

THE HISTORY BEHIND

A MISTAKE

David Miller

On October 19 1988 Douglas Hurd issued a notice, under section 29 (3) of the Broadcasting Act 1981 and Clause 13(4) of the BBC Licence and Agreement, restricting interviews with eleven Irish organisations. His action was widely reported as an unprecedented restriction in peace time. In one sense – the breadth of the directive in excising a whole swathe of elected opinion – it is. But the power of the Home Secretary to require the broadcasters in writing ‘to refrain at any specified time or at all times from sending any matter or matters of any class’, had been used on five previous occasions.

The Postmaster General issued two notices on November 15 1926. The first forbid ‘any broadcast matter expressing the opinion of the Corporation on current affairs or on matters of public policy.’ (*BBC Handbook 1956*, p 12) It is now clause 13(7) of the Licence and Agreement. The second notice directed the BBC to refrain from broadcasting on matters of political, industrial or religious controversy. The next two notices were introduced on July 27 1955 by the then Postmaster General, Charles Hill, the late Lord Hill. The ‘Fourteen Day Rule’ was a restriction which prevented the discussion of any matter likely to be debated in Parliament in the succeeding fortnight. The rule which the BBC had ‘imposed upon itself’ (*BBC Handbook 1966*, p 143) since 1944, was given the force of law after the BBC announced that it would no longer abide by it. The second directive prohibited the broadcast of party political broadcasts on behalf of any political party other than those arranged with the main political parties. This came into effect after it was proposed that Plaid Cymru and the Scottish National Party should be allowed broadcasts on the Welsh and Scottish Home Service. It was withdrawn in 1965 after the main parties agreed to allow broadcasts.

Tony Benn introduced the fifth directive, banning subliminal

broadcasts on the BBC, in 1964 when he was Postmaster General¹. It prohibited the sending of any matter:

which includes any technical device which by using images of very brief duration or by any other means, exploits the possibility of conveying a message to, or otherwise influencing the minds of, members of an audience without their being aware, or fully aware of what has been done.

A similar provision was included in the Television Act 1964.

Self restraint

The history of the relations between the Broadcasters and the State is one of government pressure and 'voluntary self restraint' by the broadcasters. An early example was the General Strike, during which there was pressure for the government to take over the BBC. In the event they decided not to. But as Lord Reith, the first Director-General of the BBC, recorded in his diary: 'The Cabinet decision is really a negative one. They want to be able to say that they did not commandeer us, but they know that they can trust us not to be really impartial.' (Stuart, 1975 p 96) When the second directive of 1927 was withdrawn in 1928 the BBC itself decided 'to continue to exclude the discussion of certain subjects so as not to offend religious or moral susceptibilities'. (*BBC Handbook 1956*, p 16).

In the Second World War the BBC saw itself as having a central role in fighting the enemy and was subject to strict control of all news bulletins by the Ministry of Information, although the BBC was not simply the mouthpiece of the government. During the Suez crisis in 1956 the BBC came under very heavy government pressure. Prime Minister Eden regarded Suez as a war situation and expected internal criticisms of the government to be suppressed. When the BBC gave the opposition the right to reply to ministerial broadcasts and refused to excise critical comments from its overseas bulletins, the government made threats of financial cuts and planted a Foreign Office Liaison Officer in Bush House to vet the external services². The BBC managed to resist government pressure partly because Suez was not a national emergency but also because there was a deep division in the press and in politics. A division which, we now know, stretched to the cabinet itself (*The Times* 1.1.87). In August of 1956, over two months before the crisis came to a head the BBC had already come under pressure from Eden who objected to an Egyptian Major being interviewed. The BBC rejected his complaints and following this Eden's Press Adviser, William Clark, wrote to the Prime Minister advising on the powers that could be used against the BBC. Clark noted that every dispute with the BBC has 'been settled by persuasion so far' (*Guardian* 2.1.87).

