# The Independence of the Official Statistics Producer

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# Introduction

Independence is controversial in politics. The controversies concern whether it is desirable or deplorable that elected representatives act independently of their constituencies and of their political parties. In his speech to the Electors of Bristol in 1774 Edmund Burke drew up the distinctions between trustees with free and delegates with imperative mandates. Still torn between the two ideals, modern political parties denounce populism while making election promises in order to win popular support.

Independence could be controversial in official statistics too. Against the ideal of the independent statistical trustee could be set the ideal of the committed statistical delegate. However, deviations from the ideal of professional independence seem more due to conflicts between theory and practice than to conflicts between competing ideals. Today apparently all producers of official statistics embrace the ideal of their own independence. Thus in the European Statistics Code of Practice (CoP), adopted by the European Statistical System's (ESS) steering Committee (ESSC) in 2011, the mission of the ESS is said to be that of providing "the European Union, the world and the public with independent high quality information". Principle 1 of the CoP is "professional independence" (ESS 2011). Likewise, the National Research Council (NRC) of the USA hails independence in the *Principles* 

<sup>&</sup>lt;sup>1</sup> The opinions expressed in this paper are those of the author and not necessarily those of Statistics Norway.

and Practices for a Federal Statistical Agency (National Research Council, 2013).

It is hardly sensational that the official statistics producers prefer independence. Probably more surprising is the overwhelming support they get from the political system. Thus indicator 1.1 of the CoP's principle 1 is "the independence of the National Statistical Institutes and Eurostat from political and other external interference in developing, producing and disseminating statistics is specified in law and assured for other statistical authorities". Regulation No 223/2009 of the European Parliament and of the Council – "the statistical law" – commits all members of the EU, the EEA and Switzerland to the principle of professional independence (EC 2009). In January 2014 the General Assembly of the United Nations endorsed the revised preamble to the Fundamental Principles of Official Statistics "bearing in mind" that the "professional independence and accountability of statistical agencies are crucial" (UN 2014).

The political support to the independence of the official statistics producers is the topic of this article. It is inspired by the assumption of public choice theory that the presuppositions economists make when analyzing markets are relevant also for political analysis. Economists presuppose that market actors are motivated by self-interest. Public choice theorists presuppose that so are political actors (Tullock 2008). Public choice does not reject the existence of public interest motives, but contend that more is explained by considering the possible private interest motives for political actions. In the words of its chief architect Buchanan (2003), public choice is politics without romance.

## **Positive or Negative Freedom**

Ljones (2011:26) argues that "independence may be understood intuitively but at the same time the concept may be difficult to define precisely". Attempting to define it he draws attention to the concept of autonomy. Others, e.g. Seltzer (1994) and Bodin (2011) have related it to the concept of integrity, while Holt (2003:350) referred to it in terms of freedom.

Independence as freedom is the topic that will be discussed here. Attempts have been made to distinguish between freedom and liberty, but those two concepts will be used interchangeably. The discussion will rely on another distinction, the one that Berlin made in his essay *Two Concepts of Liberty* (1969). There Berlin elaborated the difference between negative and positive liberty, with the former understood as absence of constraints, barriers and obstacles (freedom from interference), and the latter understood as presence of self-control, self-realization and self-determination (freedom to interfere).

The European "statistical law" defines 'professional independence' as follows:

"professional independence', meaning that statistics must be developed, produced and disseminated in an independent manner, particularly as regards the selection of techniques, definitions, methodologies and sources to be used, and the timing and content of all forms of dissemination, free from any pressures from political or interest groups or from Community or national authorities, without prejudice to institutional settings, such as Community or national institutional or budgetary provisions or definitions of statistical needs" (EU 2009, Article 2).

The definition appears to contain both positive and negative liberties. The positive liberty is freedom to select techniques, definitions, methodologies, sources, timing and content of disseminations. The negative liberty is freedom from pressure from political and interest groups, Community and national authorities. The regulators voluntarily abstain from using their power to interfere in these matters. They can guarantee it on behalf of the Community and national authorities, but not on behalf of political and interest groups. Professional independence from the latter thus depends on their willingness to abstain from exerting pressure too, and on the ability of the statistical agencies to withstand pressure from them.

