Reflexivity and the Public Interest: A case study of the Leveson Inquiry

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A thesis submitted for the degree of Doctor of Philosophy in Sociology

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Date of submission: 05 October 2021

Acknowledgments

I would like to extend my gratitude to the Sociology Department in the University of Essex for funding this research through the Fuller Scholarship.

I would like to thank everyone who took time to speak to me about this project, including those named in the thesis who generously allowed me to interview them. I am grateful for the advice, guidance and insight offered to me at various points by Prof James Curran, Dr James Alan Anslow, and Dr Tom Chivers.

Thank you to Tim Fenton for spending time reading various drafts of the thesis and always providing useful and usable feedback. I am grateful for the support of my supervisor Dr Michael Bailey, not only for his knack of guiding me gently in the right direction academically without ever attempting to direct the research, but for his general tenor of encouragement through what was, at times, a difficult process.

I'd like to thank my mum Luise, and my sister Saffia, for their constant moral support. Most of all I am grateful to my partner, Rachel, who had to live with every bit of the anxiety caused by the PhD process, without having the luxury of being able to do anything about it. She remained steadfast in her encouragement regardless and I could not have completed this work without her help.

I would like to dedicate this thesis to my dad, Mostafa, who never hid his pride in my relatively minor academic achievements during his lifetime.

Abstract

This research analyses different understandings of 'the public interest' and the role they play within the British newspaper industry. The analysis highlights the reflexive negotiation of this concept within individual newspaper organisations, whereby journalistic and editorial decisions are made, as well as the public interests utilisation in arguments supporting different models of press regulation. A case study of the Leveson Inquiry (2011-2012) and the political fallout from this inquiry, is used as the main basis for understanding these themes. This was a wide-ranging public inquiry into the culture, practices and ethics of the press following initial revelations of phone-hacking and other forms of privacy invasion within the *News of the World* newspaper which subsequently ceased trading.

Within this thesis, document analysis is used to study the Inquiry itself, focusing on contributions made by journalists and newsworkers employed within the British Press, as well as those Inquiry participants who came forward with regulatory suggestions for improving longstanding issues of oversight and accountability within the newspaper industry. The political events which followed the publication of the Inquiry's recommendations are unpacked through an analysis of parliamentary debates. The thesis demonstrates that differing interpretations of the public interest were mobilised by both those pursuing change to press regulation and those largely promoting the status-quo. Such adaptation of the public interest to achieve certain ends, was a reflexive process which eventually prevented the recommendations of the Leveson Inquiry from being effectively implemented.

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INTRODUCTION

The Leveson Inquiry in Context

Within this introduction some of the backdrop to the Leveson Inquiry is established. This inquiry into British newspaper journalism following the crisis which came to be known as the 'phone-hacking scandal' or 'Hackgate', acts as a case study for later substantive chapters of this thesis. The events which gave rise to the Inquiry are briefly outlined, with a focus on the contribution of the existing system of press regulation as revelations slowly unfolded. In line with the thematic focus of this thesis, particular attention is paid to the role notions of 'the public interest' played.

Fault lines in pre-Leveson press regulation

Before any specific allegations of phone-hacking came to light, existing structures of press regulation arguably provided conditions which fuelled the subsequent crisis. Until the conclusion of the Leveson Inquiry in 2012, press regulation was organised by the self-regulatory body, the Press Complaints Commission (PCC). For reasons which will become clear, the Inquiry found that the PCC had broadly 'failed to achieve its aims' as a regulator by developing a 'culture [which] vigorously resists or dismisses complaints as a matter of course' (Cohen-Almagor, 2014: 204) at the expense of 'the victims of unethical journalism' (Cathcart, 2021: 49).

Due to such faults, the PCC ceased operations in the aftermath of the Inquiry. A failure in attempts to ensure meaningful accountability of newspaper publishers can perhaps be sensed within the ethical guidance which the PCC enforced and which journalists were provided within the *Editors' Codebook.* This codebook was, and indeed still is, written by a separate body called the Editors' Code of Practice Committee who are essentially responsible for establishing the ethical framework which journalists are charged with upholding.

Writing in the aftermath of the Inquiry, before the PCC had formally disbanded, Petley (2013c: 22) drew attention to the purposefully ambiguous and '[d]istinctly unhelpful' manner in which the 2009 version of the codebook treated the concept of the public interest. The codebook claimed the concept was something 'impossible to define' and on that basis eschewed any supposedly futile attempt to engage with the public interest with any rigour (Petley, 2013c: 22). This is something which appears to have been inherited wholesale within

the current iteration of the *Editors' Codebook* now enforced by the Independent Press Standards Organisation (IPSO).[1]

IPSO replaced the PCC as Britain's primary self-regulator in 2014, whilst itself failing to fulfil several of Leveson's recommendations (Cathcart, 2018; Fenton, 2018b; Media Standards Trust, 2013c, 2019; Ramsay and Barnett, 2021). The conditions through which the PCC came to be succeeded by a body sharing this perspective on the public interest, as well as inheriting many other structural similarities from its predecessor, is a major theme of this thesis explored in detail in subsequent chapters.

Regardless of the reasons for this enduring reticence on the concept within official ethical codes written by successive press regulators, this surely leaves newspaper journalists on unsteady ground when attempting to assess the level of public interest within a story. Perhaps the flexibility afforded by such nondescript guidelines has, therefore, primarily benefited senior editors who remain free to rely on their professional judgment without being constrained by an overly prescriptive regulator. This ambiguity equally benefited the PCC's Complaints Committee, who didn't risk contradicting the code when justifying a ruling through an appeal to the public interest.

Perhaps this ultimately benefited executives and owners of newspaper publishers who could operate their business free from the onerous task of having to abide by any pre-specified obligations to the public interest. Petley linked the position within the codebook to the evidence provided by the PCC's former chair, the British diplomat Sir Christopher Meyer, to the Department of Culture, Media and Sport Select Committee during their pre 'Hackgate' inquiry into the *Self-Regulation of the Press* (2007). Meyer purposefully emphasised definitional ambiguity when stating 'one person's public interest is not necessarily in another person's public interest' (in Petley, 2013c: 22).

As he described the collective process of resolving complaints brought against the PCC's member publications, he stressed the difficulties in determining 'the line between what is properly private and what is genuinely in the public interest', conceding that the regulator 'will never come to an absolute objective standard for the public interest' (in Petley, 2013c:

[1] The latest version of the codebook states 'what is the public interest? It is really impossible to define exactly, so the Code does not attempt to do so. Instead, it provides examples of public interest in a non-exhaustive list that reflects the values of the society that the British Press serves' (Grun, 2020: 132). According to its authors, this ambiguity preserves 'the spirit of the Code' which 'allows flexibility' whilst simultaneously warning that the public interest should not be used as a 'Get Out Of Jail card to be played after flouting the rules or dropping a clanger' (ibid).

22). The claim coming from the top of the erstwhile regulator appeared to be that the ambiguity inherent in the public interest could only be negotiated on a case-by-case basis.

In reality, however, the latitude afforded by this seemingly off-the-cuff approach favoured one group in particular as 'the PCC tended to give the press the benefit of the doubt' (Cathcart, 2012a: 53). This favourable treatment that self-regulation tended to confer on those claiming to be regulated does not necessarily suggest those assessing complaints acted in bad faith. We need not question Meyer's description of the earnest and thoughtful collective process he engaged in with his colleagues when assessing each complaint.

One aspect of the PCC's structure which Leveson criticised in his report was serving editors' place on the Complaints Committee. This meant editors not only dictated the terms of the code but also administered it.[2] According to the judge, this arrangement gave an impression of the press 'marking its own homework', based on the credible view that the 'substantial bloc' of editors on the Committee wielded 'disproportionate influence' due to their expertise and authority (Leveson, 2012a: 1524–1525).

No matter how earnest the attempts to engage with the various issues subject to complaints were, the socialising influence of this 'bloc' of senior practitioners, entrenched in the professional norms and values of journalism, might have unwittingly biased the process. This was not necessarily a case of overt protectionism, self-interest or corrupt quid-pro-quo arrangements between the editors sitting on the Complaints Committee. These actors may have been naturally pre-disposed to empathise with the plight of their counterparts' facing complaints.

A body of both journalistic and academic literature suggests that the British Press, and the wider media/political commentariat, tend to operate within a set of shared attitudes, assumptions, and political perspectives (see chapter one). A similar set of normative journalistic values were likely relied on by these editors when ruling on complaints brought forward by members of the public against newspapers. In lieu of any explicit or objective

2 In an apparent concession to Leveson's recommendations (Ramsay and Barnett, 2021: 23), IPSO has no working editors or journalists on its Complaints Committee, although expertise is offered by members who formally held such positions. Overall responsibility for drafting the code, however, is carried out by a separate Code of Practice Committee, in which nine of its fourteen members are serving editors and editorial directors along with the chair, former Trinity Mirror group executive editor Neil Benson (see: Editor's Code of Practice Committee, n.d.).

guidance from the Editors' Code on what constitutes the public interest, it is likely that shared journalistic perspectives on the concept were used instead.

This might include the purportedly common journalistic assumption that a default public interest exists in the disclosure of information (Moore, 2007: 38; Morton and Aroney, 2016: 20). Such presumptions may have seen the body acting as a de facto defender of the press rather than an effective regulator. This defence of newspaper publishers denigrated the options available to potential victims requiring a fair hearing for their complaints or some level of meaningful redress.

Thus, the perception grew that when responding to complaints the PCC often did a better job of protecting already powerful corporations than those intruded upon or worse by the press. The former press regulator has been characterised as a body which 'ignored or denounced' the victims of press abuse whilst being 'supposedly tasked with protecting the public interest' (McGoey, 2019: 99). This directly links the PCC's ambiguous stance on the public interest to its perceived ineffectiveness as a regulator.

These regulatory failings only exacerbated, and perhaps even facilitated, the events which led to a wider 'crisis of trust' (Baines and Kelsey, 2013: 29) in British newspaper journalism becoming prevalent in the wake of the Leveson Inquiry (Fletcher, 2012). When compared to the level of trust people from other nations place in their journalism, or with the level of trust other professions command, this crisis of trust in the British press has been relatively enduring (Cathcart, 2017b). The shocking events of the phone-hacking scandal may provide some explanation for this.

Phone-hacking: A cross-title, cross-cultural conflict

(i) The Guardian, the News of the World, and the PCC

The drawbacks of the PCC's apparent deference to the press were starkly illustrated when the former regulator, somewhat unusually, became embroiled in a conflict *between* newspaper titles. Stories published within the *Guardian* in the years preceding the Leveson Inquiry, particularly those penned by freelance investigative journalist Nick Davies, are often credited for uncovering the scale of illegality at the *News of the World* and facilitating the Inquiry (e.g., Fenton, 2021: 169–170; Freedman, 2012: 19, 2014: 133; Lloyd, 2013: 217; McGoey,

2019: 103; Rusbridger, 2012a: 144; Schlosberg, 2013: 13) as well as leading to the paper's abrupt closure.[3]

According to Chris Frost (2016: 294), the *Guardian* pursued 'the phone-hacking story' by consistently reporting on 'out of court settlements to celebrities who claimed their phones had been tapped by News International'– the organisation which owned the *News of the World* along with its current stable of national titles including the *Sun* and *The Times* – and 'stories alleging that phone-hacking was widespread at the *News of the World'* when other newspapers turned a blind eye (see also Bennett and Townend, 2012).

Thus, '[m]ore than any other body or group, [sic] *The Guardian* brought about the Leveson Inquiry of 2011–12' (Cathcart, 2021: 49).[4] This conflict between two of the PCC's prominent members meant the regulator's default method of 'quiet mediation' (Cathcart, 2012a: 53) between an often-inexperienced civilian complainant and a newspaper organisation all too familiar with the complaints process was not an option.

Revealing the hacking scandal was a drawn-out affair,[5] with the *Guardian* and Davies pursuing the story whilst News International consistently denied and minimised the allegations. As Frost alludes to above, one method employed by the newsgroup was spending vast amounts on compensating victims to stop details of these allegations being aired in open court. This is a method several newspaper titles continue to deploy to this day (see footnote 123).

News International appeared intent on combating all allegations from the very first instance that voicemail interception come to light. This started with the 2007 conviction of the newspaper's Royal Editor, Clive Goodman, along with their contracted private investigator Glenn Mulcaire, for accessing the voicemails of 'royal aides' – along with five individuals

3 The actions of MPs such as Tom Watson, Chris Bryant and Paul Farrelly whilst on the Media Select Committee are also rightly acknowledged (Davies, 2014: 118; Freedman, 2012: 19).

4 Davies notes the valuable co-operation on this story from *New York Times* journalists after his reporting gained little traction within the British media (Davies, 2014: 239–240). The *NYT* published an instrumental interview with Sean Hoare in September 2010, a former entertainment journalist at the *News of the World* who went on record claiming that Andy Coulson, his former editor, and long-term colleague who was then the Prime Minister's communications chief, had first-hand knowledge of voicemail hacking (Christopher, 2012: 110–111; Davies, 2014: 253; Rusbridger, 2012a: 132).

5 For a comprehensive account see *Hack Attack* by Nick Davies (2014). Also Hanning, 2014; Jukes, 2012: 21–70.

not associated with the royal family – under the Regulation of Investigatory Powers Act 2000 (Charnley, 2012: 211).