Again, the credibility of British broadcasting and of the BBC in particular was a key reason for the reluctance of the government to take over the BBC. This thinking was shared by the broadcasters. In the aftermath of Suez, Charles Hill, as PMG, argued this point with the cabinet:

In my view, the gain to Britain from the BBC's high reputation is immense, far outweighing any confusion which may occur through failure to understand its relationship to government. The independence which the corporation has should always be kept inviolate. Once this issue was decided little more was heard of the agitation to destroy or to reduce the BBC's independence. (Hill, 1964, p188).

Informal chats

Interestingly, two years later the issue of controlling the BBC's coverage came up again. This time it was the crisis in Cyprus and the proposed visit of Archbishop Makarios to London which prompted the Foreign Secretary, Selwyn Lloyd, to write to the BBC expressing his concern. Charles Hill, who by now was the Chancellor of the Duchy of Lancaster, then went to visit Harman Grisewood, Chief Assistant to the Director General, for what he called 'one of our informal chats.' (Quoted in the *Irish Times* 2/3.1.89) Grisewood resisted the attempt to keep Makarios off the air, but nevertheless Hill:

*was left with the impression that if they did put Makarios on, they would make it the occasion for severe hostile questioning of the gentleman. (Quoted in the *Irish Times* 2/3.1.89).*

Hill then wrote to Macmillan that 'there is no power to prevent such an appearance either on the BBC, or ITA'. (*Irish Times* 2/3.1.89). It is curious that Hill should give this advice, since only three years previously, as Postmaster General, he had issued two directives to the broadcasters prohibiting certain 'matters' from being broadcast. A number of possible explanations come to mind. He may simply have forgotten that the Postmaster General had the power, or he may have deceived Macmillan in order to smooth a 'voluntary' agreement with the BBC. A more interesting possibility is that the government interpretation of the PMG's power to limit 'matters of any particular class' did not include banning individuals from being interviewed. This is in contrast to the interpretation contained in Douglas Hurd's directive of October 1988. Of course, there have been many armed conflicts and other incidents in British history, in the last seventy years, with the potential to become controversies. A key reason that some don't, is that techniques of censorship, news-management and 'voluntary responsibility' have worked. One example is the coverage of the civil war in Oman

between 1965 and 1975. Fred Halliday records that 'For the first five years of the war, as the conflict gathered force, up to the 1970 coup, not a single on-the-spot report was filed by any reporter from the British side.' (1987, p186) The result of this was that very little information about British involvement in Oman was available in Britain. Information like the presence, in a combat role, of 200 SAS men and 2000 British personnel. But even when there was coverage of Oman it was difficult for some journalists to paint a full picture. Halliday notes that:

For some years prior to the outbreak of the . . . war, the BBC had used, for its overseas transmissions, a relay station on the Omani island of Masira. While nothing was, it seems, written down, it was well 'understood' by the BBC that one of the conditions for continued use of the facility was that it did not publish broadcast material unwelcome to the Sultan of Oman. (1987, p196).

The lack of coverage of conflicts like Oman was paralleled in the case of Northern Ireland³. Rex Cathcart, the historian of the BBC in Northern Ireland notes that:

Until 1951 the BBC (in Northern Ireland) sought to portray a society without division: the very mention of 'partition' was precluded. (Fortnight November 1988)

It wasn't until the Civil Rights Association took to the streets in 1968 that Northern Ireland began to feature on our TV screens. In 1971, Lord Hill, by then Chair of the BBC, wrote to the Home Secretary defining the relationship between broadcaster and state. 'In terms which accorded with the state's definition of the situation', (Schlesinger, 1987, p212) he agreed that 'as between the British Army and the gunmen the BBC is not and cannot be impartial'. (Schlesinger, 1987, p212.) During the Falklands episode the broadcasters again found it difficult to admit critical or oppositional views to news programmes and they were attacked for being 'traitorous' when they did. In Suez the BBC had managed to resist government pressure but during the Falklands it is clear that much news was shaped to support government policy.

BBC reporting

After the *Panorama* programme, which included criticisms of government policy, was branded 'a subversive and odious travesty', the BBC's top executives discussed dispensations from the normal criteria of 'balance' and 'impartiality'. In the confidential News and Current Affairs (NCA) meeting, broadcasters were cautioned:

It was vital that BBC reporting was sensitive to the emotional sensibilities of the public. The truth had been told well so far, especially by those on the ground, but there had been some mistakes – the BBC was not infallible. The

Director General advised that, with the public's nerve endings raw, the best yardstick to use would be the likely general susceptibility. (Glasgow University Media Group, 1985, p14).

