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## Irreverent and Independent?

The press post-Leveson

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“Government in this country is as clean of financial corruption as anywhere in the world. That is largely thanks to a free and inquisitive media. To rinse the gutters of public life you need a gutter press”

Boris Johnson (2012), Mayor of London

To begin, allow me to quote a short passage from the journalist James Cameron’s memoir, published in 1967:

I am no great propagandist of the virtues or values of the Press; nevertheless I hold its functions in the most jealous of consideration. It is certainly the case that most politicians and even more officials forget that in a democratic society the theoretical master of events is the people. This is indeed a great illusion, nevertheless it is possible to argue that the reporter engaged in serious affairs must be the people’s eyes and ears; he must be the instrument associating people’s government with people’s opinion (Cameron, 1967: 70).

These words, I would suggest, remain a succinct and accurate description of the job of a reporter today. In an age of citizen journalism, when experienced reporters are often outpaced by members of the public who “report” from the scene of an incident, his words are even more pertinent. It is the trust built between the reader and a journalist who checks the facts, considers the law and weighs up any ethical implications before rushing to print, that marks the professional out from the citizen.

Still, what happens to that equation when the journalist is no longer trusted to be the people’s eyes and ears? What happens when the public - because of an act or acts which display contempt for them - no longer has faith in what a journalist writes or how the information was attained? In looking for answers to

these and related questions, this chapter assesses how the press can once again reside on a relationship of trust with its readers and considers how the responsible ‘many’ have paid a high price for the irresponsible ‘few’. It is written from a personal perspective, although informed by my work as crime correspondent for The Guardian.

It all started with the hackers

When it was revealed in 2011 that the messages on the mobile phone of the murdered schoolgirl Milly Dowler had been hacked into by the News of the World, the story of a tabloid newspaper’s phone hacking exploits was propelled into public consciousness. Until then phone hacking was largely a story of newspaper intrusion into the lives of the rich and famous. While the public might have been interested it was not something which impacted on their own lives. But the idea that even the life of a missing, later murdered child, was seen as fair game to unscrupulous reporters on a tabloid newspaper drove the criminality of a small group of journalists up the political and public agenda.

It was from this that the Leveson Inquiry was born and the whole of the press, not just one tabloid newspaper, was put under an intense judicial and public scrutiny:

*“It was sparked by public revulsion about a single action - the hacking of the mobile phone of a murdered teenager. From that beginning, the scope of the inquiry was expanded to cover the culture, practices and ethics of the press in relations with the public, with the police, with politicians and, as to the police and politicians, the conduct of each.”*

(Leveson Report 2012)

Ordered by Government, the public inquiry ran in tandem with one of the biggest criminal investigations ever mounted by the Metropolitan Police. The linked operations Weeting, Elveden and Tuleta have seen up to 200 officers engaged in investigating alleged illegal activities by journalists. As of May 2013 some 121 individuals had been arrested by detectives, the largest group by far has been journalists. The investigations have uncovered alleged payments to public officials, including police officers, prison officers and Ministry of Defence staff by journalists on The Sun news-

paper; alleged criminality which has led to several charges being laid against individuals, both reporters and officials.

Aside from alleged criminality being investigated by the police, hundreds of individuals complained to the inquiry of press intrusion into their lives, including celebrities like the actor Hugh Grant, comedian Steve Coogan and actress Sienna Millar. But there were others - members of the public who had been hit by tragedy - who also described the impact that harassment, intrusion and in some cases allegedly illegal acts by journalists had made on them at the most vulnerable points in their lives. These included Gerry and Kate McCann, the parents of the missing three year old Madeleine, who disappeared on a family holiday in Portugal in 2007 and Bob and Sally Dowler, parents of Milly, who was abducted on her way home from school and murdered by Levi Bellfield in 2002. Gerry McCann told the inquiry many of the stories about his family were untruthful, sinister or, he believed, made up. His wife, Kate McCann said seeing her private diary published in the News of the World made her feel "totally violated."