The positive freedom is not due to the absence of constraints. On the contrary, self-determination is restricted to the selection of techniques, methodologies, definitions, sources, timing and content of disseminations. It is not freedom to set the statistical agenda at one's own discretion. The National Statistical Institutes (NSIs) have been compared with the mass media. For instance, in its strategy for 2013-2017 the Federal Statistical Office of Germany states that "the function of statistical information is similar to that of the media, namely to enlighten and inform" (Destatis 2013:11). The power of the media rests on their ability to set issues on the public agenda and determine their importance (McCombs and Shaw 1972).

NSIs may have agenda-setting power at the national level. Thus Holt (2003:351) argued that independence must encompass "the priority for statistical programmes of work within the budget available". Holt added however that "in turn the statisticians have a duty to consult all users about priorities and to justify the choices made in an open, transparent manner."

At the European level the agenda-setting power of official statistics is reserved for the European Parliament and the Council. It is their prerogative to determine the European statistical programme, which "shall provide the framework for the development, production and dissemination of European statistics, the main fields and the objectives of the actions envisaged for a period not exceeding five years" (EU 2009, Article 13). As stated in the Commission decision of 17 September 2012 on Eurostat, "setting policy objectives and determining the information required to achieve these objectives is a matter for policy-makers." The task of European statistics, taking into account user needs, relevant policy developments and resource constraints" (EU 2012).

At the European level it seems clear that professional independence primarily is understood as negative freedom. Apparently this is also the perception of the practitioners at any level. Ljones (2011:27) argues for independence as having "the full responsibility for the statistics they produce, without interference from politicians or others". Seltzer's concerns (1994) were the political threats to statistics and the factors tending to strengthen statistical integrity. Bodin (2011) gave advice on how to react when the independence of the statisticians and the integrity of statistics are endangered. Holt (2003:350) referred to the "freedom from political interference", but added it "does not mean that a statistical service takes no account of the Government's statistical needs and policy issues".

# **Right or Duty**

There seems to be positive coherence between positive freedom and the understanding of independence as a right. Both concepts concern the presence of self-control, self-realization and self-determination (freedom to interfere).Conversely, there seems to be negative coherence, or conflict, between negative freedom and the understanding of independence as a duty. The two values counteract each other. A duty is a constraint on negative freedom. Imposing a duty is the presence of interference, not the absence of it.

The European "statistical law" contains one unequivocal right. It is expressed in Article 24, entitled "Access to administrative records", and is intended to serve the interests of the respondents: "In order to reduce the burden on respondents, the NSIs and other national authorities and the Commission (Eurostat) shall have access to administrative data sources". It is a rather weak right, as it leaves "the practical arrangements and the conditions for achieving effective access" to "each Member State".

#### Issue 112 Independence of the official statistics producer

On the other hand, "the statistical law" imposes no less than thirteen duties on the producers of European statistics. There is the duty of impartiality, "meaning that statistics must be developed, produced and disseminated in a neutral manner and that all users must be given equal treatment". Statistical professionals are not to "comment freely on statistical matters" as advocated by Holt, who argued that "if public confidence is to rest on the professional independence of the statistical service then it is essential that this independence is demonstrated" (Holt 2003:351). For the European regulators it is essential that their statistical professionals demonstrate their neutrality, not their independence. Furthermore, the producers of European statistics are subject to the duties of objectivity, reliability, statistical confidentiality and cost effectiveness, all of this according to Article 2 of the "statistical law". And there is more to come. Article 12 states that in order "to guarantee the quality of results, European statistics shall be developed, produced and disseminated on the basis of uniform standards and of harmonized methods". Professional independence is in this sense not an individual right but a collective duty. The Article adds seven quality criteria that the independent producers must satisfy: (a) relevance, (b) accuracy, (c) timeliness, (d) punctuality, (e) accessibility and clarity, (f) comparability and (g) coherence.