When Douglas Hurd announced the British ban he acknowledged that 'These restrictions follow very closely the lines of similar provisions which have been operating in the Republic of Ireland for some years' (*Hansard* 19.10.88 col 893) and to a large extent the wording of the notice 'is drawn from the Irish wording'. (col 901) The power to restrict broadcasting in the South of Ireland is vested in the Minister for Posts and Telegraphs under Section 31 of the Broadcasting Authority Act 1960. Ironically the wording of this power is based on the BBC Licence and Agreement. It states that 'The Minister may direct the Authority in writing to refrain from broadcasting any particular matter or matter of any particular class, and the Authority shall comply with the direction.' Historically government intervention in Radio Telefis Eireann (RTE) has been more direct and overt than in Britain. In Britain the BBC's reputation for 'independence' has been acknowledged as of crucial importance by both the broadcasters and successive governments. RTE does not have the same reputation either internally or internationally and governments have been less concerned about being seen to control and constrain broadcasting output. In the late sixties, for example, RTE proposed to send a news team to Vietnam to cover the war and to Biafra to cover the crisis there. In both cases the journalists were stopped from reaching their destinations after representations by the government brought about the intervention of the RTE Authority.

On October 1 1971 the then Minister for Posts and Telegraphs, Gerry Collins, issued the first order under Section 31, directing RTE to:

refrain from broadcasting any matter that could be calculated to promote the aims or activities of any organisation which is engaged in, promoted, encouraged or advocated the attainment of any political objective by violent means.

In November 1971 when the government deemed the directive to have been broken they dismissed the entire RTE Authority and the journalist involved was given a jail sentence. Five years later, Conor Cruise O'Brien, Minister for Posts and Telegraphs, amended the Broadcasting Authority Act to read:

Where the minister is of the opinion that the broadcasting of a particular matter or of any matter of a particular class would be likely to promote, or incite to, crime or would tend to undermine the authority of the state, he may by order direct the Authority to refrain from broadcasting the matter.

When this amendment was passed O'Brien issued a notice which specified that RTE was to refrain from broadcasting 'An interview or a report of an interview, with a spokesman' of specified organisations – the

IRA, Sinn Fein, the UDA, the INLA and 'any organisation banned under the Emergency Provisions Act (Northern Ireland).' In 1982 a further two clauses were added to the order prohibiting Sinn Fein from being allocated Party Political Broadcasts. The British Home Office notice prohibits the broadcasting of:

any words spoken, whether in the course of an interview or discussion or otherwise, by a person who appears or is heard on the programme in which the matter is broadcast where –

(a) the person speaking the words represents or purports to represent an organisation specified in paragraph 2 below, or (b) the words support or solicit or invite support for such an organisation.

The British ban

Section 31 is stricter than the British legislation in a number of ways. It not only bans the broadcast of interviews but also reports of interviews with listed organisations. It prohibits Party Political Broadcasts and election coverage as well. The British ban allows exemptions for Party Political Broadcasts. The Broadcasting ban also allows for transmission of actuality from inside the Houses of Parliament, but not from the European Parliament. Section 31 allows neither of these. One interesting anomaly is that while the British legislation applies to historical footage the Irish ban does not. In practice Section 31 is interpreted over cautiously by the broadcasters. Whilst the order speaks of 'spokesmen' or 'representatives', RTE actually bans people who are simply members of Sinn Fein. One celebrated example of this occurred on a radio phone-in programme, about a book on wild flowers, in October 1987. One caller said 'I wanted to ask about mushrooms . . . (but) I just remembered that I am a member of Sinn Fein and because of Section 31 I wouldn't be allowed'. The presenter confirmed this and terminated the conversation.

