



The Business of Silencing Journalists and Its Harm to the Democratic Environment

Demet Altunay¹

CSR Blog Contributor

Suggested citation (OSCOLA): Demet Altunay, 'The Business of Silencing Journalists and Its Harm to the Democratic Environment' (The Corporate Social Responsibility and Business Ethics Blog, 31 March 2022) retrieved at: <https://corporatesocialresponsibilityblog.com/2022/03/31/the-business-of-silencing-journalists>

In every democratic society, journalists are expected to freely and honestly convey information in the public interest, without fear of being silenced by the threat of lengthy retaliatory trial proceedings. In a society where this cannot be guaranteed, the existence of democracy and freedom of expression should be questioned. The failure to guarantee such freedoms lends itself more closely to authoritarianism than a free democratic society. Therefore, it may be considered the job of the law to protect journalistic independence, and not allow powerful individuals and organizations to harm journalists through economic and psychological threats. Contextualized against the case of Carole Cadwalladr, this blog outlines the increasing need for effective anti-SLAPP regulations to support the rights of journalists to report independently and in the public interest. Further, it demonstrates lawsuit of this nature cannot be interpreted just as an action against only the targeted journalists, but also it sends a powerful message to others, enabling the silencing of those who report wrongdoing, and giving powerful and wealthy actors the power to act freely without reprisal.

¹ This article is dedicated to all brave investigative journalists and public interest defenders who face challenges and even risk their lives to speak the truth.



INTRODUCTION

Article 10 of the [European Convention on Human Rights](#) (ECHR) confers [freedom of expression](#) - one of the most fundamental and most important provisions of the Convention. Critically, freedom of expression is not only important in itself; it also plays a crucial role in protecting other rights stemming from the ECHR.

In democratic systems, limitations to freedom of expression and its protection must be balanced as attempts to restrict these rights may result in the indirect restriction of many other freedoms. It raises complex issues for every democratic society, and solving them imposes special responsibilities upon the courts. Addressing this issue, [Aharon Barak](#) who is a lawyer and jurist has said "The court must examine not only the law but also the deed; not merely the rhetoric but also the practice."

In Russia, Iran, China, Venezuela, and other authoritarian countries this basic right cannot be exercised freely, and often critical views and truths are called treason and severely punished. In many cases, the protection of freedom of expression by enforceable constitutions is a key feature that distinguishes a democracy from authoritarian regimes.

Simultaneously, there is an ongoing debate about tackling the spread of disinformation and misinformation to ensure the protection of democratic systems and the integrity of accurate information. Yet, these provisions aimed to protect citizens from harmful and misleading information may also be weaponized to close down legitimate debate and have the potential to infringe upon the rights to freedom of expression, by example during recent weeks many thousands of individuals protesting against the Ukraine war have been violently quashed in Russia.

Further, the Russian state has drafted a law that imposes prison sentences of up to 15 years for those who "spread fake information" regarding the war ([Reuters](#), March 4). In addition, access to social media platforms including Facebook and Twitter has been blocked by the Russian government, whereby obstructing freedom of expression and also preventing individuals from obtaining information.

This topic was discussed in the Whistling at the Fake International Roundtable "[Disinformation and the Public Sector](#)" and Damen (2022) explains "In Lebanon, they enacted the Ministry of Information laws, which formally and apparently aim at countering misinformation and disinformation but, in reality, have been adopted to go against freedom of expression, journalists, and fact-checkers."

It is necessary to draw attention to the contradiction of states which claim to be 'democratic' in nature, yet where freedom of the press is not adequately protected, and freedom of expression for the benefit of society is considered a crime. In the absence of these freedoms, the implementation of meaningful free elections will not be possible. Moreover, the full exercise of the freedom to impart information and ideas allows free



criticism and questioning of the government and gives voters the opportunity to make informed choices.

THE CASE OF CAROLE CADWALLADR

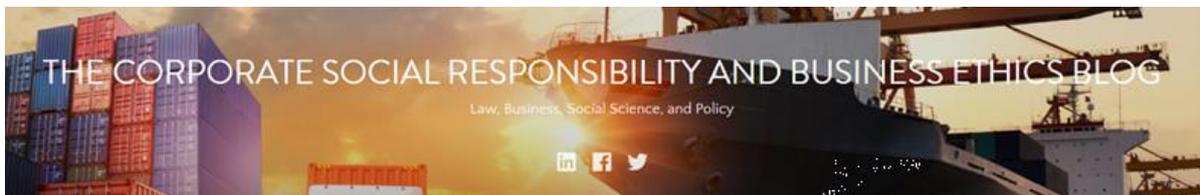
In the United Kingdom, the case of Carole Cadwalladr is emblematic of how powerful individuals or companies may use the legal system to threaten and punish journalists with the Strategic Lawsuit against Public Participation ([SLAPP](#)), and in doing so, cause harm to the wider society.

In April 2019, Carole Cadwalladr gave a [TED talk](#) at TED's main conference in Vancouver, Canada about the disinformation threats on online platforms within the context of the Brexit vote, and the misuse of personal data. During the talk, Cadwalladr outlined the outcomes of nearly three years of investigation, research, and interviews with witnesses focused on that matter.