During the trial and beyond, the newsgroup argued this behaviour was confined to these two individuals who represented a rogue element in the midst of an otherwise untarnished workforce (Cathcart, 2012c: 38; Jukes, 2012: 33). The PCC appeared happy to accept this argument when conducting their own investigation into the matter following these arrests (Davies, 2014: 17–18).

When, in 2009, the *Guardian* reported the scale of phone-hacking at the *News of the World* far eclipsed that first professed, along with the prevalence of other questionable practices such as illegally accessing private details held in 'police computers, British Telecom, the DVLA, Inland Revenue' (Davies, 2009), the PCC were forced to revisit their previous position. The regulator, however, simply doubled down. Their then chair Baroness Buscombe 'dismissed' (Jukes, 2012: 156) the *Guardian*'s investigation in a now withdrawn report.

Former *Guardian* editor, Alan Rusbridger rightly maintains that his newspaper's reporting in this period 'blew apart News International's "one rotten apple" defence' (2012a: 130). This seemed, however, to have little immediate impact. In the run-up to the Leveson Inquiry, Rusbridger labelled the PCCs response 'worse-than-meaningless' (ibid: 135) and noted the regulator 'could not resist having a little jab' (ibid: 131) at his paper. The offending 'jab' was the PCC's assertion that the *Guardian*'s reports 'did not quite live up to the dramatic billing they were initially given' (in Davies, 2014: 129).

One basis for this conclusion was that the newspaper failed to provide evidence that the practices it identified continued after Mulcaire and Goodman's arrest. This claim was never part of the *Guardian*'s reporting, whose revelations centred on the hitherto unrealised scale of such activity in the years prior to these arrests. Davies prophetically warned, in print, that the PCC risked its own credibility by failing to investigate the issue of phone-hacking sufficiently (Davies, 2014: 130).

The fallout saw Rusbridger resign from the Editors' Code Committee in protest (Charnley, 2012: 12; Frost, 2016: 293), having purportedly considered pulling his paper out of the PCC altogether (Davies, 2014: 130). Although the paper stopped short of publicly questioning the viability of self-regulation (Cathcart, 2021: 49), Davies (2014: 130) claims the episode 'test[ed] the ideas that newspapers could regulate their own business'.

In one sense, during these events the *Guardian* found itself in a novel position, occupying the role of frustrated complainant attempting to secure accountability through the PCC. When investigating the *News of the World*'s activities, the regulator appeared to rely on a well-worn institutionalised response, combining its all too limited investigatory powers (see chapter seven) with an exaggeration of the sanctity of its findings. Combined with its predisposition to accept the arguments of editors and newspaper executives at face value, this produced a similar dismissal of accusations made against a newspaper publisher, as seen in many past complaints.

The PCC did more to protect the superficial veneer of respectability of a publication than it did to tackle a serious ethical deficit seemingly allowed to fester. Before this point, the *Guardian*'s dealings with the PCC would have been as a light touch regulator providing helpful mediation of complaints made against the newspaper. Whereas the *Guardian* had mostly benefited from these previous dealings, possibly presuming the regulator was acting as an honest broker, the newspaper was now seeing the PCC through the *other end of the telescope.*

With the rest of the press either ignoring the apparent deficiencies of the PCC's investigation, or simply repeating the regulator's findings as if definitive, those journalists investigating the story were in a similar position to past victims of press abuse, being left to wonder where accountability could be sought. Unlike those victims, however, the *Guardian* had a platform, expertise, and the resources to continue pursuing the issue.

A breakthrough was achieved almost two years on from their initial report, when the newspaper uncovered the 2002 hacking of the voicemail of murdered schoolgirl Milly Dowler. The paper's former crime correspondent describes this revelation as creating 'a firestorm which would have dramatic and lasting ramifications for the entire media' (Campbell, 2016: 227). It is those ramifications I intend to unpack in this thesis.

(ii) A clash of journalistic cultures

As well as a tale of criminal deception, it is also possible to view this saga as a contestation over divergent ideas on the professional identity of journalism. The *Guardian*'s stance represents views commonly associated with the 'quality press', with the sensibilities of tabloid journalism represented by the *News of the World.* Hackgate highlighted 'two moral assumptions clashing' (Lloyd, 2013: 219) over what constitutes public interest journalism.

This moral differentiation was partly expressed through different approaches these newspapers employed towards fulfilling the public interest. The sentiments of two figures who assumed the role of protagonist and antagonist in these events, Nick Davies and Glenn Mulcaire, provide a sense of this ideological divergence. In a section of his book criticising the *News of the World*, Davies accuses the paper of cynically

> pretending in print that the nation lived by an antique moral code which rendered anything other than clean living and straight sex between a married couple improper and, therefore […] a legitimate subject for exposure (Davies, 2014: 40)

He describes this as a 'fiction' perpetuated as 'justification for [the paper's] most destructive work' (ibid).

Davies gives a flavour of newspaper content he considers unfit for print when describing material belonging to private investigator Steve Whittamore, uncovered in the flawed 2003 ICO investigation into data protection breaches by the press, Operation Motorman (McGoey, 2019: 106–111). Summaries of several stories were written on invoices Whittamore gave to various national newspapers for his services: 'Bonking headmaster…Dirty vicar…Miss World bonks sailor…Witchdoctor…TV love child…Junkie flunkies'. Davies claims these summaries alone showed 'how little of this had anything to do with public interest' (Davies, 2014: 114).

This journalist's view of an easily identifiable conception of what constitutes public interest journalism based on the principles of the Fourth Estate arguably reflects the stance of the quality press. Hanging this argument on a definition of the public interest, however, might be problematic as the meanings ascribed to this concept are not universal. Morrison and Svennevig (2007: 47) highlight the possibility of employing a Durkheimian position on the public interest, whereby 'social solidarity is ensured by moral appeal to collective agreement on ways to live'.

Under this framework, rather than being entirely susceptible to the accusation that such stories solely satisfy a reader's amusement or prurience, reporting the actions of 'love cheats', for example, acts as a social corrective by 'enshrine[ing] ideals' of what is deemed

socially acceptable (2007: 47).[6] Davies himself concedes the plausibility of this defence, despite claiming to 'profoundly disagree' with it:

> I believe those journalists who claim that it is a matter of public interest that we be told about sex lives of public figures, particularly when they are in breach of established conventions are speaking sincerely (in Dwyer, 2013: 193–194).

Dwyer interprets this as the journalist admitting 'not to know what the public interest is' (ibid). Without any objective standards to measure the concept, it remains vulnerable to highly contestable, perhaps entirely relativistic, moral arguments.

Such relativism is highlighted by the contrast with the statements of the *News of the World*'s former private investigator Glenn Mulcaire. We might assume that a figure central to the newspaper's endemic hacking operations would have little recourse to evoke the public interest when discussing his activities. Whilst Mulcaire's account can be read as an attempt to salvage a modicum of credibility following intense public opprobrium, the justifications made within a series of interviews with journalist James Hanning (2014) provide insight into this broadsheet/tabloid divide in conceptualising the public interest.

Mulcaire's description of the *News of the World*'s journalism diametrically opposes Davies'. Recounting his pride at first being employed by the paper Mulcaire states it 'had done great, really great work in exposing people who needed exposing' and describes the paper's ethos as one of 'standing up for and entertaining decent people against corruption' (Hanning, 2014: 55–56). Despite being an investigator by trade, Mulcaire's description carries something of the traditional journalistic defence which positions the profession as society's 'watchdog', (see chapter one).

Although 'proud' (Hanning, 2014: 55), Mulcaire was not oblivious to the types of criticisms aired by Davies which meant he compartmentalised his work for the paper into two distinct categories: 'celebrity nonsense' and 'greater good stuff' (ibid: 69-70). The more interesting discussion lies in dissecting the types of stories Mulcaire viewed as worthwhile. One example is the infamous campaign spearheaded by then editor Rebekah Brooks for 'Sarah's Law', of which Mulcaire claims: 'I loved what I did there' (Hanning, 2014: 76).

6 The authors suggest the term 'social importance' as a replacement for 'the public interest' when navigating the issue of disclosure within journalism as they believe this avoids the 'operational difficulties of the latter' (Morrison and Svennevig, 2007: 61)

What he did involved illegally obtaining private information about the identities of people with previous convictions for child abuse for publication. The campaign was highly contentious, seen as giving 'vent to a lynch mob mentality' (Hanning, 2014: 76), and linked to 'violence against a convicted paedophile in […] Portsmouth' and instances of offenders disengaging from their probation officers and rehabilitation programmes (Petley, 2013b: 67). Apocryphal reports of a paediatrician fleeing their home after being mistakenly identified as a paedophile (Hanning, 2014: 75; *Press Gazette*, 2012), give an indication of the chaotic and heightened environment this campaign created.

Petley (2013b: 67) argues that 'if such a campaign cannot be considered as a harmful action, it would be hard to know what can'. Within this context it becomes difficult to determine what public good was served. Mulcaire, however, remains unconflicted on Sarah's Law as 'to his mind, making life hard for paedophiles […] was unassailably the right thing to do', meaning the identification of 'a child abuser' constitutes 'a greater good' justifying his intrusion into their privacy (Hanning, 2014: 77).[7]

Similarly, during the Leveson Inquiry Rebekah Brooks (2012a: 53–58) labelled this campaign 'public interest journalism'. Although the former editor expressed some 'regrets' regarding the above unforeseen consequences, she maintained that publishing these details was ultimately 'the right thing to do'. In a similar vein to the above discussion on sex scandals, the identification of the public interest in this campaign highlights the conflation of the concept with subjective ideological values.

Perhaps those with a firm conviction in retributive justice, or who share what Hanning describes as Mulcaire's 'socially conservative' outlook (2014: 69), will be more willing to accept this justification of the Sarah's Law campaign. The tendency to identify and name perpetrators of crimes within the media, and publicly assess the appropriateness of punishment, has been argued to be a distinctly British trait in comparison to how crime is reported in other European countries.

In a comparative study of such coverage in Sweden, the Netherlands and Britain, Smith Fullerton and Jones Patterson (2013: 130) argue this reflects the absence of a broad 'ethic of

7 Mulcaire maintains a similar stance when discussing his involvement in the infamous Milly Dowler phone-hacking. He claims, 'he was acting not only in the public interest, but also with an "empowering authority"', having believed his paper had a tacit agreement with the police enabling him to aid the investigation (Hanning, 2014: 214).

care' in British society compared to these continental nations the authors identify as examples of '[s]ocial welfare states with consensus forms of government'. This provides an indication of the cultural relativity of what it means for journalists to fulfil the public interest. Such relativity arguably explains how phone-hacking became an accepted practice for some journalists whilst being seen as a scandal by others.

The public interest as justification

Differing definitions of the public interest were not only displayed by journalistic actors during the slow unfolding of the hacking scandal. The actions and utterances of senior media stakeholders prior to the *Guardian*'s 2009 revelations provide further examples. One telling indication of the uncertainty surrounding the concept, are misunderstandings of how the public interest overlaps with the law demonstrated by those in position to influence the press.

In the immediate aftermath of Goodman's and Mulcaire's convictions, the then chair of the PCC, Sir Christopher Meyer, whose views on the vagaries of the public interest are noted above, publicly contradicted the law of the land by describing phone-hacking as 'a totally unacceptable practice unless there is a compelling public interest reason for carrying it out' (in Hanning, 2014: 146). Hanning, the *Independent on Sunday*'s former deputy editor, notes there was no legal basis for a public-interest defence for phone-hacking.

This may indicate a general shortcoming in the understanding of this law within the press prior to the scandal which 'nobody, including the PCC's £150,000 a year head, seems to have been aware of' (Hanning, 2014: 146). It could also be argued, however, that this instance demonstrates a common tendency within the press and its former regulator, to hide behind the comforting ambiguity of the public interest when accused of virtually any wrongdoing or transgression. As will be demonstrated later in the thesis (see chapter three), the concept seems to be treated within the press as a one-size-fits-all justification.

This impression is reinforced by a strikingly similar instance of confusion in 2003, when the two national editors most readily associated with the phone-hacking scandal, Rebekah Brooks and Andy Coulson, gave joint evidence to the Culture, Media and Sport Select Committee.[8] Here, after Brooks appeared to freely admit approving payment for information from police

8 It would later come to light, in an ironically tabloid like fashion during subsequent phone-hacking trials, that Coulson and Brooks were partners in a personal as well as professional sense (Heawood, 2019: 28).

officers – something she would later deny in 2011 (Fenton, 2016: 52) – Coulson interjected claiming this was only ever done in the 'public interest' (in Jukes, 2012: 28).

Again, no legal basis for this exemption exists (Davies, 2014: 135). This was demonstrated within the legal proceedings following the phone-hacking scandal, whereby Operation Elveden sought convictions for payments made by journalists to police officers and other public officials. Despite several journalists seeing their charges dropped due to the prosecution's inability to disprove a public interest existed for payments made to some officials, the Crown Prosecution Service pursued cases against 'those journalists who had made payments to police officers which is a specific offence' (Frost, 2016: 306).[9]

The above miscalculations, whether the result of genuine misunderstandings of the law or attempts to knowingly circumnavigate it, highlight a tendency to use the public interest as a legal crutch. The fact that two of the country's most senior tabloid editors and the press self-regulator's chief freely admitted to tolerating prohibited, indeed illegal, activities under the terms of this concept suggests some of those capable of influencing the ethical culture within the press used the public interest to simply justify existing practices.

