

# Press FREEDOM

*must be safeguarded in the New South Africa*

*If negotiations do finally succeed in establishing a genuine democracy in South Africa, it will be necessary to write into the consequent Constitution a charter of inalienable rights including the right to the unfettered operation of free media writes*  
**DONALD WOODS**  
*in this his first article published in South Africa since he was allowed to return*

**H**ISTORY shows us that proper democracy is unattainable without complete freedom of the media within reasonable law, because free media are irreplaceable as part of the proven system of checks and balances which alone ensure the continuation of working democratic systems.

One of the better-known quotations about democracy is Winston Churchill's statement about democracy being an imperfect system – and all other systems being worse.

It is against this summary of the practical blend of idealism and cynicism apparently applying best to democracy that the crucial factor of media freedom should be addressed, preferably after a broad survey of the democratic overview.

A complete analysis of all the pertinent aspects of such an overview would require many volumes and a degree of objectivity far beyond my brief here to meet even the most elementary standards of academic legitimacy, so what follows is blatantly subjective and should be regarded as sheer advocacy.

The human story up to 1990 suggests there are few proven formulae for the best ordination of the human condition, but what is commonly regarded as "democracy" has yielded the least bad conditions within which human beings can pursue their legitimate destinies.

In this context it is heartening that the list of democracies in the world is growing, while the list of totalitarian regimes is declining.

But what kind of democracy is best? Social democracy, as in Sweden – or pro-corporate democracy, as in the United States?

Such details matter less to me at this stage than the importance of providing a practical mechanism for each country to work out what suits it best. Many Swedes, while praising the caring style of semi-socialism in Sweden, are critical of the consequent intrusions by the State into individual privacy which the system there entails. It's great to know that no Swede has to starve or go homeless on any given night; less great that a minor traffic offence in the far north above the Arctic circle means an entry into the computer back in Stockholm.

As for the United States, this land of the ringing denunciation of any State role in the economy is the land whose mighty modern economy was saved in the 1930's by Franklin Roosevelt's New Deal. Contradictions abound.

But they don't matter. What matters at this stage of human history is the provision of at least the basics of a system which allows national majorities to chart national courses with due regard to minority concerns. Within the basic provisions of what is generally regarded as democracy, broad freedom of choice about more precise details is possible.

PLEASE TURN OVER

## Guest Editorial

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Conversely, outside these basic provisions, no democracy is possible.

You cannot, for instance, have democracy in a one-party state. One-party democracy is not only an impossibility – it is a contradiction in terms. The right to form a new political party, even if it is only for left-handed croquet players, is central in any democracy.

I have heard all the fatuous apologia for one-party states long put forward in parts of Africa, for example, and have long regarded them as deeply insulting to Africans. Fortunately, and predictably, the trend in various parts of Africa is now away from such aberrations.

The subject is often obscured by emotive silliness. For example, that “the Westminster System” is not suitable to Africa, the image conjured up here being that of Speaker’s wigs and other traditional trappings of the British. But in essence, the Westminster system has nothing to do with such trappings. The trappings are mere appendages attached by British eccentrics. The essence of the Westminster system – the passing of statute law after full debate, challenge and scrutiny by elected opposition representatives in the glare of public awareness – is appropriate to Africa as it is to America, Asia or anywhere. It is the essence of what we commonly mean by democracy.

It is that glare of public awareness that is most important to advocates of free media.

It does not mean that every citizen has to know of every statute before that statute can be passed. It does, however, mean that every citizen must have such knowledge readily available. It means further that every citizen should have it available through a variety of interpretations including, crucially, critical interpretations outside the control of the government of the day.

Only a free press can do that.

Only free media can do that.

Now before the defining of free media, let the media be kept here in their proper context as part of the components of the checks and balances necessary to a democracy.

Here again we can point to many im-

perfections in the constitution of some of these checks and balances.

Probably the best working model of a democracy in the most basic practical terms is the oldest of all democratic systems still functioning today – that of the United States.

In the United States the four main checks and balances are:

1. The Executive Presidency;
2. Congress;
3. The Supreme Court, and
4. The Free Media.

The ideal functioning thereof is somewhat diluted by the fact that Supreme Court judges are nominated by the president; though Congress can vote down each judicial appointment.