British broadcasters have also been cautious in their interpretation of the ban. A series of guidelines were issued by BBC, ITN and C4 (at least nine by my calculations) and working practices fell into shape on a case by case basis. Lord Donaldson, the Master of the Rolls, has argued that 'If broadcasters took enough trouble they could 'totally defeat' the ban'. (*Independent* 22.11.89) But it is clear that this has not been the broadcasters' main concern. The broadcasters approached the Home Office for clarification of the notice. The Home Office indicated that 'A member of an organisation cannot be held to represent that organisation in all his daily activities.' This allowed journalists to broadcast the sound of an interview with a Sinn Fein representative in their capacity as a council or committee chairperson. The BBC did this for the first time on February 16 1988 when they interviewed Gerry Adams about jobs in

West Belfast⁴. Thirty seconds of sound on film was broadcast in Northern Ireland, with Adams speaking as MP for West Belfast rather than *Sinn Fein* MP for West Belfast. The Home Office showed it was keeping an eye on things when it phoned the BBC in London for an explanation.

News bulletins from South Africa have regularly been prefaced by blanket warnings that, for example, 'This report . . . has been prepared under reporting restrictions imposed by the South African government' (BBC1 1300 30.8.89) but health warnings on Ireland have only been used when Sinn Fein have been interviewed and they have been woven into the text of reports at the point that an interview occurs. Indeed the confidential minutes of the BBC's fortnightly Editorial Policy Meeting (EPM), which we have obtained, show that senior BBC executives have explicitly eschewed a blanket warning because 'it could sound propagandist' (EPM Minutes 15.11.88). The same concern surfaced after BBC Northern Ireland subtitled an interview with Danny Morrison (*Inside Ulster* 24.1.89). The BBC decided that subtitles would no longer be used on the local news because, in the words of one senior executive 'It looked so dramatic. It looked like we were seeking to make a point.' This decision was endorsed at the Editorial Policy Meeting and the Controller Editorial Policy, John Wilson, indicated his preference for it to be extended to network news. But the BBC have not been alone in being cautious. The IBA banned a song by the Pogues which simply proclaimed the innocence of the Birmingham Six and the Guildford Four. They argued that this contention might 'support, or solicit, or invite support' for a listed organisation. Ironically, since the Guildford Four have now been released, and the courts have accepted that their convictions were 'unsafe', the IBA is placed in the position of effectively arguing that the British courts and the Home Secretary are also 'supporting, soliciting or inviting support' for a listed organisation. One senior BBC executive has commented that the IBA ruling was 'a bloody bad decision'.

Legal advice

The caution of the broadcasters has also meant that they did not raise actions in the courts or apply for a judicial review. Their stated reasons are that their legal advice indicated that they would not win and that they could not waste licence payers/public money in a losing battle. They also argue that a failed case would consolidate the Ban. But there are indications that not all the advice given to the broadcasters was uniformly pessimistic. According to Channel Four their advice was less pessimistic than that of the IBA and gave them a better chance of winning at the European Court. Lord Bonham Carter, former BBC governor, has reportedly been advised by at least two counsel that the

case has a 'high chance of success in the European Court' (*Guardian* 20.11.89). But even then there are indications that for some broadcasters the legal advice was not the only criterion of whether to proceed. At Channel Four and the IBA other policy and political matters were taken into account. According to one senior IBA source, part of the reason that they did not proceed was because it was not the place of a statutory body to take the government to court:

For the IBA as a statutory authority operating under the Broadcasting Act, the Home Secretary was operating legally and, therefore, legally, we didn't have a leg to stand on. Other people of course had wider interests: The NUJ and so on, who are not subject to the Broadcasting Act.

Even though, as we have seen, Section 31 is wider than its British equivalent and it is interpreted over zealously by the Broadcasters, RTE executives including the Director General, TV Finn, have felt able to supply the NUJ with affidavits for their application to the European Court. The BBC and IBA have refused to do so.

Journalists have tended to use two main arguments when discussing the ban. One is that it limits understanding of the conflict in Ireland and is bad in principle. Michael Checkland, Director General of the BBC, has recently argued this in a speech in New York in November 1989. He said:

We have protested and we continue to protest at this measure because it interferes with our task of reporting current events fully and fairly and sets a damaging precedent. Although there is no sign that the government is ready to change its mind, it will look increasingly strange as the movement for freedom of expression gathers momentum throughout Eastern Europe and the Soviet Union. (BBC News Release, 22.11.89)

A corollary of this argument is that the conflict in Ireland is not going to go away by simply ignoring it. As Liz Forgan, Director of Programmes at *Channel Four*, has argued.