After sitting for eight months, and hearing in person or via written evidence from 650 witnesses, Leveson issued his report in November 2012 concluding that the press had treated the rights of ordinary members of the public with "disdain" and "wreaked havoc" with innocent people's lives for many decades. He dedicated 12 pages of his 2000 page report to the McCanns, saying some of the reporting when Madeleine went missing in 2007 from the resort of Praia de Luz in Portugal, was "outrageous." Some newspapers, he said, were "guilty of gross libels", and he picked out the Daily Star for its headline claiming the McCanns had sold their child: "Maddie sold by hard up McCanns."

### The impact of the Leveson Inquiry

There is no denying it was a chastened press which woke the day after the publication of the Leveson Report in November 2012. But over the months which followed, any sincere feelings of regret about the behaviour of some journalists seemed to be lost in the politically charged debate which continues over Leveson's main recommendation - that there should be a new independent press regulator underpinned by Statute.

Six months on from the report there is a hiatus with two opposing proposals on the table: the David Cameron Royal Char-

ter, as modified by cross party support, and that of Hacked Off – the group set up in support of many of the victims of ‘phone hacking - and the Royal Charter plan put forward as a rival by the Newspaper Society, which rejects what it calls “state sponsored” regulation.

In the background there is the threat, contained within the Leveson Report, that if his recommendation is not acted upon the state should step in and enforce it anyway – this is the key conclusion regarding statutory regulation:

*“With some measure of regret, therefore, I am driven to conclude that the Government should be ready to consider the need for a statutory backstop regulator being established, to ensure, at the least, that the press are subject to regulation that would require the fullest compliance with the criminal and civil law, if not also to ensure consequences equivalent to those that would flow from an independent self-regulatory system.”*

(Leveson Report: Chapter 7: Par 3:34)

In the vacuum that now exists, responsible working journalists who have never hacked a phone or paid for information are trying to get on with their jobs in something akin to a McCarthyite climate in which their everyday activities and working practices are viewed with suspicion. The authorities - meanwhile - from the police to Whitehall departments like the Ministry of Defence, are all clamping down on relationships with journalists, in a post Leveson attempt to restrict the flow of information to authorized, strictly controlled press office communications.

Kirsty Walker (2012), former political correspondent of the Daily Mail, wrote of her fears that the Leveson Inquiry would serve to enhance the power of the already powerful, in *The Spectator* shortly before the report was published:

*“How do we know that Lord Leveson’s report will encourage the rich, the powerful the venal and the pompous to intimidate journalists and frighten papers into not covering stories? Because the prospect of it has done so already. How do we know that an elite will attempt to decide what it is appropriate for the rest of us to read over our cornflakes? Because Leveson is already doing exactly that. This is a judge who read a 200 word article in the Times about how *The Thick of It* was plan-*

*ning to satirise him in one episode - and promptly asked the editor of that paper whether it was "appropriate" for him to run the piece. It is all too easy to guess what a judge with such an attitude to newspapers will do for press freedom."*

(Walker, 2012)

While the focus remains on the proposals for a new press regulator, it is other recommendations within the Leveson Report, some of which have already been adopted by organizations like the police, that present far greater challenges to the working practices of reporters and the free flow of information in a democracy now and in the future. These include:

- recommendations that off the record conversations between police and journalists must be banned;
- a requirement that police whistleblowers should not turn to the media with their concerns about corruption, or malpractice;
- changes to the Police and Criminal Evidence Act 1984 which would force journalists to sign a contract with their sources to ensure that their information remained privileged; and
- the recommendation that new restrictions should be placed on the media's exemptions in gathering personal confidential data under the 1998 Data Protection Act and the introduction of tougher custodial sentences for breaching it.