Some characterise the general willingness of journalists and elite media stakeholders to promote opacity in the definition of the public interest as a cynical attempt to permit the publication of ethically questionable material (e.g., Cathcart, 2012a: 85; Davies, 2014: 40; Dwyer, 2013; P Harding, 2012: 310–311; Moore, 2007: 33; Petley, 2013b: 73, 2013c: 21; Rusbridger, 2012a: 140). This cynical employment of the public interest may be used as an attempt to justify its antithesis: the 'wanton disregard for any public interest, and the exploitation of defenceless individuals for the public's vicarious delectation' (Garnham, 2009: 165).

Even if the most egregious abuses of a public interest defence are relatively easy to identify, as previously highlighted these justifications remain difficult to disprove entirely. Solely relying on the probity of editors and the validity of their sometimes-capricious judgments, as the PCC appeared to be largely doing, provided no viable solution to this conundrum. This thesis will attempt to identify how the public interest was utilised by various actors involved

9 The lack of a consistent public interest defence covering all journalistic practices has been noted as a potential weakness in the law (Cathcart, 2012a: 87–88; Rusbridger, 2012: 141). A firmer legal definition of the concept was called for by the Media Standards Trust during the Leveson Inquiry (Moore and Ramsay, 2012: 99–110).

in the press during the Leveson Inquiry and throughout the subsequent attempts to replace the PCC.

The instigation of a public inquiry

To conclude this introduction, I will outline the events which directly preceded my case study and led to the establishment of the Leveson Inquiry. As previously cited, it was the revelation that the *News of the World* had intercepted the voicemail of murdered 13-year-old Milly Dowler during her initial disappearance which signalled the crisis that precipitated the Inquiry.[10] Fenton (2021: 170) claims the Dowler revelation 'stirred a whirlwind of public fury'. Hanning argues it 'turned the phone hacking saga from a hiccup in media regulation to a national outrage' (2014:11), and 'catalysed the closing down of the *News of the World'* (ibid: 138).

Freedman similarly notes the 'immediate public outrage and […] huge amount of media coverage' (2012: 17) following the revelation. He identifies the 'public backlash against corruption' as a primary factor which 'transformed the situation' and prompted the Government's announcement of an Inquiry just three days on from this disclosure (ibid: 18-19). When describing the moment his story was published, and the sea change it signalled from previous dismissals and denials, Davies (2014: 337) states evocatively: '[t]here was a white flash and a mighty explosion'.

The '[p]ublic revulsion' (Cathcart, 2019: 96) at a murdered schoolgirl being subject to the type of privacy invasion which it later became clear many others had received[11] played a key part in forcing the Prime Minster, David Cameron's hand on this issue. This combined with internal pressure from the Conservative's coalition partners at the time, the Liberal Democrats (Jukes, 2012: 99). The newly formed campaign group, Hacked Off, played a role

10 It is worth noting that one impactful aspect of the original reporting was later subject to conflicting accounts. This was the idea that newspapers had not only hacked into Dowler's voicemail, but deleted some messages, giving her family false hope that the schoolgirl was listening to them and thus still alive (Davies, 2014: 375–377; Hanning, 2014: 188).

11 A report by the Media Standards Trust stated that the police estimate for the number of people hacked, solely by those working on behalf of the *News of the World*, then stood at 5,500. This provisional estimate was mainly based on notes recorded by Glenn Mulcaire partially recovered during Operation Weeting (Moore, 2015: 16). A majority of victims identified within the MST's report were non-public figures (ibid: 21) although 'many […] had a relationship with a public figure, as partner, work colleague, family member or friend' (ibid: 22).

in shaping the terms of reference for the Inquiry, aiming to ensure its remit was broad enough for substantive impact.

This group had somewhat serendipitously planned a launch event announcing their campaign for a public inquiry in the House of Lords on 6 July 2011, a date, it transpired, two days on from the Dowler revelations. The basis for this campaign was the dawning realisation noted above that News International remained intent on obscuring the true extent of phone-hacking by settling cases out of court and preventing the accusations from being heard (Cathcart, 2012b: 27, 2012c: 38–39).

Having anticipated a slow-burning campaign raising awareness and support for their cause, Hacked Off found themselves at the centre of an issue for which the touchpaper had been lit two days earlier. Their petition for a public inquiry gained 8,000 signatures in the space of a week (Curtis, 2011). In the words of one of their founders, the group 'found ourselves in the peculiar position that our central demand, for a public inquiry, was conceded almost before we began work' (Cathcart, 2012b: 27).

Hacked Off were now in a position to negotiate directly with party leaders and select committee chairs. Members of the nascent campaign group, such as former Liberal Democrat MP Evan Harris, accompanied the Dowler family to meetings with senior politicians, including David Cameron.[12] Cathcart comments that politicians of all stripes appeared 'open minded and receptive' to his campaign group's position, to the extent that 'sixteen elements' they had suggested were included in the PM's final terms of reference for the Leveson Inquiry (Cathcart, 2012b: 27).

The campaign group would continue their stated aim of 'representing victims of press abuse' (Ramsay and Moore, 2019: 91) in political negotiations following the Inquiry (see chapters five & six). Along with this pressure from campaigners, politicians, and victims the palpability of public discord compelled David Cameron to initiate the Leveson Inquiry. This might be interpreted as a realisation that the actions of the *News of the World* strayed so dramatically from any notion of the public interest that no other resolution could be justified.

This interpretation seems particularly compelling in the context of Cameron's decision to include the relationship between the press and politicians within Leveson's terms of

12 In his autobiography Cameron (2019: 259) describes this encounter with the Dowlers, who were 'charming and understanding, but passionately wanted something to be done', as 'sobering and difficult'.

reference. The Prime Minister was already facing scrutiny for his decision to employ former *News of the World* editor Andy Coulson as his communications chief. Coulson had resigned from Downing Street by this stage and would later be convicted for his role in phone-hacking. Cameron surely also surmised that the Inquiry would scrutinise his close personal and professional ties with Rebekah Brooks.[13]

On a policy front the conduct of Cameron's Culture Secretary Jeremy Hunt, whilst tasked with reviewing the proposed takeover of BSkyB by News International, had also been questioned. Hunt had used a backchannel via a special advisor to communicate with senior figures at News International during this supposedly impartial review process and attempted to bypass Ofcom on the media conglomerate's behalf (Davies, 2014: 321; Jukes, 2012: 180).

Cameron claims his political opponents' support for this wide remit was because they 'believed that the Conservatives and I had the most to lose from broadening the terms to include the relationship between the press and politicians' (Cameron, 2019: 257). Nonetheless, the case for an in-depth and fully independent public inquiry was now overwhelming. On 13 July 2011 Cameron announced the terms of an Inquiry, armed with a 'relatively wide brief' (Lloyd, 2013: 217).

Within this introduction I hope to have given some indication of the role the public interest played in the context and events which facilitated the Leveson Inquiry. In the following literature review I aim to pin this admittedly allusive concept down in a more precise manner, based on competing intellectual, ideological, and regulatory traditions.

13 Due to the nature of their social contact, and proximity of their homes in Cameron's wealthy constituency, Brooks and Cameron were considered members of a group colloquially labelled the 'Chipping Norton set' (Jukes, 2012: 230–235).

CHAPTER ONE

Literature Review: Defining the Public Interest

This chapter provides a brief overview of historical perspectives on what constitutes the public interest, which encompasses divergent notions of who the public are and how their needs are best met. Initially this is explored in general terms, in relation to broad developments in society encompassing moves towards modernity and liberal representative democracy. The latter section of the chapter applies such developments to the management and regulation of the media. The aim is to unpack the influence of competing historical definitions of the public interest on the contemporary media landscape.

Studying the public interest provides a suitable vantage point to map historical developments of major institutional forces contributing to the formation of modern liberal democracies. Changing dynamics of the media's interaction with these 'institutional spheres' (Ryfe, 2017) such as the state, the market and civil society (Keane, 1991: 21) has, over time, shaped journalism's understanding of what it means to serve the public interest. As discussed in the introduction to this thesis, a level of ambiguity pervades some academic and journalistic discussion of the public interest (e.g., Dennis, 1974; Feintuck and Varney, 2006: 75; P Harding, 2012).

This creates space for journalistic understandings of the concept to be aligned with the intellectual trends of these adjacent spheres as the profession 'is enmeshed […] in the constitutive commitments of contiguous social fields' (Ryfe, 2017: 41). Such differing institutional bases contribute to multiple definitions of the concept being in use at any one time which are completely at odds. When viewed from the perspective of the market for example, 'the notion of the public interest' can be seen 'as an ideological device designed to cloak unjustified regulatory ambitions on the part of governments' (McQuail, 1992: 3).

Whereas, if scrutinised through the lens of civil society, descriptions of the nature of the public interest often promulgated by corporate press actors can often be viewed as embodying 'barely disguised self-interest and self-regard' (Petley, 2013c: 21). Such differing bases of attack have their roots in longstanding perspectives on society. Influenced by a

Bordieuan approach to the 'journalistic field',[14] David M. Ryfe argues that modern journalism negotiates numerous external forces generated by the major spheres of public life.

Ryfe adopts the analogy of a tent with the opposing forces generated by such institutions as the market, the state and civil society, acting as tentpoles giving shape and meaning to journalism as a discipline (2017: 27). Contained within these forces are the definitions which journalists use to understand the public and 'what public life, at bottom, is' (ibid: 41).

The separation of the public from the state

Little evidence for journalistic activity exists within early Western history. Throughout these periods of state domination, one definition of the public existed largely uncontested. In Medieval and Tudor Britain, for example, the mechanisms of the state, church and crown were indivisible from notions of the public (Ryfe, 2017: 24). A member of the public was not simply an inhabitant of the nation state. 'Public status' was selectively conferred on 'servants of the Crown' or 'public office holders' responsible for protecting 'the interest of the nation as a whole' (Hind, 2010: 18).

Any action not performed in service to the Crown, no matter how community orientated, was considered an expression of 'private interest' rather than 'public interest' (Owen, 1996: 2–3). 'Communication' was severely restricted in aid of a 'good greater than that of the individual – that of true religion, sovereignty of the prince, privilege of nobility, [and] order in the community' (McQuail, 1992: 5). The concept of journalism, therefore, lay dormant.

Widescale political, social, and cultural upheavals which characterised the transition into modernity, challenged this dogmatic notion of what it meant to serve the public. The Protestant Reformation, for example, placed less emphasis on external authorities, challenging the established 'relationship between the individual and the deity' to one 'unmediated by an ecclesiastical hierarchy' (Hutchison, 1999: 72). Such movements encapsulated the search for truth through independent thought which came to represent modernity and its ideals of citizenship.

The English Civil War had a lasting influence on what it means to be a member of the public. Cultural figures within the republican movement, such as the writer and civil servant John Milton, articulated a changing conception of the public aligned to notions of liberty and the free circulation of competing ideas (Hind, 2010: 18; Ryfe, 2017: 3–4). In the process,

[14] See also (Bourdieu, 2005; Marlière, 1998).

Enlightenment ideals of protecting independent rational thought in the pursuit of truth were tied to support for the emergent free press.

Keane (1991: 12) positions Milton's aversion to blanket censorship as a 'theological approach' to understanding citizenship, which incorporated the aims of the Reformation by advocating for individualised spiritual realisation unencumbered by the 'cloistering of reason' via censorship. This argument was later built upon by the mid-nineteenth century utilitarian theorist John Stuart Mill, who staunchly defended the need to protect self-expression and a free press, within hard-won democratic societies (Freedman, 2008: 55; Ryfe, 2017: 4; Zelizer, 2013: 463).

For Mill, the only legitimate constraints on an individual's freedom are those preventing harm or impediment on the freedoms of their fellow citizens (Freedman, 2008: 56; Hutchison, 1999: 77). On this basis, Mill considered the free exchange of opinion between individuals a fundamental guard against unnecessary dogma and prejudice (Keane, 1991: 19). Even self-evident truths should be tested through proper engagement with 'minority positions' in order to ensure 'public opinion […] assume[s] a vibrant and meaningful existence' (Freedman, 2008: 56).

A 'classical Miltonian doctrine' continues to inform the 'functional definition of a public interest' often employed to promote the media in contemporary democratic society (Dennis, 1974: 947). This emphasises the media's role in informing the public and fostering political engagement. A tendency to utilise this argument to support deregulation of the media – including in response to the recommendations of the Leveson Inquiry (Ogbebor, 2020: 111) – has been noted.

Academics have criticised the decontextualized adoption of republican philosophy by advocates for media deregulation assuming their support for their cause. Such assumptions: i) fail to recognise that Milton's advocation for the 'free competition of ideas' applied to 'public rather than the private use of reason' (Garnham, 2009: 176); ii) minimize Milton's and Mill's engagement in 'political struggle' erroneously characterising them as ideological free-market advocates (Freedman, 2008: 62); and, iii) ignore Milton's argument for limited censorship rather than the complete abandonment of regulation (Keane, 1991: 12, 148).

It has been argued those evoking Mill and Milton within 'the standard justification for press freedom based on the doctrine of free marketplace of ideas' are engaging in mythmaking by misinterpreting their original arguments (Nordenstreng, 2007: 19). Neither the argument for

an entirely free press, nor the proposal that free expression will inevitably foster accuracy by preserving a 'self-righting truth', is found within Milton's or Mill's original works 'from the classics of liberalism' (ibid). Such contemporary appropriation of Miltonian ideas exemplifies a major theme of this chapter: the longevity and effect of traditional notions of the public interest.