The quotes from Articles 2 and 12 add up to twelve duties. The 13<sup>th</sup> is professional independence itself, principle (a) under Article 2. Just like it can be read to contain both positive and negative freedoms the principle can be read to contain both rights and duties. The right is the freedom from pressure from Community and national authorities. The duty is to withstand pressure from political or interest groups. The twelve duties effectively eliminate the negative liberties as well as the need of Community and national authorities to exert pressure. All that remains, then, is the duty to withstand pressure from political or interest groups. Hence professional independence is not a right, but a duty. Under leadership of the European Commission, in the shape of Eurostat, the duty of the European Statistical System (ESS) is to defend the European statistical programme against intruders. The programme is decided upon by the European Parliament and the Council. Ultimately the duty of the ESS is thus to defend their duopoly of power over the European statistical programme. The duty is to do this without support from the duopoly. The ESS is professionally independent, "bowling alone" to paraphrase Putnam (2000).

### **Revolving Doors**

Seltzer (1994:2, 3-4) identified eleven modes of undermining the integrity and professional independence of statistical agencies. One of

them he simply called "staff", and one way it works "is to attack those staff members who seem to symbolize this integrity and independence most strongly". Frequently it "takes the form of dismissing or forcing the resignation of statistical office staff", where after "new, politically more acceptable staff" can be recruited. Then "there is the special case of the head of a statistical agency". One role of the head, or Chief Statistician, "is to serve as buffer between the technical staff of the statistical agency and the political world, including the current government and its priorities." A recurring problem is the political appointment of chiefs who lack the technical qualifications for managing a statistical agency. "Too often" those appointed on such conditions are actually "interested in some other job". They will spend much of their time trying to get that job, and merely use the statistical agency as springboard for it. "It is much more likely that a person with technical qualifications would be pleased by the appointment than someone lacking such qualifications."

Writing about the heads of the US Census Bureau, Seltzer (together with Anderson) was criticized for "conflating the lack of a coherent, organized official record with conspiracy motives" (Kincannon 2009). However, conspiracies do not exist merely in the imagination of the overly suspicious; thus Adam Smith noted already in 1776 that "people of the same trade seldom meet together, even for merriment and diversion, but the conversation ends in a conspiracy against the public, or in some contrivance to raise prices" (Smith 2005:111). Another conspiracy against the public is regulatory capture. It may be the unintended cognitive capture of the regulator's mindset, but those familiar with the theory of Stigler (1971) will know how to use regulatory capture as a means to achieve their ends. Particularly effective is the use of revolving doors, as they work both ways. Thus if the NSI is subordinate to a Ministry authorized to appoint the Chief Statistician on a fixed-term basis, the Ministry can use the revolving door to appoint one of its own civil servants under tacit agreement that if he/she serves the Ministry well as Chief Statistician, the door will revolve him/her back to the Ministry and to a higher position there after the tenure. The revolving door gives the Chief Statistician a private interest motive to plot for the NSI a course that the Ministry will approve. Back at the Ministry, in a higher position, the civil servant can supervise the NSI without interfering improperly into its affairs, as it is sufficient to ensure that it follows the course that was independently plotted for it by its own Chief The new Chief Statistician, also on a fixed-term Statistician. appointment, young enough to have a career after its expiration, will know that by staying on his/her predecessor's course, and avoiding all actions that the Ministry may disapprove, the door will revolve for him/her too, and so on eternally.

# Trust or credibility

Independence is not an end in European statistics. It is a means to the end of trust.

"In order to enhance trust in European statistics, the national statistical authorities should in each Member State, as should the Community statistical authority within the Commission, enjoy professional independence and ensure impartiality and high quality in the production of European statistics" (EU 2009: L87/165).

Independence is however neither necessary nor sufficient to ensure public trust. It is unnecessary, because trust is achievable by other means too. The "statistical law" mentions impartiality and high quality. It is insufficient, because independence may fail to deliver and even cause distrust. Independence implies freedom to act without constraints. The freedom of the actor is a risk for the public affected by the actions. Risk causes insecurity and distrust. The public may be unwilling to take it, and prefer an institution which is not independent, but accountable to the public itself as its governor. The public will then not have to rely impotently on the institution, but can rely instead on its own control of it.

Professionalism solves the problem of trust. Inherent in professionalism is accountability. It is possible to control the credibility of the professional statistics provider. The possibility in itself may be sufficient to secure public trust. Those who remain skeptic will use the opportunities to check. Repeated instances of finding no faults will substantiate credibility and enhance trust even further. The need to control will be reduced, but the ability to control will be kept intact.