If I thought it would save a single life I would be talking differently. I don't think that . . . I don't think it will help the situation in Northern Ireland by one tiny bit. (Media Show, Channel 4, 15.10.89).

A mistake?

The second argument is that the ban is a tactical mistake. Journalists who use this argument implicitly agree, along with journalistic supporters of the ban, that the main object of covering Sinn Fein and the IRA is not to explain why people are fighting but to discredit the Republican Movement as part of the campaign to defeat 'terrorism'. Their difference with the supporters of the ban is that they see the ban as

a means of inhibiting the 'exposure' of Sinn Fein. An editorial in the Independent put this case, arguing that:

The wickedness of their arguments can best be exposed by allowing these to be voiced, especially in the aftermath of some particularly horrifying atrocity. (20.10.88).

This argument has uncomfortable echoes of Lord Reith's note in his diary at the time of the General Strike, that the government could trust broadcasters 'not to be really impartial'. Top broadcasters are often ambivalent or undecided about which of the arguments they favour. When Norman Tebbit attacked the BBC's coverage of the US bombing of Libya he argued that the BBC had emphasised the civilian casualties and that this operated in 'Libya's interests'. There are indications that this perspective is taking hold in broadcasting. In the aftermath of the IRA bombing, at Deal in Kent, the BBC dispensed with their signature tune and closed their main evening news bulletin with the Marines band playing over slow motion footage of a young boy in uniform laying a wreath to the dead. (BBC1 20.55 23.8.89). When a contributor to *Right to Reply* complained that this was not news but 'pure emotionalism', the BBC responded that:

The day before this item was broadcast ten Marine bandmen had been murdered and around 20 injured. We are satisfied that the item properly reflected the feeling of many people in the aftermath of such an event. (Right to Reply, Channel 4, 7.10.89)

This simply assumes that the BBC is in the business of reflecting the perceived feelings of the nation, rather than that of reporting events.

But it need not be like this. There were two strands to the BBC reply to Tebbit. One was that they were wrongly accused, that they had in fact excluded much coverage of Libyan casualties because it would have suited 'Gadaffi's propaganda purpose extremely well'. The other was a much stronger argument for the independence of broadcasting. The BBC argued that it was not their:

function to decide whether some facts are too 'damaging' or too 'callous' to be broadcast, and if we were to take that decision we would indeed be open to the accusation of manipulating the news for political purposes.

When it comes to Northern Ireland the broadcasters have tended to duck this more resolute line in favour of being in touch with the 'national mood'. But, from their own point of view, this can only be a short sighted policy if, as Rex Cathcart has argued:

Northern Ireland has provided the means by which the professional broadcasters have steadily been brought to the government's heel. (Fortnight, November 1988).

NOTES

1. Ironically a recent casualty of this ruling was the Northern Ireland Office. When the NIO produced an advertisement inviting people to use the confidential telephone, the IBA insisted that one 'image of brief duration' be 'increased from four frames to eight to remove its subliminal character.' (*Fortnight*, March 1988).
2. There is some dispute over whether Eden intended to 'take over' the BBC during the crisis. See Harman Grisewood, *One Thing at a Time*, Hutchinson, 1968, and F. R. MacKenzie, Eden, 'Suez and the BBC – A Reassessment', *The Listener*, 18 December 1969.
3. According to the British Army's handbook, *Land Operations: Volume III – Counter Revolutionary Operations*, between The Second World War and August 1969, the army had experience of 53 'operations of the counter revolutionary type'.
4. Although a Sinn Fein councillor's voice had been heard prior to this on independent radio. Mairtin O'Muilleoir was interviewed as a language activist about the Irish language on Downtown Radio on November 1 1988. The BBC had also broadcast sound of an interview with Sinn Fein councillor Francis McNally after his brother was shot dead by Loyalists in mistake for him. He was interviewed in his role as a relative of a murder victim. (BBC 2100, 25.11.88).

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