Refined understandings of the public promulgated during short-lived attempts to establish a British republic have enduring appeal. Not only did the new notion of the public debunk the legitimacy of definitions based on inner circles of hand-picked elite state bureaucrats and dignitaries, but it positioned wider collective engagement in the construction of policy and 'the ability to shape the state' (Hind, 2010: 28) as the proper basis for liberty and citizenship.

Although policymaking was never fully wrestled from government, this installed an obligation for those in power to reconcile what it meant to uphold the public interest against a broader public body. A public who inhabit a separate space from the state and maintained a critical stance towards public policy emerged after the 1688 settlement, due, in part, to a rise in literary rates and the growing influence of the novel as an artform (Hind, 2010: 35).

This assertive literate public (Hind, 2010: 36) and the worrying sight of state capitulation in France and America (ibid: 48; Hutchison, 1999: 9) forced the British state to consider likely public reactions when taking decisions. In Hind's (2010: 37) words the public became a 'spectral authority' within the establishment's machinations, meaning policy needed to at least appear to be motivated by more than self-interest. This burgeoning 'public sphere' – a term we will return to – was formed through civil society exerting definitional influence on the notion of 'the public' for the first time (Ryfe, 2017: 25). The media, especially broadcasters, were later embroiled in efforts to placate this more critical public based in civil society through the widescale dissemination of culture.

To avoid dwelling on themes slightly tangential to my core research aims, I will avoid entering into much of the detail of the rich history of these early struggles for freedom of thought and expression from repressive state, crown, and church diktats. The more general point here is to illustrate that these past arguments and political struggles impact on our conception of the press today and our understanding of it as a 'fourth estate' which necessarily stands independent from those institutions vested with most authority over people's lives to hold them accountable.

It must be acknowledged, however, that despite their prominence in the discourse relating to this conception of public interest journalism, our understanding of the fourth estate emanates from a more complex set of influences than the writings of Milton and Mill alone. Indeed, many events which occurred, and ideas which were popularised, between the times of Milton's and Mill's most influential writings on freedom of expression played a similarly important role in shaping this discourse.

John Locke, for example, alongside political accomplices Edward Clarke MP and John Freke – who made up the informal network known as 'the College' (Goldie, 2014: 29; Kemp, 2012: 48, 2019: 172) – concretely contributed to the struggle for press freedom. In a time shortly after the Revolution of 1688, Locke et al played an influential role in arguing for a reconfiguration of censorship laws and the abandonment of pre-publication licencing.

The 1662 Licencing Act had meant that only a selection of printing presses, handpicked by the archbishop of Canterbury for receipt of a state licence, were permitted to legally publish and circulate written material, with all written work being subject to pre-publication approval by the church (Kemp, 2012: 50). Likely to have been influenced by these arguments for the Act to be replaced with a system based 'on compulsory imprints for purposes of copyright and post-publication accountability' (ibid: 2019: 172) parliament elected to allow the Licencing Act to expire in 1695.

It has been argued that the motivation for the stance Locke adopted in advocating for the end to licencing, as expressed in his writing, originated from his longstanding views on religious tolerance which opposed 'arbitrary private judgment' (Kemp, 2012: 52), and concerns about the negative influence of the de facto monopoly created by licensing on both the 'intellectual property of authors' (Goldie, 2014: 30) and the prohibitively expensive cost of accessing printed works for individual scholars and readers created by uncompetitive pricing (Kemp, 2019: 176).

These somewhat prosaic concerns perhaps differentiate the motives of Locke from the likes of Milton's wider commitment to freedom of expression (Kemp, 2019: 173), but do nothing to negate his contribution to the cause of press freedom. The removal of pre-publication censorship contributed significantly to the burgeoning of a daily press (Williams, 1957: 14), although this was far from the last struggle for independence that the press would be involved in during its nascent years and throughout the eighteenth century.

Newspapers gaining the ability to report on parliamentary debates and proceedings, which by 1738 had become 'expressly prohibited under the most serious penalties' (Williams, 1957: 37) was a similarly seismic development. According to Francis Williams (ibid: 33-35) these restrictions on reporting were designed by the Government to work in tandem with heavy taxation targeted solely at newspapers, to subdue the ability of an emergent independent press to truly hold the institutions of the state accountable.

Williams largely credits John Wilkes with combating this measure and arming the press with the ability 'to obtain and publish parliamentary information' (1957: 41).Wilkes, an MP and journalist, gained notoriety and support from both the public and London's City Merchants by successfully challenging a warrant brought against himself and his associates at the *North Briton* for charges of 'infamous and seditious libel' and exciting the people 'to traitorous insurrections against [the] Government' (ibid: 42-43).

This support meant that later, when Wilkes openly defied the ban on parliamentary reporting within the *Middlesex Journal*, he was able to use 'his alliance with the commercial interests of the city and his own authority as Alderman' to quash charges brought against his printers (Williams, 1957: 44). The strength of support meant that Wilkes was never charged himself, rendering the law untenable. Thus, despite the rule still officially being in force until the early nineteenth century, 'after 1771 the right of newspapers to report on parliament was never again denied' (ibid: 45).

Other measures such as the excessive stamp duty placed on newspapers were subjected to similar contestations. This tax, which increased fourfold in 1815 following its introduction in 1712 (Williams, 1957: 29), was part of the suite of taxations aimed solely at newspaper publishers labelled the 'taxes on knowledge' by their opponents. It remained in place in some form until 1855 (ibid: 98) after a long and resiliently popular campaign was employed 'to compel first a reduction and then the abolition' of the tax (ibid: 96).

The tax attempted to subdue the influence of the press by artificially increasing prices beyond the means of most of the population, effectively capping circulation whilst rendering news workers reliant on bribes and patronage from parliamentarians and political parties. Along with public support stamp duty was most likely eventually thwarted by the effectiveness of newspaper owners and pamphleteers willing to defy the tax by circulating and trading unstamped political writing. William Cobbett, for example, circumnavigated this when publishing his hugely popular weekly, the *Political Register*.

Cobbett ensured the paper contained 'comment but no news in order to keep it outside the legal definition of a newspaper and cheap enough for his readers to buy' (Williams, 1957: 68), until the Government responded in 1819 by changing the definition to capture such publications. Nonetheless it was recognised amongst the political classes that the stamped version of the *Register* continued to be influential and widely read amongst the working class who would band together to buy a single copy of the radical publication and share it between multiple readers (ibid: 70).

Other publications such as Henry Hetherington's *Poor Man's Guardian* were willing to publish in more open defiance of the stamp tax as a point of principle against the unjust law (Williams, 1957: 67). Similarly, pressure saw the right for newspapers to be judged by an independent jury when facing charges of libel, but not until 1792. Before that point such rulings would be made by judges who were often entirely receptive to the priorities of parliamentarians (ibid: 49).

This hopefully provides some sense of the historic struggles which the modern press has come to define itself through, lending credence to the argument that the public interest journalism can only be secured by complete independence from the coercive and excessive powers of the state.

The intrusion of the market

If the early development of the public interest involved civil society challenging state dominance, Britain's rapid industrialisation and urbanisation throughout the nineteenth century brought the last of our institutional spheres, the market, firmly into this equation. James Curran famously outlined how this growing influence of market forces implicated the nineteenth century British press, as the state purposefully mobilized the market to counter the often critical radical press to preserve the public interest by having the public read material seen as beneficial to the establishment, leading them to form desirable 'political habits in the process' (Curran and Seaton, 2018: 21).[15]

A laissez-faire approach adopted by governments towards many industries throughout this period created a parallel recognition of the intricate social problems which were found in

[15] This account of the of the nineteenth century British Press's movement from dependence on the Government and political parties to dependence on wealthy media barons opposed what were the 'standard interpretations of the historical emergence of a "free" press' (Bailey, 2009: xx). This countered the established 'Whig' history which hailed market forces and advertising as the liberators of the press, having freed newspapers from the coercive control of the state (Garnham 2009: 21).

large complex integrated urban communities. The spread of disease and extreme social deprivation, for example, were seen to be exacerbated, rather than remedied, by unencumbered capitalism (Hind, 2010: 50; Hutchison, 1999: 72). The seemingly modest growth of enfranchisement with the 1832 Great Reform Act,[16] whose crowning achievement is often thought to be the avoidance of full-scale revolution, nonetheless saw those in power incentivised to begin campaigning nationally on these increasingly prevalent social issues.

According to Phillips and Wetherell (1995: 426) these reforms ushered in modern electoral practices. Politicians began to utilise 'new notions of the politics of principle and the politics of party' to garner support from the electorate, superseding their prior reliance on 'correct and natural political behavior [sic] based on place in society, property, and connections'.[17] This amounted to the development of 'what might be called social liberalism' (Hutchison, 1999: 73) partly centred on minimising or counteracting the negative consequences of market capitalism.

Whether considered a cynical attempt to legitimise existing social dynamics by representing the lower classes as a perennial societal problem, or a reflection of genuine concern for the direction of travel under unregulated capitalism, such issues occupied the activities of a significant section of the intellectual elite. Owen's (1996: 17–20) description of the split between nineteenth century liberal individualists and liberal collectivists highlights this. Although keen not to overemphasize the extent of disagreement between these two schools of liberal thought, the author shows their diverging positions on state intervention in public and private affairs (1996: 17).

Owen cites the likes of Herbert Spencer, and his disciple Beatrice Webb, as proponents of the individualist perspective who argued that open economic competition and a non-interventionist state 'were the answers to societies ills' (1996: 17). Like John Stuart Mill before, the foundations of this argument lie in the republican belief in near unencumbered individual liberty, repackaged as advocations for the remedial ability of market forces to deliver public goods. This argument was influenced by the likes of Adam Smith.

[16] Phillips and Wetherell (1995: 413-414) claim the franchise expanded to '650,000' by including 'men who occupied premises worth at least £10 per annum' compared to an estimate of 'more than 400,000 Englishmen' prior to 1832.

[17] Hind (2010: 49) sees this as little more than a cosmetic rebranding of political discourse. Politicians 'became fluent in the language of public service and public trust and less likely openly to insist on aristocratic privilege to justify their position' whilst retaining 'the right to determine the public interest'.

Smith envisaged the market as a public space containing institutional rules fostering the development of social responsibility within individuals, by forcing them into a symbiotic relationship with one another (Garnham, 2007: 213). Freely accessible competition would compel otherwise self-interested individuals to co-operate to protect those resources most mutually beneficial (Hind, 2010: 41). The only objective measure of the public interest is these resources maintained by accumulative self-interest and tailored for communal use within the market. Open competition ensures that these interests are met.

Any state intervention limiting an actor's ability to freely negotiate the market is therefore, by definition, detrimental to the public interest. Liberal collectivists, on the other hand, believed that 'cooperation', not 'competition', provided the optimal means for fulfilling the 'public interest' (Owen, 1996: 18). Intentional moral thought, discussion, and effort should be relied upon to preserve public goods rather than being left to the vagaries of the market. Limited state intervention was legitimate for this purpose.

By the 1920s, 'hard political realities' (Owen, 1996: 20) meant arguments for the indiscriminate removal of all state intervention were largely quashed. Consensus developed on the state's right to serve certain needs the market had patently failed (ibid: 18; Hind, 2010: 51–52). The appropriate balance between state provision and economic freedom, however, remains a bone of contention to this day (Feintuck and Varney, 2006: 82; Hutchison, 1999: 81).

Perkin (2002: 15) reaffirms this, claiming the question for any 'complex, interdependent society' once 'vital services cannot be equitably or efficiently provided by the market', is not whether 'state provision through publicly funded professions' should be employed, but 'knowing where to stop'. One consequence of this acceptance was the spawning of a professional class responsible for identifying social goods and the most effective means of provision.

Fear for, or of, the masses?

As the nineteenth century drew to a close, a coterie of 'experts' became central to efforts from the Government and the 'social and intellectual elite' (Hind, 2010: 55), to promote and legitimise an ethic of public service. A 'reformed civil service' was encompassed by the 'bureaucratic practices of the newly emerging professional classes' (Scannell, 2000: 56), and became 'one of the key organizing professions' (Perkin, 2002: 25) foreshadowing the British post-industrial expansion of government.

This societal change saw '[t]he rise of the professions [come] to permeate and […] dominate modern society' (Perkin, 2002: 25), with groups of specialists claiming authority by perpetuating the view that they were best placed to identify the public interest within their respective fields. This doctrine hailed the professional's ability, in contrast to laymen or party politicians, to avoid myopia and tackle widescale social problems through expertise and circumscribed non-partisan disinterestedness (Hind, 2010: 53; Owen, 1996: 72).

Arguably, this self-perpetuating 'classically educated caste' of public servants ultimately helped retain power amongst social elites (Hind, 2010: 55). Their ability to ascribe problems onto 'the masses' (ibid) was institutionally sustained through a doctrine of professionalisation. Regardless of the intention, this precluded the majority from obtaining the type of agency and choice championed by liberals as the basis of citizenship, sustaining 'the dominance of the middle class over the lower ranks' (Scannell, 2000: 56).

The disinterestedness of this homogeneous group was increasingly subject to query as the tendency to suffuse the public interest with notions and cultural assumptions primarily beneficial to themselves became apparent (Owen, 1996: 147–8). Rather than entirely charitable, it is possible that a professionalised public service was born out of fear of an increasingly inclusive democratic system. As suffrage movements mobilised, the threat of an unpredictable and arbitrary basis for political decision-making created fears of mass, or even mob, rule (Hind, 2010: 54).