Independence plays a minor role in the UNs Fundamental Principles of Official Statistics. It is mentioned only in the revised preamble as we have seen, and only in connection with accountability. The assumed driver of trust is not independence, but professionalism:

"Principle 2. To retain trust in official statistics, the statistical agencies need to decide according to strictly professional considerations, including scientific principles and professional ethics, on the methods and procedures for the collection, processing, storage and presentation of statistical data."

Assuming that professional independence will enhance public trust, the European political authorities clearly do not consider the option that the public will associate independence with positive freedom. They take for granted that the public will associate it with negative freedom, which is all they offer the providers of the European statistical programme. They take for granted their own lack of trust, documented in numerous studies, amongst them the European Commission's own Eurobarometer<sup>2</sup>, and assume that by interfering in the matters of the statistical agencies they risk enhancing the public's distrust in their authority to even higher levels. Accordingly they commit themselves to refraining from interference and make their promise binding by "enacting" it as part of "the statistical law".

This has several advantages for them. They can expect that the public will accept the statistical agencies and their products as trustworthy. This in turn will make it less significant that the public lacks trust in the authorities, since the public will have confidence in the statistics these authorities use for their evidence-based policies. Finally, by granting them negative freedom the political authorities will have shown that they trust the statistics producers. Thereby they have contributed to an atmosphere of mutual trust, where they can expect that the public too will trust the statistics producers and possibly even start trusting the political authorities.

In order to obtain these advantages it is imperative that the European public does not familiarize itself with the European "statistical law". Because the law makes it clear that the European political authorities do not trust the European statistics producers. What makes the producers unworthy of trust is precisely their independence. For the European authorities as for the European public the professional independence of the statistics producers involves the risk that in "bowling alone" the statisticians will take liberties at their expense. Risk causes insecurity and distrust. The European authorities are not willing to take it. Knowing that independence encompasses both positive and negative liberties they decide: away with the positive liberties. Knowing that independence encompasses both rights and duties they decide: away with the rights. Knowing that duties constrain liberties they decide: In with enough duties to put the negative liberties completely out of action. Were the European political authorities willing to take the risk inherent in professional independence, they would empower the statistical agencies with both positive and negative liberties, with many rights and few duties.

 $<sup>^2</sup>$  The share that tends to trust in the European Union fell from 57 % in spring 2007 to 31 % in spring 2014, but increased to 37 % in the autumn, EC 2014.

#### Issue 112 Independence of the official statistics producer

An importunate question is however to what extent the European "statistical law" - Regulation 223/2009 - and ensuing documents, such as Regulation 99/2013 on the European statistical programme 2013-2017 (EU 2013), are the products of the European political authorities and not of the ESS and its steering Committee (ESSC) itself. Article 11 of "the statistical law", entitled European statistics Code of Practice (CoP), refers to a document produced by the ESSC's predecessor the Statistical Programme Committee in 2005 (SPC 2005), and "enacts" that "the Code of Practice shall be reviewed and updated as necessary by the ESS Committee", which it establishes in its Article 7.3 Most of the duties listed in Regulation 223/2009 can be found in the CoP of 2005. A revision of the CoP, adopted by the ESSC in 2011, contains them all. The order of the events indicates that by adopting Regulation 223/2009the European political authorities did not regulate the ESS. Instead the authorities were subject to regulatory capture. Rather than wait for rules to be made by the European political authorities, the ESS made its own rules and enticed the political authorities to approve them.

The ESS shares the idea to forestall political intervention by adopting one's own rules with another information industry, the media. For the media self-regulation is a means to escape external control (McQuail 2003). In contrast, the ESS seems to welcome external control, provided it is conducted on terms it accepts.

External control is a constraint on its negative freedom. The ESS does not seem troubled. Nor does it seem troubled by the obligation to undertake the European statistical programme as decided by the European Parliament and the Council. The ESS seems rather content with its assigned role as their statistical employee. There is security in being employed. The ESS is a partnership between Eurostat, the national statistical institutes (NSIs) and other national authorities responsible for the provision of European statistics (Reg. 223/2009, Article 4). As self-employed the members of the ESS would have to compete for their revenues. As employees they are comfortably exempt from that: "The NSIs and the other national authorities [...] may receive grants without a call for proposals" (Article 5). Just like the European political authorities the ESS fears risk and seeks security. It gets what it wants from them, and pays the price, the loss of independence.