In Britain, too, you can point out that the upper house of parliament, the House of Lords, is undemocratic, being unelective.

In both these old democracies, furthermore, you can fault the composition, style and manner in which the media function. You can state, correctly in my view, that too many newspapers are owned and controlled by proprietors such as Rupert Murdoch and Robert Maxwell; or that there are too many rubbishy tabloids; or that too many media are controlled by conservatives.

All true.

But you cannot ordain it otherwise. The most you can do is limit or outlaw outright monopoly. You cannot prescribe or enforce media balance and composition. Whose balance, whose composition would it be – that of the government of the day? It cannot work like that.

All you can do is make it possible for any citizen or group of citizens with a legitimate common aim to create and publish a newspaper which must then take its chances in the marketplace – in this context a phrase representing broad public opinion.

It is no coincidence that in most working democracies the most successful newspapers and other media are those most obviously independent of the government of the day; those most disposed to be critical of the politicians.

This, indeed, is the healthiest manifestation of the service which free media can render to democratic governments – to be ever vigilant for fault or corruption; to be

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ever critical of error.

One can of course ask that this function should not be destructive or cynical; that in a perfect world all the good media will be positive about positive actions and negative about negative ones.

But this, too, cannot be ordained by any government in a democracy. The risk of journalistic unfairness, as in journalistic error, is the price of freedom.

Not that journalistic error or unfairness should go unpunished. Journalists cannot expect more rights than any ordinary citizen in a democracy can expect. If an ordinary citizen breaks a law, he should expect the penalty prescribed within reasonable law. So should the journalist.

In this respect the law of defamation is crucial in any democracy. It is one of the most important safeguards there is against unscrupulous journalism.

In my view the Americans have gone too far in their liberality of interpretation of their First Amendment right of freedom of speech and opinion, consequently it is almost impossible for an American politician, for example, to sue successfully for published defamation.

Politicians need as much protection as ordinary citizens against verbal damage, and should be entitled to redress if seriously wronged.

In the healthy continuing war between the media and the politicians which should be the normal condition in any democracy, both sides should be able to count on fair basic ground rules. And just as politicians should be able to sue newspapers or other media which unlawfully attack them through defamation, so journalists and other ordinary citizens should be protected from the outdated anomaly of parliamentary privilege under which politicians have for generations defamed their critics without having to substantiate their allegations as the rest of us have to and should continue to have to do.

This, then, is not a plea for special privileges for journalists. On the contrary it is advocacy for the extension to journalists of what should be any citizen's rights or duties in the exercise of free speech.

Any citizen should have the right to publish a newspaper, and to print in that

paper any legally permissible material whatsoever.

In the definition of what should be legally permissible, I would include any material which does not transgress normal law as manifested in other democracies. I have said the Americans go too far in permitting freedom of attack on politicians or public personalities – but rather too far than not far enough. Let the elected representatives of the people, by democratic process, decide what is too far and what is acceptable. We can only hope that in the process they will be guided by wise precedent in the most mature and experienced democracies.

But what we cannot have in any democracy – what we dare not have in a South African democracy, if that democracy is to have any hope of success – is any degree of limitation on media rights to probe government deeds and other public issues.

By all means pass laws forbidding the media to commit flagrant crimes such as defamatory attack; by all means define statutorily the crime of racial incitement or even promotion of racism in application to our particular post-apartheid national needs. But do not resort to the old totalitarian trap of defining such crimes so loosely that an authoritarian politician can arrogate the role of judge and jury in such matters.

A democratic South Africa must not have politicians deciding guilt or innocence, as has been the case for decades in South Africa and other authoritarian states such as the Soviet Union.

Democracies leave those duties to independent judges and ideally to juries as well. Countries without juries lack that deep trust in ordinary common sense which is central to democracy.

So if South Africa is, as most of us surely hope it is, heading towards a proper system of democracy, we must expect, and we should demand, that normal checks and balances of democratic procedure are written into the constitution, and in that acceptable democratic process there must be enshrined a charter of complete media freedom within orthodox democratic law.

With it we can build a truly free society destined for progress.