Adrian Bingham identifies such anxieties in a section of the inter-war press in the wake of the 1918 Reform Act. Reacting to Prime Minster Stanley Baldwin's pledge to further expand the franchise by lowering the female voting age to twenty-one, the *Daily Mail* and the *Mirror*, driven by their staunchly anti-socialist proprietor Lord Rothermere, ran the 'Flapper Vote' campaign against the policy between 1927 and 1928 (Bingham, 2002).[18]

This campaign treated prospective voters with 'suspicion not so much because they were women, but because they were young [and] likely to be employed' leaving them susceptible and exposed to 'propaganda from unions and the labour movement' (Bingham, 2013: 97). This fear of political recruitment chimed with *Mail* editorials expressing concern at the voting habits of other groups claimed to be lacking 'political knowledge and civic responsibility'

[18] Bingham makes clear this does not reflect the views most of the press expressed at this time, which largely welcomed the policy as a sign of the increasing modernity and social equality.

(Bingham, 2018: 166), such as the young and those in receipt of 'public relief' (Bingham, 2002: 27).

These campaigns possibly germinated from a school of thought focused on critiquing mass society. This constitutes a major intellectual tradition, albeit one running through numerous diverging perspectives rather than a unifying framework (Bennett, 1982: 32). The influence of John Stuart Mill can, again, be traced within this tradition. A wariness of predominant majority views accompanied Mill's libertarianism. He believed the mass acceptance of an argument was equally capable of stifling individual expression as was state censorship.

The earlier work of French writer Alexis de Tocqueville, based on his observations of the political situation he encountered whilst visiting America in the early nineteenth century, expressed similar fears (Bennett, 1982: 32). Tocqueville cogently expressed this through his phrase 'the tyranny of the majority' (1840 in Ryfe, 2017: 5) who were, in his view, capable of being 'every bit as tyrannical as a despot towards those who hold unpopular views' (Hutchison, 1999: 12).

Culture and media are implicated within these arguments. Press freedom, for example, is now not only procured solely by evading state censorship, but also by the ability to challenge received truisms and mass opinion. Failing this, the journalist becomes little more than an organ by which dogma and prejudice are amplified. Perhaps the role of a Tocquevillian journalist is to navigate the quagmire of prejudiced received opinions in search some true notion of public interest.

American journalist and political commentator Walter Lippmann shared this mindset. Roughly fifty years after Mill, Lippmann voiced concern for the burden placed on the average layperson by democratic governance. It was unfair and nonsensical to expect the opinions of an electorate who remained uninformed of key issues to be responsible for policy decisions (Carey, 1987: 7). For Lippman (1997 [1922]) a group analogous to the British public servant was required to provide the press, and by extension the public, with 'a reliable picture of the world' (in Hind, 2010: 64).

The 'Public Interest', therefore, is not the mass opinion of a 'spontaneously informed citizenry' (Hind, 2010: 64) but 'presumed to be what men would choose if they saw clearly, thought rationally, acted disinterestedly and benevolently' (Lippman, 1955; in Dennis, 1974: 939). This was something a select few educated 'men' were capable of, and intrinsically not achievable by any collective. An accompanying strand of this fear of attenuated public

opinion, and mass misdiagnosis of political realities, was a concern for the effects of mass society on cultural tastes and production.

If mass audiences began engaging in the arts, hitherto the province of the educated, the quality of cultural fare would inevitably diminish. The elitist notion of 'Gresham's Law' betrayed a hysteria around this audience. Pandering to mass tastes would provoke an irreversible descent to the lowest common denominator. Universal standards of quality such as challenging and demanding subject matter capable of educating audiences would vanish entirely (Hutchison, 1999: 13; Scannell, 2000: 52).

The influential literary critic F.R. Leavis advocated for such distinction between 'low' and 'high culture' through 'cultural judgements informed by the "correct" aesthetic and moral criteria' (Goodwin and Whannel, 1990: 2; see also: Hutchison, 1999: 14–18). The Leavisite perspective was directly influenced by Matthew Arnold, who saw culture as a crucial tool for ameliorating the malign potential of democracy to mutate into anarchy and 'revolt from below' (Scannell, 2000: 56).

In Arnold's view, culture could act as a glue sustaining social unity (Owen, 1996: 11). The correct type of cultural experience had a capacity to 'make all men live in an atmosphere of sweetness and light' (Keating, 1970; in Hutchison, 1999: 14). Through mass education and moral guidance culture would mollify impulses for class conflict and encourage, or coerce, the type of social cohesion which, according to Arnold, constituted the public interest.

Bennett (1982) categorises this as the redefinition of the '*political* problem of social disorder […] as a *cultural* problem' (35, [emphasis in original]). Just as Lippmann calls for experts to identify the public interest in policy making, Leavisite /Arnoldian arguments call for culturally elite arbiters to foster good tastes and engender appreciation of appropriate culture. The public interest is served through paternalistic notions of mass social betterment and a strengthening of national ties.

In the style of a self-appointed missionary, the public is positioned as grateful recipients of civilizing cultural guidance. The fact that we arrive at this dogmatic position from a founding belief in the sanctity of individual liberty and independent thought, and a reactive fear of censorious mass opinion, demonstrates the often-contradictory way existing frameworks of knowledge can mutate to an unrecognisable degree over time.

We can see such mutation in the latter substantive section of this thesis, as traditional understandings of the public interest are bastardised, stripped of their original context, and transposed onto the early twenty-first century press.

State market confluence

At various points in history, we have seen different characterisations of the state through its relationship to the market and civil society. As outlined above, it has been synonymous with a minuscule 'public' comprised of privileged individuals serving the Crown; an institution preoccupied with censorship imposing arbitrary limits on a public's liberty and freedom of expression; and the terrain of disinterested experts, guardians and reformers protecting a mass public from their own instincts and the ills of the market.

Recognition of the inherent condescension imbued in the vestiges of the Victorian paternal state saw its realignment with the market. Throughout the latter half of the twentieth century the dominance of neoliberalism saw a near total conflation of the priorities and goals of the state and private sector as 'the intellectual initiative' was 'sized by advocates of market economics […] challenging most established beliefs about the role of the state' (Johnson, 1997: 500). Governments and commercial organisations now hailed, in unison, the corrective power of market forces (Hind, 2010: 82; Hutchison, 1999: 73; Owen, 1996: 175).

The advent of neoliberalism saw two descriptions of the public compete for representation within policy and the popular imagination: the 'citizen' vs the 'consumer' (Feintuck and Varney, 2006: 123; Keane, 1991: 91; Mills, 2016: 201). This division encapsulates the longstanding fissure between market-based approaches and those vested in civil society, as demonstrated by the liberal individualist/collectivist debate above. These categorisations of members of the public provide differing criteria for fulfilling the public interest.

Describing the public as consumers prioritises plurality of choice within an open market, whereas '[c]itizenship', draws focus to 'other democratic expectations such as accountability and equity' (Feintuck and Varney, 2006: 122). This debate exposes differing understandings of the fundamental organising principles which shape human nature and motivate the various associations, interest groups and kinship ties which make up civil society. Society is presented as either the amalgamation of self-interested individuals seeking to maximise autonomy whilst maintaining mutual benefits, or as a co-dependent collective requiring guidance and infrastructure for shared achievement.

Such thinking was popularised in response to specific historical developments and struggles such as civil war, industrialisation, suffrage/enfranchisement, commercial globalisation, and technological advancement. When applied to contemporary media debates it demonstrates that:

> all theories of the media rest upon historical theories as to the process of the historical development of media institutions and practices and their relationship to the development of modernity and its characteristic social structures and practices (Garnham, 2009: 38).

An interpretation of history informs views on the role public interest media plays in contemporary society and the balance between accountability and freedom inscribed in media policy and regulation. In what follows a broad brush will be applied to the different approaches employed within broadcast and newspaper regulation considering their historical lineage.

Broadcast regulation

Although this thesis focuses on the public interest within press regulation, when locating this concept within the media generally it is instructive, and practically unavoidable, to account for broadcasting. Within no other medium are the state's attempts to influence how the media goes about serving the public so visible. This is particularly true of Public Service Broadcasting, the most 'paradigmatic example' of which remains the BBC (Feintuck and Varney, 2006: 77).

Whilst not entirely coterminous with notions of 'the public interest', 'PSB in the Western European tradition' is argued to be the 'most concrete manifestation' of the concept (Feintuck and Varney, 2006: 77). From broadcasting's inception, the use of technology as a means of mass communication placed this medium in a far more direct relationship with the state than print media. Several explanations for state involvement in the BBC have been mounted.

One convincing argument is a technologically deterministic perspective on limitations in early broadcasting equipment. Upon first realising radio's potential for live broadcasting, the need to restrict competition was dictated by available space on the electromagnetic spectrum (Feintuck and Varney, 2006: 80). Experience of the American system, where commercial radio was pioneered and unregulated, indicated that multiple simultaneous broadcasts result in perpetual signal jamming and practically unlistenable output (Burns, 1977: 5; Freedman, 2008: 19).

Space on the spectrum needed to be divided ‘amongst the competing claims of broadcasting’ with room reserved for the likes of ‘the armed forces, merchant shipping, emergency services, [and] telecommunications’ (Scannell, 2000: 45). This compelled the Government to take responsibility for allocating wavelengths itself. The state’s adjudicatory role was further legitimised by the perception that spectrum scarcity created the conditions for a ‘natural monopoly’ (Feintuck and Varney, 2006: 91; Keane, 1991: 119).

This limit to broadcaster numbers meant that open competition was unlikely to provide choice, quality, and cost savings for the listener. Enabling unregulated access to this newly developed market would be likely to facilitate an ‘unrestricted commercial monopoly’ (Scannell, 2000: 46), with fears that the Marconi Company in particular, who held the patent rights for radio technology, could easily absorb any commercial competition (Burns, 1977: 8–9). The Government’s decision to assume power for licensing broadcasters can therefore be viewed as a pragmatic response to structural conditions.

Under the Post Office’s licensing system multiple wireless manufacturers were invited to act as BBC shareholders as a means of selling their hardware (Barnett and Curry, 1994: 6; Burns, 1977: 7; Crisell, 1997: 13; Owen, 1996: 88–89). Greater plurality was thus achieved through state intervention rather than open competition. This means ‘broadcasting was the first of the media to be centrally regulated from its inception for overtly technological reasons’ (Hutchison, 1999: 55–56).

The BBC was sanctioned to act as the sole national broadcaster, initially as the private British Broadcasting Company in 1922 and later in its current guise as a public corporation through the 1926 Royal Charter (Burns, 1977: 28; Crisell, 1997: 18; Curran and Seaton, 2018: 199; Scannell, 2000: 49). Although keen to remain demonstrably separate from the BBC’s management (Owen, 1996: 91), the Government maintained its discretionary power through the Postmaster General’s broadcasting licence. Although spectrum scarcity had motivated this intervention, notions of the public interest legitimised it.

The consensus at the time of the BBC’s inception broadly mirrored liberal collectivists’ acceptance of the state preserving the public interest through targeted intervention in the market. The First World War provided a context through which state involvement in the provision of amenities and services had been demonstrated and normalised (Hutchison, 1999: 21; Owen, 1996: 20). Thus, government involvement in broadcasting appeared more viable than it would have done under strictly laissez-faire conditions.

The authority to ratify the BBC's frequency access and determine its level of funding through the licence fee – an arguably more pernicious source of control than any formal broadcasting policy or regulation (Mills, 2016: 25; Owen, 1996: 93) – depended on broadcasting being constituted a 'public good' requiring protection from the market. This was reflected in the Sykes Report (1923), which, at British broadcasting's advent, argued for radio airwaves to be treated as 'valuable form of public property […] subjected to the safeguards necessary to protect the public interest' (in Owen, 1996: 92).

This amounted to a state 'mandate to develop [broadcasting] as a national service in the public interest' (Scannell, 2000: 47). The monopolies the BBC initially enjoyed in radio, and later television, were also defended on explicitly Leavisite grounds, leading some to argue that the broadcaster represents 'the most overtly Arnoldian response to the coming of the media that there has ever been' (Hutchison, 1999: 22). Forcing the corporation to compete for listeners and viewers, it was felt, would inhibit its ability to produce programming most befitting a Public Service Broadcaster.

The singular vision of John Reith is largely considered to be the driving force behind the national broadcaster's early development, and in many ways the organisational imprint left by the BBC's inaugural Director General continues to be felt today (Crisell, 1997: 14). Reith's founding vision for the BBC in 1922 owed something to the paternal instincts of the Victorian era noted above and, according to some, his Presbyterian upbringing (Crisell, 1997: 13; Curran and Seaton, 2018: 197; Seymour-Ure, 1996: 64).

He was steadfast and unapologetic in his self-declared mission to contribute to the intellectual and cultural betterment of the nation through broadcasting. He, for example, limited light entertainment programming to focus on broadcasts with a higher cultural cachet and educational value (Burns, 1977: 36; Scannell, 2000: 47–48). As such, Reith was 'famously condescending towards popular tastes and envisaged the audience merely as passive receivers of the BBC's output' (Mills, 2016: 201) and thought the BBC should 'enlighten' (Owen, 1996: 61) rather than 'pander' (Scannell, 2000: 47) to fleeting tastes.

