of speech, and of the institution which propagates this, the media, are an essential check and balance on government. The history of the 20th century has demonstrated that putting any faith in a search for an ideal government, and giving it full power to transform society into a utopia, is the most dangerous thing Mankind can do. Acton's insight, that power tends to corrupt and absolute power corrupts absolutely, is a warning that should always be given the greatest prominence in any debate on these issues.

That is why a limited government, with appropriate checks and balances, is more important than even universal suffrage or democratic elections. The constitutional system of England after the Glorious Revolution, and of the United States after the War of Independence, because they created limited governments, prepared the way for democracy.

Freedom of the press is best assured by liberal constitutions with adequate checks and balances, but which of course also ensures stable governance. In this context, constitutional and international declarations of freedom of speech and of the press tend to be superfluous. None existed in England in 1688, and the American First Amendment was, along with the rest of the Bill of Rights, adopted to protect the states from the dangers of central power, rather than to create actionable personal rights. In fact, until the 20th century, it was hardly used, and even then most judicial activity came in the last four decades of that century – when the press was, to all intents and purposes, already free. The Declaration of the Rights of Man of 1789 was, of course, soon overshadowed by the Terror and Napoleon's dictatorship. And the interpretation by the courts of Bills of Rights can have undesirable results, for example in declaring as protected free speech, serious reputational harm, improper interference with the judicial process, or gross pornography.

Judicial activism can go too far, and is difficult to reverse. An international or other domestic declaration of a right to free speech is being devalued by an extraordinary and seemingly never ending proliferation of new 'rights' (see Claude Malhuret, *Les Vices de la Vertu*, Editions Robert Laffont, Paris 2003). Freedom of the press can be no more absolute today in the information society than it was in the days when newspapers were the principal or only medium.

Such a freedom has to be balanced. It can and must be limited to protect other rights which by long experience are seen to be necessary in a democratic society. I stress 'necessary', and not just 'desirable.' I stress also 'long experience' – this strips any limitation on free speech back to those core rights which are, and have long been, universally accepted. And any such legitimate limitation should be proportional – not as they say, overbroad – to the protection of the right, say reputation, or the judicial process. And most importantly, any such limitation should be of general application, not specific to the press or other media.

Finally, I would stress that freedom of the press is important not so much because of the freedom it gives to journalists, editors or proprietors, but because of the freedom it gives to the public to be informed.