<sup>&</sup>lt;sup>3</sup> Article 11 states that "the Code of Practice shall aim at ensuring public trust in European statistics". Like independence the CoP is a means to the end of ensuring trust, not a means to the end of ensuring credibility.

Independence is not incompatible with having a mission. The mission of the independent public institution is to safeguard the public interest. It is the rationale for independent public auditing. "While there are many similarities between the features of audit committees operating in the public and private sectors, one significant difference is the 'public interest' motive that applies to public sector committees" (IIA 2014). It is the rationale for independent central banks. "A central thesis of current conventional wisdom is that central banks should be independent. If they are subject to political forces, so the thinking goes, politicians will manipulate monetary policy for their short-run advantage at a long-run cost" (Stiglitz 2013: 311). Stiglitz deplores their independence, which has enabled the financial sector to capture them. "Rather than the public interest" they pursue regulations that "reflect more the interests and perspectives of those" they are "supposed to regulate" (p. 312). "It is convenient not to be accountable, to be independent" (p. 314), but the central banks should be accountable to the democracy, Stiglitz argues. "The lack of faith in democratic accountability on the part of those who argue for independent central banks should be deeply troubling" (p.313). It is however also convenient not to be independent. By serving an employer one avoids the risks associated with "bowling alone".

Independence is not incompatible with serving the Government. Holt:

"Freedom from political interference does not mean that a statistical service takes no account of the Government's statistical needs and policy issues. On the contrary good public administration contributes to the well-being of all members of the society and good public administration depends on good, trustworthy official statistics. The statistical service has a duty to support it." (Holt 2003: 350).

The problems arise when the official statistics providers serve the Government *only*. Holt: "At the same time citizens use official statistics as a window on the performance of Government and it is essential that the service operates in a professionally independent manner, is free from inappropriate political influence *and is perceived to be so*" (pp. 350-1). The window function is important, but again independence is conceived only as negative freedom, and the public interest as sufficiently safeguarded when the public can watch the Government in action. The UN captured this in the first of its fundamental principles of official statistics: "To this end, official statistics that meet the test of practical utility are to be compiled and made available on an impartial basis by official statistical agencies to honour citizens' entitlement to public information." The public is not ignored, but its political

participation and ensuing need for statistics is perceived as limited to fulfilling the role of spectators in an audience democracy (Manin 1997).

# **The Public Interest**

With a mandate to safeguard the public interest, the independence of the official statistics producers would encompass positive freedom too. It would be their right to set issues of importance for the public on the public agenda and underpin them with statistical evidence. The objects clause of the NSIs would be similar to that of another type of stateowned but professionally independent information industry, the public service broadcasting corporations. An example is the Norwegian Broadcasting Corporation. Entitled to "act freely and independently in relation to people or groups who, for political, ideological, economic or other reasons want to influence the editorial content", it shall "sustain and strengthen the democracy", what it shall do by "satisfying democratic, social and cultural needs in the society". It shall "contribute to sufficient information" for the whole population "to take active part in democratic processes". It shall "expose reprehensive conditions and help to protect individuals and groups against the abuse or negligence of public authorities and institutions, private enterprises or others" (Ministry of Culture 2008).

These are all rights rather than duties, because it is possible (and possibly tempting) to sanction the broadcasters for their disclosures but not for their inability to find out what happens in secret. The independent official statistics producer is potentially in the same situation. The society has secrets that can only be discovered by those with competence to measure what is going on. Therefore the growth of statistical knowledge should be driven by the supply, and not by the (political) demand. As stated by the High-Level Group (HLG) for the Modernization of Statistical Production and Services, set up in 2010 by the Bureau of the Conference of European Statisticians:

"Common wisdom states that you need to research the market for what it needs and then produce what is needed. That is not the way the automobile was born, or the 'smart phone'. The fact is that these artefacts were not needed at all; market research would not have revealed them as opportunities. What happened is that the presence of enabling technology and innovative thinking created a product that was at first only of any importance in the eyes of the innovators and their funders. They struggled considerably in early incarnations before the general public caught on" (HLG 2014).

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