The National Union of Journalists (NUJ) is also concerned, saying that:

*"There are parts of the Leveson report that the NUJ will strongly resist. This includes changes to PACE (the Police and Criminal Evidence Act) and the Data Protection Act - changes that would restrict the ability of journalists to properly carry out their work, to carry out investigative work, and to truly protect their sources. Journalism needs more of this work, not less, and the NUJ will robustly challenge any attempts to introduce these changes."*

(NUJ spokesperson cited in Travis and Bowcott, 2012)

Already journalists working in the UK have no rights to information, they have no First Amendment to wave as they negotiate their way around the myriad laws that already exist - li-

bel, privacy injunctions, the data protection laws, the bribery act, contempt of court or conspiracy to commit misconduct in public office, to name but a few. Those in power have swiftly taken on what Leveson recommended and been emboldened in their attempts to control information. As a result the inquiry and responses to it have served to erect another set of obstacles in the path of the journalist seeking legitimate information in the public interest in a democracy. For example the Metropolitan Police, and other forces in its wake, has ended off the record briefings, forced officers to take a note of their meetings with journalists, backed the call for whistleblowers to be discouraged from talking openly to the media and is refusing to provide context or guidance during major operations and incidents; most recently the murder of an off duty soldier in Woolwich, south east London (see also O'Neill, 2013).

Thus while clearing the police of wrongdoing, and giving politicians a mild rebuke for their closeness to the press, it is ordinary law abiding journalists whose activities are most affected by the Leveson recommendations, and if the words of James Cameron still stand true, it is the public who will ultimately suffer. Some members of the police have voiced their concerns about transparency in the future and the free flow of information to the public. John Yates (2012), former assistant commissioner Metropolitan Police, observed in the Daily Telegraph:

*“Gone is the practice of helpful and informed background briefings - and in has come the default position of concealing rather than sharing information. The result? The public knows less about what is going on. And important public institutions, such as the police, are becoming less accountable.”*

(Yates, 2012)

The challenges ahead

There are many who say the press has brought this on themselves; the guardians cannot be exempt from scrutiny and the press has had many years in which to clean up its act. That is undoubtedly true. But if the desire to act against the illegal excesses of a minority, leads to a neutering of the press as a whole, it could be a high price to pay. There are already plentiful laws in our society to curtail the excesses of the media -

many of which are being used against journalists in the current police investigations - and it is legitimate to ask who will step in to take their place if the more irreverent, loud, raucous voices in the press are muted in a post phone hacking moral panic?

It is something that Mark Thompson (2011), former director general of the BBC, has considered. He acknowledges that the corporation would not have taken on the MPs' expenses story, published by the Daily Telegraph after the purchase of stolen information - a crime the Director of Public Prosecutions declined to prosecute because it was not in the public interest to do so.

Carl Bernstein - one of the Washington Post reporters who broke the Watergate scandal that toppled US President Richard Nixon in 1974 - has added his voice to those warning against the neutering of the British press in response to the revelations about Milly Dowler and within Leveson:

*“The answer is find the proper way to put them in jail for the horrible offences that they are guilty of, not to try and restrain free speech, freedom of the press - that is going to come back and bite British democracy in the ass because that is what this is about. It’s an easy answer to a tough problem.”* (Bernstein, Channel 4 News, 29 November, 2012)

With all this stacked against the reporter, it might seem a depressing and difficult world for any young journalist to join. But there are nuggets of hope. While memories of the Leveson hearings will fade, there is no doubt that newspaper editors and publishers have been censured and upbraided and behaviour has been modified.

The tendency to reach for the easy, but illegal, way to source information, is no longer considered an option within newspaper organizations. In addition there are recommendations within Leveson which could become powerful tools in a reporter's armoury in future. Firstly the recommendation - which has made it into both Royal Charter proposals - that a whistleblowing hotline should be set up for journalists to complain if they are being forced to engage in illegal or unethical behaviour, and secondly the recommendation that companies write a conscience clause into contracts to protect those who refuse to carry out such acts from being sacked. In a small way

these ideas could hand power back to the responsible journalist on the ground, something James Cameron would no doubt have welcomed.

## Challenging Questions

- Where the press is concerned, the responsible 'many' are paying a high price for the actions of an irresponsible 'few'. Discuss in relation to the findings of the Leveson Inquiry.
- 'Leveson handed back power to the powerful.' Do you agree with this statement?
- If the news reporter is 'the eyes and ears of the public,' as James Cameron contends, would the Leveson reforms affect his/her ability to be so in the future?
- Consider the impact that Leveson has had on the relationship between the police and journalists.

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