Resultant of the high rate of "Leave" votes, Cadwalladr went to South Wales to discover why this was the case, especially considering in areas such as Ebbw Vale many infrastructure facilities were EU funded, and the town had seen increasing living standards. During her investigations, Cadwalladr identified concerns regarding specific microtargeting of Facebook advertisements, which may possibly have distorted the result of the referendum, whereby creating significant implications for the democratic fabric of society through providing asymmetrical access to information. Simply, through the Facebook platform, the Vote Leave campaign was able to tailor highly specific advertisements to target individuals with identified predispositions to certain viewpoints and to prey upon these fears. An example of this would include the identification of individuals concerned with immigration, before bombarding them with targeted advertisements regarding the possibility of Turkey joining the EU, and the subsequent migration of Turkish citizens to the United Kingdom, regardless of the reality of the situation. The clear implication being those citizens are somehow harmful or dangerous. Cadwalladr calls those targeted 'the persuadables'. Of importance is these advertisements were not available to be seen by everyone, and therefore, the veracity of the legitimacy of the information provided could not be publicly debated or addressed.

During her TED talk, Cadwalladr highlighted "In the last days before the Brexit vote, the official Vote Leave campaign laundered nearly three-quarters of a million pounds through another campaign entity that our [Electoral Commission](#) has ruled was illegal." This reference to the decision of the Electoral Commission provides the factual basis for the claim of the causal link between the illegal funneling of money in breach of electoral laws, and the spread of disinformation through funding Facebook advertisements.

Addressing the ultimate source of this illegal funding, Cadwalladr considers the political donations by businessman [Arron Banks](#), who made the single largest political financing donation in UK history of £8million, and states, "He is being referred to the [National](#)



[Crime Agency](#) because the electoral commission has concluded they don't know where his money came from." This raised a critically important point – what was Arron Banks' interest in the Vote Leave campaign, and what were his connections with other interested parties. Subsequently, Banks' connections to the Russian state have been brought to question, including his interests possibly being influenced by [Russian officials](#) having admitted to meetings held at the Russian Embassy, and lunches with officials prior to the EU referendum, and suspicion that the source of Banks donation was linked to the Russian state in order to destabilize British politics.

Following the release of the TED talk, and despite the same matters being reported in national news publications, Arron Banks pursued Cadwalladr in a personal capacity for libel, whereby levying his substantial resources against a single journalist, as opposed to stories published under the umbrella of a news publication who are better resourced to defend such claims. When accused of issuing a SLAPP suit, Banks commented, "I was at a loss to understand how Cadwalladr could reasonably suggest I was operating a SLAPP policy. I considered her criticism to be unfair. I was not sure how else I was expected to correct the record and I certainly cannot do so if she insists on being able to repeat false claims."

Yet this comment fails to take into account the work of investigative journalists, and the role they play as crucial watchdogs with profound effects on society as a whole.

Also, as it was brilliantly argued during the Whistling at the Fake International Roundtable "[Disinformation and the Private Sector](#)" another thing that the case of Carole Cadwalladr teaches us is that lawyers who work for corporate entities or the ultra-rich are just becoming much more sophisticated at realizing where the weak points lie. What's ingenious about this case is that they have realized that, as a freelancer, she is extremely vulnerable and so they have attacked her personally. They have not sued the newspaper or Carole on the material that she used in her newspaper articles, but they attacked her for what she said during a TED talk on Twitter.

THE ABUSIVE USE OF THE SLAPP TECHNIQUE TO SILENCE "TRUTH"

Such a case acts to highlight the delicate balancing act that democracies must perform, not only between empowering free speech and public debate, and defending society from the spread of harmful misinformation and disinformation, but also preventing the weaponization of such protections as a means to stifle and shut down legitimate criticism through fear of retaliatory legal action, and the chilling effect that has on others.

Therefore, [SLAPP](#) suits may be understood as a means used by the economically and politically powerful to intimidate and silence those who scrutinize issues of which they would rather remain out of the public spotlight. The aim in SLAPP cases is not necessarily to win the case as a result of a legal fight, but rather to subject the other party to a prolonged trial process and to cause economic and psychological harm to the person



through abuse of the judicial process. [SLAPP](#) suits are highly effective because defending baseless claims can take years and cause serious economic losses. Suing journalists personally, instead of the companies that publish the articles or speeches, is a common tactic deployed by those seeking to intimidate critics and drain their resources. Critically, it sends a strong message to others who may question the behaviors of those involved – if you publish against us or dig too deep, you will be subject to the same devastating consequences.

Therefore, it is possible to view the actions of Banks against Cadwalladr through the lens of a SLAPP suit, whereby he is retaliating against Cadwalladr personally, but also sending a chilling message to others who may wish to raise legitimate questions surrounding the ethics of his conduct, and in doing so within the context of possible electoral fraud, has substantial ramifications on democracy and transparency around the funding of political campaigns by those with vested interests.