Any attempt at the latter would invariably underestimate the audience's intelligence, leading to standards unnecessarily dropping (Burns, 1977: 36; Mills, 2016: 210; Owen, 1996: 172). This positioned 'public service [broadcasting] as a cultural, moral, and educative force for the improvement of knowledge, taste and manners' (Scannell, 2000: 47–48). Advertising was prohibited on precisely these terms. The Sykes Committee claimed raising funds through

advertisements would adversely affect broadcast standards (Crisell, 1997: 16; Owen, 1996: 93).

Later the Beveridge Committee (1951) questioned the logic of introducing the secondary interests of sponsors, which risked distracting the corporation from its central mission (Owen, 1996: 153). Contradicting the latter committee's support for the corporation's monopoly (Scannell, 2000: 51), the Conservative Government licensed a rival advertisement-funded television channel under two years later. This demonstrated a burgeoning hostility to Reithian approaches to broadcasting, which became for some synonymous with a self-assumed elitist authority to identify universal public goods.

Such supposed 'universalism' is described by Keane (1991: 57) as 'a mask for its own particular brand of paternalism'.[19] According to this author, despite pretence of the corporation's universal use, it struggled to shake off its contradictory image as the domain of 'nice young men sporting military moustaches and […] prim officials with rolled up umbrellas and black hats […] speaking frightfully good English' (ibid: 56).[20]

Such criticism meant the 'Victorian ideals of service laced with Arnoldian notions of culture [which] suffused all aspects of the BBC's programme service in the thirty years of its monopoly […] did not outlast the 1950s' (Scannell, 2000: 56). Despite this, in the era of the duopoly, criticism of the BBC was largely restricted to whether its structure was best equipped to deliver an accepted notion of the public interest, rather than challenging this conceptualisation itself.

[19] Despite its detractors, a form of universalism appears to have endured at the BBC. Throughout an interview with then Editorial Director of News Kamal Ahmed, universalism was couched in language conveying willingness to accommodate pluralised diverse news audiences: 'things that matter to people are very different depending on socio economic class [and] geography. What's important to people in Scotland may be different to what's important for people in London, to what's important for people in South Africa. The BBC has to cover all those different audiences in different ways on different output. At its most fundamental it's about […] informing the audience about what's important'. This perhaps highlights the fine line the BBC now navigates between prescribing what an informed audience should consider important, and the realisation that an overly uniform or dogmatic approach fails to meet this ambition within diverse modern society. Whilst expressing faith in the continuing ability of the BBC to fulfil the Reithian principles to 'inform, educate, and entertain' the audience, Ahmed simultaneously displayed an aversion to their Arnoldian origins when responding to my query of whether this depended on some perceived 'authority'. Ahmed, instead used the word 'trust', emphasising the audience's active reception and use of the BBC's journalism. Slight paternal instincts can still be sensed however, in other statements about the BBC's endeavour to 'explain why [certain issues] might matter to you and why you need to understand them' (interview with author, 17 July 2019, Broadcasting House)

[20] See Burns' (1977: 45) similar description of the 'BBC type' who displays an 'intellectual ambiance composed of values, standards and beliefs of the professional middle class, especially that part educated at Oxford and Cambridge'.

The Pilkington Committee (1962) employed familiarly Leavisite discourse on the menace that 'triviality' and 'entertainment' represented within a newly commercialised broadcast landscape for an all too easily manipulated audience (Curran and Seaton, 2018: 276; McQuail, 1992: 57; Scannell, 2000: 51). The report prioritised broadcasting's 'moral or social purpose' over 'profitability' (Owen, 1996: 133), and recommended a third terrestrial channel be run by the BBC. A decade later, however, The Annan Committee (1977) appeared to represent a definitive shift in thinking on how public service values in broadcasting were understood.

The tacit 'commitment to an undivided public good' (Curran and Seaton, 2018: 445) within broadcasting was questioned, as 'old certainties' (Scannell, 2000: 53) were supplanted by the need to cater for a cosmopolitan public if the concept of Public Service Broadcasting was to retain relevance and meaning. The Committee outlined existing terrestrial broadcasting's failure to embrace 'new ideas of social and cultural *diversity*' (McQuail, 1992: 57, [emphasis in original]) and cater for 'an increasingly diverse society' (Scannell, 2000: 53; see also Freedman, 2008: 75) which resulted in the creation of a public service broadcaster, Channel 4, with a remit to cater to these audiences.

This challenged 'large parts of what remained of the Reithian, paternalistic inheritance' (Feintuck and Varney, 2006: 77) with its advocation of an increasingly jarring and narrow set of unifying 'social and moral objectives' now considered an imposition, or worse, 'a form of social engineering' (Owen, 1996: 64). The solutions posed were inspired by liberal pluralism; no longer should the BBC consider themselves a source of 'moral leadership' (Curran and Seaton, 2018: 446). Rather, it was argued, a Miltonian system should be employed within broadcasting, allowing innovative independent ideas and views to be aired freely and to openly compete (Curran and Seaton, 2018: 446; Feintuck and Varney, 2006: 78).

Plurality came to be accepted as a sign of a healthy system of Public Service Broadcasting. This attempt to modernise and improve the long-established public service ethos arguably damaged the cause in the process. It became difficult thereafter to defend, or perhaps even distinguish, the key characteristics of Public Service Broadcasting. This was only exacerbated by the Peacock Committee (1986), headed by an 'economist […] trustee of the seminal neoliberal think tank the Institute of Economic Affairs' (Mills, 2016: 148).

The findings of this committee built on Annan's themes of diversity and competition by adopting a rationale based primarily on an advocation for the free market when seeking

recommendations on how broadcasting should be organised and funded (Goodwin, 1998: 77; Scannell, 2000: 54–55). Thus, the market, understood as the need for consumer sovereignty and choice, replaced 'public service as [the] central organising principle' for broadcasting in the Peacock report, in a thematic break from all past inquiries (Goodwin, 1998: 78).

With the spectrum scarcity argument becoming redundant due to advancements in cable and satellite technology, reasoning for the BBC's funding was questioned. The blanket licence fee paid by anyone owning a television set regardless of their use of, or fondness for the BBC's services appeared to represent neither optimal choice nor value for the consumer. The technology would soon be available to allow a near unlimited number of channels. At this point, it was asked, why should viewers be expected fund the BBC (Scannell, 2000: 54)?

It was argued that the BBC should be transitioned into one of many subscription services (Hutchison, 1999: 136). There were, however, some difficulties in the content of this report for the Government, difficulties which indefinitely delayed any immediate threat to the BBC's funding model. Although it was assumed at the time that Peacock's committee had been carefully selected to deliver recommendations which would enable Margaret Thatcher to quickly realise her vision for a BBC funded through advertising, their more nuanced and long-termed recommendations for a subscription-based model provided no such easy route to ending the licence.

In fact, within his report, Peacock (1986: 133) envisaged the continuation of some form of public subsidy for an attenuated selection of public service broadcasts 'by people in their capacity as citizens and voters' (in Goodwin, 1998: 79), within a system otherwise organised by market competition. Until such a time as truly unlimited consumer choice in broadcasting was enabled by more widely available and used technology, Peacock argued that having the BBC subsidised by the licence was preferable and provided at least some level of differentiation between the few available broadcasters viewers had available to them (Goodwin, 1998: 81).

With the report neither defending the current funding model or the public service ideals it was based on, nor endorsing the use of advertising to fund the BBC, the Government appeared to be forced into an uneasy stasis. Peacock's recommendations were only ever formerly instituted in a piecemeal fashion. The primary recommendation for a subscription-based BBC service was quickly rejected after a subsequent government-commissioned study concluded that the switch was not financially viable (Goodwin, 1998: 88).

In effect, the BBC had been saved, for the time being, not by any staunch defenders of public service principles, but by the fact that its critics had differing visions for the application of neoliberal philosophy within broadcasting (Goodwin, 1998: 92). Nonetheless, the BBC's susceptibility to attack would only grow as competition with commercial broadcasters increased. With the Reithian moral purpose now appearing outdated, elitist, and incongruous scant means for defending Public Service Broadcasting availed themselves.

The sustained criticism and attack initiated by the Peacock Report, the Thatcher Government and the 'knocking copy' of the Murdoch press (Goodwin, 1998: 74-75; Hutchison, 1999: 137; Jukes, 2012: 120–121; Mills, 2016: 149; Owen, 1996: 175; Seaton, 2015: 33–34, 56) rested on the prioritisation of the public's 'consumer sovereignty' (Owen, 1996: 133) over their rights to non-commercial societal goods previously considered the base requirement of citizenship.

Although the broadcaster had not been directly competing with the likes of ITV for advertising revenue, it was under pressure to compete for an audience share to justify its receipt of the licence fee. On this basis the likes of economist Cento Veljanovski (1987) continued to argue that the homogenising and lowering of standards, thought to be inevitable through commercialisation, were already in full effect within publicly funded broadcasting (in Feintuck and Varney, 2006: 83; see also Freedman, 2008: 50; Hutchison, 1999: 36–37; Seaton, 2015: 33–34).

It appears, to this day, despite such arguments and attempted government initiatives 'privatization has been used as more of a threat than a reality inside the media industry' (Freedman, 2008: 51). The Thatcher Government might have made its influence felt on the BBC in other ways following Peacock's review, including through their perceived role in the 1987 dismissal of incumbent BBC Director General, Alasdair Milne,[21] but the fundamental funding model for Public Service Broadcasting in Britain has so far survived.

[21] The Government's influence over this decision is subject to debate, and largely hinges on the perceived role of the newly appointed chairman of the BBC's Board of Governors Marmaduke Hussey. The likes of Tom Mills (2016: 151-152) and Milne's son Seamus – a former editor of the *Guardian's* comments section and communications chief for the Labour Party – argue these events amounted to 'a No 10 coup by any other name' (Milne, 2015) with Hussey being responsible for the sacking, whereas official BBC historian Jean Seaton argues the dismissal was primarily caused by long-term rupture in trust between board members and Milne which pre-dated Hussey's government-led appointment (Seaton, 2015: 312-318). Barnett and Curry's (1994: 45) analysis sits somewhere between these versions with those who imagine Hussey was given instruction from the Government described as '[c]onspiracy theorists', whilst the authors do not discount the notion that Hussey was appointed because he knowingly shared the Government's outlook on the BBC.

Nonetheless, tensions between those advocates of a fully marketized broadcasting system and those who value the public service model are equally enduring. This tension can be found in the process undertaken by the New Labour government when drafting the Communications Act 2003 which established Ofcom as an overarching regulator for all broadcast media. The draft version of this bill published in a white paper in 2000 was scrutinised by a committee led by Labour peer David Puttnam.

This committee concluded that the legislation had not provided the new regulator with guidance on how to prioritise the multiple, potentially contradictory responsibilities it was charged with carrying out (Feintuck and Varney, 2006: 114) and seemingly lacked any central organising principle which the regulator could use to guide its duties. As such, within his report Puttnam (2002) argued the legislation should 'prioritise the long-term "democratic, social and cultural interests of citizens" […], particularly in relation to broadcast content' (Bailey, 2019: 148) as opposed to having Ofcom prioritise the instructions to operate in a light-touch and pro-competitive manner.

Despite winning major concessions, especially in relation to 'large media mergers' becoming 'subject to several public interest considerations' (Bailey, 2019: 149) – albeit at the discretion of the relevant secretary of state – Feintuck and Varney argue that the language of the Act itself remains too ambiguous in relation to 'the protection of citizenship interests', meaning '[i]n terms of defining public interest values which underlie Ofcom's actions, there remains a failure to give due priority to the citizenship values which the Puttnam Committee sought' (Feintuck and Varney, 2006: 116).

This enduring structural ambiguity over the status of the public interest, and political disagreement over whether the market or public service principles should underpin the organisation of broadcasting, appears to underscore Ofcom's understanding of its duties today. In a 2021 report, referencing the 2003 Act, Ofcom claim 'our principal duty […] is to further the interests of citizens in relation to communications matters and to further the interests of consumers in relevant markets, where appropriate by promoting competition.' (Ofcom, 2021: 37). There is no statutory guidance on how to proceed when these two responsibilities contradict and clash with one another.

Press regulation

Unlike the origins of broadcasting, the press in Britain has long been defined through independence from the state. Again, seemingly pragmatic reasons for this exist. Mass market newspapers have a longer history of being private undertakings funded through advertising having 'carried commercial messages since their inception' (Hutchison, 1999: 38). There is no equivalent structural justification of spectrum scarcity prohibiting competition in print – although commercial factors mean ownership of the national press is highly concentrated (see Media Reform Coalition, 2021).

Individuals actively purchasing and reading newspapers has commanded less government attention than the act of beaming programming into family homes (Feintuck and Varney, 2006: 81; Minutes of the Sykes Committee, 1923 in Owen, 1996: 129),[22] often associated with intrusiveness and 'pervasiveness' (Blumler, 1998: 51). Just as traditional notions of public service influenced the nature of broadcasting, so too can historical factors explain the likelihood 'that the print media will continue to be more lightly regulated than broadcasting' (Feintuck and Varney, 2006: 81).

This lineage cemented distinct perspectives on the press's public function and how newspapers serve the public interest. As previously mentioned, written expression and the newspaper press played prominent roles in historical struggles between the state and social change advocates, including 'historic movements of the Enlightenment, reform and revolution' (McQuail, 1992: 47). Such struggles long preceded Alfred Harmsworth establishing the *Daily Mail* in 1896 as 'the first mass circulation [newspaper] of the modern age' (Hutchison, 1999: 7–8).