Such a chilling effect on legitimate investigative journalism, through threats of prolonged and costly legal actions, poses a significant risk as it provides cover for individuals and organizations to act with near impunity, safe in the knowledge that journalists and others would not question or disclose their malfeasants for fear of retaliation. It is in this way that SLAPP suits pose a risk to society. As much as Arron Banks objects to the designation of this case as SLAPP, it seems that this case only serves as a deterrence to the journalists who devote their life to courageous investigative journalism and fight back against abusive lawsuits.

REFERENCES

Barak, A. (1990). Freedom of Expression and its limitations. *Kesher* / 4, 8, עקשר–11e. <http://www.jstor.org/stable/23902900>

Carole Cadwalladr and Peter Jukes (2018) Arron Banks ‘met Russian officials multiple times before Brexit vote’. Retrieved from <https://www.theguardian.com/politics/2018/jun/09/arron-banks-russia-brexit-meeting>

Damen (2022, February 25). Whistling at the Fake International Roundtable “Mal-Mis- Disinformation and the Public Sector”. Session I, video recording at 27:56. Retrieved from <https://www.corporatecrime.co.uk/whistling-at-the-fake-roundtable-public-sector>.

[Haroon Siddique](#) (2022). Arron Banks’s lawsuit against reporter a freedom of speech matter, court hears. *The Guardians*. Retrieved from <https://www.theguardian.com/uk-news/2022/jan/14/arron-banks-carole-cadwalladr-libel-trial>

[Haroon Siddique](#) (2022). Cadwalladr reports on Arron Banks’ Russia links of huge public interest, court hears. *The Guardians*. Retrieved from



<https://www.theguardian.com/world/2022/jan/21/cadwalladr-reports-on-arron-banks-russia-links-of-huge-public-interest-court-hears>

Jeremie Gilbert (2018) Silencing Human Rights and Environmental Defenders: The overuse of Strategic Lawsuits against Public Participation (SLAPP) by Corporations. Retrieved from

<https://corporatesocialresponsibilityblog.com/author/jeremiegilbertroehampton/>

Peter Walker (2018) Arron Banks inquiry: why is £8m Leave.EU funding under review?. Retrieved from <https://www.theguardian.com/politics/2018/nov/02/arron-banks-inquiry-why-is-8m-leaveeu-funding-under-review>

TED TALK 2019. Facebook's role in Brexit -- and the threat to democracy. Carole Cadwalladr. Retrieved from

https://www.ted.com/talks/carole_cadwalladr_facebook_s_role_in_brexit_and_the_threat_to_democracy

The Electoral Commission (2019) Media statement: Vote Leave. Retrieved from

<https://www.electoralcommission.org.uk/media-statement-vote-leave>

Whistling at the Fake International Roundtable "Mal- Mis- Disinformation and the Private Sector" (Corporate Crime Observatory, 28 January 2022), Session I, video recording. Retrieved from <https://www.corporatecrime.co.uk/whistling-at-the-fake-roundtable-private-sector>

Whistling at the Fake International Roundtable "Mal- Mis- Disinformation and the Public Sector" (Corporate Crime Observatory, 25 February 2022), Session I, video recording. Retrieved from <https://www.corporatecrime.co.uk/whistling-at-the-fake-roundtable-public-sector>

Disclaimer

The views, opinions, and positions expressed within all posts are those of the author alone and do not represent those of the Corporate Social Responsibility and Business Ethics Blog or of its editors. The blog makes no representations as to the accuracy, completeness, and validity of any statements made on this site and will not be liable for any errors, omissions or representations. The copyright of this content belongs to the author and any liability with regards to infringement of intellectual property rights remains with the author.



The [Corporate Social Responsibility and Business Ethics Blog](#) is a scientific forum for analysis and discussion of corporate issues around the world. It also represents an innovative teaching platform, which is intended to facilitate a global interaction of both undergraduate and postgraduate students.

Areas of interest:

- *Bioethics, Healthcare, and Pharmaceuticals*
- *Business and Human Rights*
- *Corporate Crime and Financial Crime*
- *Corporate Governance*
- *Environmental Ethics and Sustainable Development*
- *Ethics and Responsibilities within the Supply Chain*
- *Ethics of Corporate Power and Wealth*
- *Standards of Health, Safety, and Security*
- *Sustainability of the Food Supply Chain*
- *Technology and Corporate Activities*
- *The Establishment of Moral Organisations*

Editor in Chief

Costantino Grasso (Manchester Metropolitan University, UK)

Editorial Board

Dawn M. Carpenter (Georgetown University, USA)

Jacobo Dopico Gómez-Aller (University Carlos III Madrid, Spain)

Jérémie Gilbert (University of Roehampton, United Kingdom)

Karin Buhmann (Copenhagen Business School, Denmark)

Luca D'Ambrosio (Sciences Po, Paris)

Donato Voza (University of Roehampton, United Kingdom)

Solomon Lumba (University of the Philippines, The Philippines)

Senior Contributors

Liemertje Sieders, Stephen Holden

Contributors

Amir Sherdil Rana, Bianca Oprea, Célia Mokhtari, Cleander Yu,

Eden Benat, Kellisha Harley, Michael DeJesus, Ololade

Durodola, Demet Altunay