Pamphleteering during the Civil War of the mid-seventeenth century saw 'a mass readership [seek] emancipation through the written word' (Hind, 2010: 35). A flourishing politically active underground press also produced unstamped newspapers, despite state censorship and the 'taxes on knowledge' in the early nineteenth century (Curran and Seaton, 2018: 8–17; Keane, 1991: 10;). The political nature of early publications means 'from the time of the

[22] To a degree, the existence of an independent press meant the state's initial involvement in broadcasting appeared more palatable when viewed as one section of a pluralistic media ecology. Eventually the reverse was appreciated in the Third Royal Commission on the Press (1974-77), whereby it was stated that the ability to mandate balance in 'political news discussion by broadcasting organisations … has certainly helped to counter the political imbalance of the press' (in Curran, 1978: 5).

English Revolution, the call for "liberty of the press" was a vital aspect of the modern democratic revolution' (Keane, 1991: 22).

This history means the press primarily define themselves through independence from the state. This differs from the 'social responsibility paradigm' used to legitimise state supported broadcasting which positions the airwaves as 'public resources' (Feintuck and Varney, 2006: 80). The press's development 'alongside the evolution of liberal democratic political systems' meant that 'journalistic criticism of elites' was required to legitimise both the political system and the role newspapers occupy within it (McNair, 2010: 84).

This conceives of journalism as a 'fourth estate' acting in 'the public interest' by providing the transparency required by democracy to function (P Harding, 2012: 309), a distinctly Miltonian understanding of journalism (Ryfe, 2017: 4). Scannell (2000: 57-58) attributes such understanding to a 'politicized concept of the public interest' historically at odds with the notion of 'public service'. He links the development of the press to the 'public sphere' which was formed independently from 'church and state, claiming to criticize both and committed to the establishment of public life' through equal discussion open to all.

The public sphere and written press thus facilitated representative democracy. This legacy is often evoked, and arguably misrepresented, by those advocating for the continued self-regulation of the press. Ogbebor (2020: 85-86) has noted the press's employment of such 'historicisation' when responding to the reforms proposed by the Leveson Inquiry. Despite the press's adamance of its democratic role, there remain serious questions over the ability of its present incarnation to cultivate a critically informed public meaningfully engaged with their own governance.

As above, the tendency of contemporary neoliberal thought has been to repackage these ideals of open liberal democracy into economic arguments. The right of an individual to live free from arbitrary state censorship and penalisation becomes synonymous with arguments for total economic freedom (Keane, 1991: 152), in what has been labelled the 'deregulatory libertarian era' (Feintuck and Varney, 2006: 81). Laissez-faire doctrine is thus resurrected, as the public interest is identified and addressed through free-market terminology.

Under neoliberalism, the market has evolved from an equilibrating force enabling the development of an independent critical bourgeoisie, into a catalyst for commercialisation's encroachment into all areas of our personal lives and cultural activity. This includes the British national press which has developed the characteristics of an oligopoly (Feintuck and

Varney, 2006: 104; Hutchison, 1999: 79; Keane, 1991: 88–89). Lax newspaper ownership laws have been as effective at restricting a diverse range of voices from having access to mass communication systems, as was Reithian elitism within public service broadcasting or any form of government licensing.

Newspaper concentration has provoked concern that the modern press is more disposed to cater for the self-interest of corporate actors than the wider public. It is argued that 'private ownership of the media produces private caprice', limiting the choice available to the public to those outlets which sustain corporate media systems (Keane, 1991: 90). Such self-interest goes a long way to explain the aforementioned criticism of the BBC found within sections of the press, as well as the recurring motifs of criticism of government subsidisation and regulation (Davies, 2014: 177).

The 'marked tendency for newspapers to lean towards a right-wing pro-business point of view' (Hutchison, 1999: 170) has become axiomatic. Academics have responded by attempting to emphasise non-market-oriented definitions of the public interest. This includes recourse to 'social responsibility theory' to scrutinise journalistic output and conduct within the current concentrated media system. This conception of journalism asks journalists and news organisations to 'strive […] harder to report fairly, and open their columns to a variety of opinions' (ibid: 80) to counterbalance explicit corporate interests.

This call for agential proactivity in lieu of external regulation originates from America, specifically the 1947 Hutchins Commission on Freedom of the Press (McQuail, 1992: 37; Ogbebor, 2020: 58–59). Although signs point to this theory cutting through American journalism, 'as far as the British tabloids are concerned […] the social responsibility theory might as well not exist' (Hutchison, 1999: 80). In this vein academics have argued that 'the cut-throat practices of the British tabloid press seem, at times, devoid of anything save desire for profit' (Smith Fullerton and Jones Patterson, 2013: 129).

Non-commercial responsibilities of the press are emphasised in arguments of the media's role in re-establishing a contemporary equivalent of 'the public sphere' from early modern society. This was first articulated by Jürgen Habermas in the 1960s. As above, Habermas argued that civil groups comprising individuals operating separately from the state, and engaged in inclusive rational debate and discussion, rendered 'public opinion' visible (Garnham, 2009: 169–170; McQuail, 1992: 6).

Such opinion formed the bedrock of demands for democratic systems of governance. The press attempted to provide an accurate picture of state activity to interlocutors, informing these critical discussions. In Habermas's assessment the contemporary corporate press is failing in this capacity. The lack of diversity in corporate press ownership has resulted in an absence of 'clear, reasonable and accessible discussion' (Garnham, 2007: 202). Habermas's 'work has catalysed an entire field of study' (Ryfe, 2017: 118) around the concept of the public sphere.[23]

The notoriety this theory garnered within Western academia may be partly explained by timing. Habermas's work was first translated into English from its native German in 1989, when multiple scholars were refining intellectual arguments against 'the increasing intrusion of markets further into public life' advocated by neoliberalism (Ryfe, 2017: 121). The public sphere helped define a public existing outside binary marketized or statist understandings of society. Arguments for the public sphere promote 'the public resource aspect of the media over competing, commercial, perspectives' (Feintuck and Varney, 2006: 122).

This academic saturation should not be mistaken for universal agreement. Accompanying questions over the historical reality of Habermas's depiction of the sphere's development in the coffee houses and salons of eighteenth century Britain (Garnham, 2007: 203; Fraser, 1990 in Ryfe, 2017: 120), doubts have been cast over the faith placed in rational discussion to produce solutions for political problems. Despite the emphasis on open access, 'the public sphere' remained largely 'propertied and male' meaning 'its claims to universalism are always suspect' (Hind, 2010: 37) and risked excluding minority interests.

John Keane (1991: 171–2) expresses such doubts over modern democratic systems being 'guided by' the public sphere, due to the attempt to use 'argumentative reason' to arrive at a 'practical synthesis of all differences'. This, Keane claims, is an unrealistic aim within any diverse contemporary society which 'is marked […] by trends towards philosophical and political pluralism'. In a similar vein Jay Blumler (1998: 55) describes 'the Habermassian idea of a public sphere, in which rationality undistorted by interested parties prevails' as 'impractically utopian'.

In response to such views, Garnham (2009: 187–188) argues for the differentiation between public spheres depending on their ultimate purpose. '[M]ultiple public spheres' should be

[23] The journal *Media, Culture & Society* published 'nearly sixty articles' on the concept 'in the decade between 1990 and 2000', and '350 articles' by 2013 (Lunt and Livingstone, 2013: 87 in Ryfe, 2017: 120).

employed to accommodate diverse group identities and autonomous individual interests when the aim is to negotiate, exchange and affirm cultural identity. This prevents these identities being corroded through the homogenising search for consensus. The media, Garnham argues, should represent these myriad identities in full.

If the aim of a public sphere, however, is to provoke political change, a unitary 'political public sphere' must be employed to produce 'common agreement necessary for concerted action' (Garnham, 2009: 187–188). Despite such differing assessments of the ability of rational discourse to do justice to diverse viewpoints, both arguments underline the view that a legitimate public interest-oriented media must incorporate the multiple perspectives of civil society. For Keane this is achieved through the direct input of civil society into a truly pluralistic media structure. For Garnham the media must take responsibility for ensuring all sections of civil society are represented.

The public interest's enduring ambiguity

The historical basis for interpretations of the public interest outlined above show that British broadcasting and newspaper journalism have evolved out of differing definitions of this concept. Broadcasting was forged on a definition emphasizing the provision of education and cultural value. This positioned the state and cultural elites as providers of collective social goods, and the mass audience as passive beneficiaries. The press, on the other hand, were defined through libertarian conceptions of the public interest prioritising independence from the state, individualism, and the rational critique of authority.

In the contemporary context the ability, or desire, of either sector to truly fulfil these functions is questionable. This is perhaps most apparent in the press who retain their independence from the state whilst being intertwined with powerful corporate and political interests. Many questions remain over the role of the media and legitimacy of their claims to fulfil the public interest. As will be demonstrated the concept is often evoked to defend ownership structures, self-regulation, and the individual practices of news organisations and journalists.

Despite having been applied to both print and broadcast journalism since their inception, the presence of these competing notions of the public interest means attempts to use the concept as a justification for actions remain contentious. News and media organisations have always been encouraged, or compelled, to fulfil 'certain broader public interest goals linked to democratically based principles of fairness and equity' (Horwitz, 1989: 13) compared to

other commercial enterprises, yet the basis for which they can legitimately claim to do so remains obscure.

Des Freeman notes that within contemporary British journalism 'the public interest' is 'regularly' evoked as 'a yardstick by which to justify the publication or broadcast of particularly sensitive or controversial material' (Freedman, 2008: 66). Thus, the concept continues to have a material impact on journalistic decision-making processes. The significance of this concept on professional identities is stressed by two Australian practising journalists and academics in an article interrogating editorial decision making.

Morton and Aroney (2016: 20) describe the public interest as 'central […] to journalists' self-understanding' and claim that the dominant definition of the concept employed by journalists promulgates a 'presumption' that the 'disclosure and free flow of information' is generally beneficial to society (ibid).[24] Relying on a definition which prioritises disclosure to justify that self-same disclosure is clearly problematic. On such a basis the public interest has been habitually evoked by many journalists working within disparate sections of the media to justify a range of practices.

This attempted universal use has resulted in 'the concept itself' becoming 'inadequately defined', making it 'difficult to identify objectives with adequate specificity' to determine 'criteria' for what it means to fulfil the public interest (Feintuck and Varney, 2006: 74). The above authors who recognise the centrality of public interest principles to journalism, are equally harmonious in lamenting the ambiguities inherent in the concept. It is at once described as a 'maddeningly vague term' (Horwitz, 1989: 9) and as a concept whose 'definition' is a 'contentious matter' (Freedman, 2008: 64).

Morton and Aroney describe journalists' general disinclination to grapple with and 'reflect on' the definition of this concept which they so regularly evoke, as 'striking' (2016: 20).[25] Jay Blumler (1998: 54) nicely encapsulates the fruitlessness of attempts to have the concept '[i]n concrete terms […] definitively pinned down', claiming the public interest is bound to be

24 Martin Moore uses strikingly similar language when positioning the idea that the media act 'as watchdogs of government' as 'central to many journalists' narrow definition of their public-interest role' (Moore, 2007: 38).

25 See also a comment of a former Controller of Editorial Policy at the BBC who labels the term 'infuriatingly difficult to define with any precision' (P Harding, 2012: 310). American journalism and communications scholar James W. Carey similarly described the understanding of the 'public' as an entity, '[f]or all [its] conceptual importance' to journalistic culture, as 'a symbol without a referent' rarely defined with any precision (Carey, 1987: 5).

‘pursued rather than known, and democracy entitles all with a point of view on it to take part in the search’.

Within this chapter we have seen this ‘search’ play out through the historically transitory and contradictory nature of prominent thought on who the public are and how their interests are best met. This leaves the contemporary journalist to reflexively negotiate (see chapter two) an ill-defined concept when attempting to fulfil the public interest in their work.

Collective understandings within journalism

A body of literature highlights the tendency within the British Press, and the wider media/political commentariat, to operate within a set of shared attitudes, assumptions, and political perspectives. With no definitive notion of the public interest available, such assumptions about the professional role of journalism are likely relied on instead. Within a chapter reflecting on his 27-year career at the *Guardian,* former Editor-at-large, Gary Younge, addresses this idea in a section focused on the newspaper’s treatment of Jeremy Corbyn’s recent leadership of the Labour Party.

Despite being considered the most progressive or left-of-centre publication amongst Britain’s national titles, the *Guardian*’s reaction to this unanticipated shift to the left from the Opposition party largely mirrored that of the wider media. Younge writes that ‘[a] set of received wisdoms prevailed’ on Corbyn’s ability as leader whereby *‘*most did not just believe this political project would fail; they “knew” there was no possible way he could succeed’ (Younge, 2021: 48).

The author ascribes this certitude, which initially failed to bear fruit in the 2017 General Election, to a broader tendency within the media to agree on certain political realities and resist, or at least demonstrate scepticism towards, any challenge to that order. Younge encapsulates this sense of homogeneity of thought poetically and concisely in his musing on the meaning of the term ‘“mainstream newspapers”: they may swim in different parts of the river but ultimately they go with the flow’ (Younge, 2021: 51).

Within his research into the health of the ‘watchdog’ function within UK broadcast journalism, Justin Schlosberg found a similar dynamic at play. This research focused on the accountability outcomes produced by broadcast journalists and whether they practised the ‘fearless scrutiny of power’ (Schlosberg, 2013: 28) journalism is often said to provide in a healthy democracy. Drawing on Barbie Zelizer’s work on journalism’s self-legitimation, Schlosberg found evidence throughout multiple case studies of journalists justifying the

outcomes of their work by reinforcing 'the collective legitimisation of journalism's cultural authority', partly by 'divert[ing] attention from errors in their own predictions over likely outcomes' (ibid: 207).[26]

Concurrently Schlosberg reports 'a significant *tendency*' within journalistic output 'towards ultimate containment in news controversies that threaten to unsettle the discourses that legitimise state-corporate power' (Schlosberg, 2013: 217, [emphasis in original]). This is a symmetrical process whereby journalists at once reify their own authority and that of the wider establishment. The media do not entirely fail to hold the powerful to account, but for various nuanced overlapping reasons uncovered by Schlosberg, there are limited parameters within which they are able or willing to do so.

Relating his experience of working for the *Financial Times* to Edward S. Herman and Noam Chomsky's propaganda model, Matt Kennard points to similar limitations in the press's ability to hold the powerful accountable. Paraphrasing Chomsky, Kennard states 'the liberal press already considers itself so extreme in its opposition to power that anything more would be madness' (Kennard, 2019: 158). Journalists tacitly receive the message when engaging in criticism of corporate or political power, 'this far and no further' (ibid).

According to Kennard, attempting to challenge prevailing orthodoxies has a demonstrable material impact on journalists' career trajectories within mainstream titles like the *FT* (see also footnote 49). This is especially true of any challenge to the representation of the West as a benevolent and moral force for good, and any treatment of capitalism as anything other than the optimal economic system (Kennard, 2019: 158). This appears to lend weight to Donsbach's (2004: 143) assertion that journalists are particularly susceptible to developing 'shared realities' whereby a 'decision about reality […] represents group dynamics and group norms rather than reality'.

26 This is not specific to the British media. Gaye Comp Tuchman's discussion of 'typifications' in her ethnographic study of newsroom behaviour in a US context (Tuchman, 1980: 46–63) highlights similar practices whereby journalistic conventions are used to justify practices. Reliance on 'typifications' to interpret and categorise external events can result in printing or broadcasting errors and incorrect predictions, based on 'stereotypes' or 'what all newsworkers collectively agree upon' (ibid: 59). In these circumstances, rather than questioning the reliability of such conventions, the journalists Tuchman observed actively reinforced them via a well-rehearsed 'typography' employed to explain unpredicted events. Tuchman labels this typography a "What-a-story", whereby idiosyncratic unfolding events are compared with past unpredictable stories (ibid: 62) reaffirming the order of the newsroom and journalistic methods.

Such accounts paint a picture of insular working environments and cultures, perhaps surprising for a profession geared towards gauging events outside the immediate confines of the newsroom. Editors and representatives often discuss their newspapers as direct embodiments of the public's wants and needs, or at least that of their readerships (see analysis in chapter three). How exactly these are intuited, or if they are based on anything more than the sheer number of newspapers sold[27] remains obscure.

No amount of audience research or surveying could truly account for the variety of taste amongst a newspaper's readership, at least not in a fashion usable to editors amidst unfolding news stories. They certainly can't help to identify the broader public interest value of a story. As such, surveys undertaken by publishers' marketing departments have been 'routinely ignored in print newsrooms' (Christin, 2018: 1383) as '[g]ut feeling guides reporters and editors as they align incidents and circumstances with what they perceive will appeal to public interest' (McDevitt and Ferrucci, 2018: 516).

It appears the art of journalism involves developing some innate sense of what is appropriate and desirable for publication and, therefore, what is in the public interest. These judgments are imbued with prevailing orthodoxies of the newsroom and the editorial line of a given newspaper. It is likely such understandings are fostered by a journalist's interaction with their colleagues such as those on the news desk determining which stories go to print and how they appear (Deacon et al., 1999: 18; Phillips et al., 2010), and the editor with overall responsibility for a newspaper's direction.

In a seminal 1960s study of newspaper journalists and their working environments, Tunstall comments on the way these institutions insulate themselves from the public. He claims a journalist is more likely to be influenced by 'news sources, executives and competitor-colleagues than […] millions of audience members' (Tunstall, 1971: 252). According to Tunstall, this reflected the 'low marginal utility' of a single reader/audience member 'to the

27 The more prevalent contemporary equivalent is measuring *clicks* or web-traffic, a metric valued by advertisers. User engagement can now be tracked with increasing sophistication through specialist software (Christin, 2018: 1388) although Christin argues this 'evidence' is relied on to varying degrees within different publishing environments. The interpretation of user statistics remains distinctly human, idiosyncratic, and sometimes 'impressionistic' (ibid: 1400) meaning individual journalists often continue to measure their performance by more traditional journalistic standards (ibid:1403). Even within emergent digital-only publications journalists employ a 'specific set of cognitive categories, justifications, and organizational forms that developed over time' within broader journalistic cultures (ibid: 1409).

news organization' and their subsequent lack of 'power over the individual journalist' (ibid: 251).

In other words, an ordinary reader has neither the specialist knowledge deemed valuable to the journalist, nor a platform from which to exchange their views.[28] Bingham (2013: 94) has identified this tendency within the inter-war British press, within which he claims '[j]ournalists often spoke for readers without listening to their voices, or listening only to those voices they wanted to hear'. Under this entirely asymmetrical relationship between the reader and journalist, any evocation of the public interest becomes at best arbitrary and, at worst value laden.

Judging by the above accounts, the contemporary newsroom retains an element of this hermetic characteristic. Newsworthiness is defined internally rather than by some objective response to the needs of the public. Certain "media events", such as the 2016 presidential campaign of Donald Trump, have been covered in an increasingly sensationalist and populist manner, found by McDevitt and Ferrucci to be caused by erroneous understandings of audiences' preferences. The authors argue that 'the epistemology of news work shapes how audiences are imagined' (2018: 522) rather than any engagement with that audience.

This means 'routines and shared practices […] underpin decisions and judgements' (Eldridge, 2000: 115) made by media practitioners, as has been long evidenced through multiple examinations of media representations by the likes of the Glasgow University Media Group who have undertaken several major studies that question normative claims of 'impartiality and objectivity' often promulgated by journalists (Eldridge, 2000: 117). It is the basis of such

28 Tom Burns reports a similar phenomenon in his study of the BBC: 'the rhetoric of television – and radio – news [..] is embedded in the corporate idea of the set of assumptions and attitudes supposed to be in good currency among the public, but which derives ultimately from established ideas held by broadcasting organisations to be in conformity with the national interest' (Burns, 1977: 209–210). This was something hinted at during an interview with the BBC's then Editorial Director of News Kamal Ahmed, reflecting on his journalistic approach to tailoring work for an audience both at the corporation and within former roles at the *Observer* and *Telegraph* which self-evidently have divergent audiences: 'to be a successful journalist you need to understand your audience […] you're their servant and if you don't write things that engage them and interest them and inform them in a way that they understand there's no point to your journalism. That's why you think about "what does a *Telegraph* audience want to know about, what is its interest?" […] The thing about the BBC is we have many myriad audiences not just in the UK but around the world. It is not a binary discussion, and it is not a discussion that I just have in my head. I have it with all my colleagues, they're all thinking the same things […] we have long discussions […]. We've got to take it step by step with due care, due impartiality and using our judgment to ensure that we are informing the audience' (interview with author, 17 July 2019, Broadcasting House).

decisions made in relation to the media which will be interrogated in the remainder of this thesis.

This includes an analysis of the role of the public interest in these routinised editorial judgments within the national press, as well as decisions made on a less regular basis, when press and state actors are called to address questions of regulation in the midst of a crisis of accountability within the newspaper industry.

CHAPTER TWO

Methods

Within this chapter I will outline the approach taken when performing the empirical research presented in subsequent chapters of this thesis. The aim is to clarify the basis for the interpretation presented within these chapters. The selection and analysis of data for this project will be outlined, whilst highlighting the theoretical influences on analysis.

Research questions

Broadly speaking, the purpose of this research is to understand how the public interest is reflexively defined within, and in relation to, the media. More specifically, the impact of this concept on understandings of the role of the British newspaper industry will be unpacked. The material ramifications of public interest definitions, in terms of their impact on the organisation and regulation of the British Press, is a primary focus.

Using an analysis of events which occurred both during and in the aftermath of the *Leveson Inquiry* (2011-12) as a case study, these broad objectives were investigated through sub-questions exploring different aspects of these events:

- How did newspaper journalists define the public interest within the Leveson Inquiry and describe the negotiation of the concept within their working environment?
- How did reflexive understandings of the public interest influence thought and debate on press regulation, both within the Inquiry itself and beyond?
- How did understandings of the public interest, by various parties and actors, influence the actions taken on Leveson's reforms which, for all intents and purposes, eventually saw the Inquiry's recommendations abandoned?

The order in which these questions were tackled, and the chronology of the events of my case study, encompassed a shift from a micro to macro perspective, at least in terms of the analytical inference made in relation to the data used at each stage of research. The initial chapters of the thesis reflect a focus confined to the Leveson Inquiry itself, whereby I attempt to capture individualised insight into the experience of working within the newspaper industry.

Later chapters embark on broader analysis of the political implications of the Inquiry. This involved using individual accounts from journalistic, civic, and political actors to address far-

reaching questions on press regulation and the organisational structure of the industry. Such questions required a broad analytical scope encompassing the interplay between the press and other major institutional forces holding considerable influence in British society such as the state and the market (see chapter one).

As will be explained in the *theoretical influence* section of this chapter, the version of reflexivity operationalised within this research demands equal weight be paid to accounts given by individual actors and the broader structures within which they are based. The ability to shift between a micro and macro perspective, therefore, enabled me to study the reflexive interplay between structure and agency through discussions of the public interest within my data set.

Data sources and sampling methods

To produce a detailed case study of the Leveson Inquiry, capturing both the proceedings of the Inquiry itself and the longer-term ramifications of this judicial process, documents were sampled from two digital repositories: the archive of the Leveson Inquiry run by The National Archives, and the official records of parliamentary debate in the United Kingdom contained within Hansard. Below, I will summarise and justify my method for sampling documents within each data source.

(i) The Leveson Inquiry Archives

Documents from this archive were used to examine testimony provided within the Leveson Inquiry. The testimony of newspaper journalists and other actors within the press were particularly focused on, to analyse first-person accounts of those working within the newspaper industry. Such testimony was also used to build an understanding of the evidence Leveson used to make recommendations at the conclusion of his Inquiry. This data was mainly sourced through the official online archive of the Inquiry (available here: https://webarchive.nationalarchives.gov.uk/20140122144906/http://www.levesoninquiry.org.uk/).[29]

[29] Partway through the research, with most of this data collected and coded, a second repository/archive of Leveson-related material was launched by the Journalism Department at Kingston University called *Discover Leveson* (www.discoverleveson.com). This was a very useful resource. Although it mainly contained duplicate documents available on the original archive, *Discover Leveson* had been optimised for searching and was generally easier to navigate. This database proved particularly useful for rewatching video recordings of the hearings from the Inquiry.

In 2011 and 2012 with the Inquiry under way, this was a live website providing updates on the process undertaken by Brian Leveson and his Council Team. It published written submissions from those giving evidence to the Inquiry and provided a portal for broadcasting hearing sessions where oral testimony was provided by a range of witnesses. Following the completion of the Inquiry's evidence gathering and publication of their findings, the website was preserved as it stood on 22 January 2014, as a record of these events, by The National Archives.

My research used two types of document freely downloadable from this archive: written transcripts of the hearing sessions, and, to a lesser extent, written evidence submitted by witnesses. The basis for sampling from the vast array of available documents differs for the various sections/chapters of this thesis. The initial sample was constructed to address those research questions focused on the public interest from the perspective of newspaper journalists.

I, therefore, sampled those documents containing first-hand oral testimony from such journalists, or actors previously employed in this capacity. I concluded that the most appropriate documents for this task were transcripts of hearing sessions attended by these individuals. Here, I focused on oral testimony, as opposed to written evidence, as I reasoned this would provide richer and more in-depth data, in line with what one might expect when conducting an interview for research purposes.

As I familiarised myself with these documents, it became clear that the hearing sessions were largely formatted to revolve around information originally included in participants' written submissions. Members of the Counsel for the Inquiry, such as Leading Counsel Mr (now Sir) Robert Jay, appeared to use these submissions as a basis for questioning, often reading aloud pertinent sections whilst probing participants for further comments and explanation. Similar techniques of probing for elaboration through follow-up questions are often employed within social research interviews, designed to abstract qualitative depth and insight (Yeo et al., 2014: 194–198).[30]

I did not, therefore, lose access to much substantive detail contained within written statements by choosing to focus on oral testimony. There were also pragmatic reasons for this approach. It meant a manageable amount of data was included within the sample for this

[30] Admittedly such interviews would not ordinarily occur under such pressure, or perhaps even duress, as the questioning conducted in this judicial environment.

initial stage of research, enabling timely analysis. To clarify, the sample for this initial phase of research consisted of transcripts from every hearing session attended by a participant identified as a newspaper journalist prior to, or at the time of, the Inquiry.

I identified ninety-five individuals fulfilling this inclusion criteria. As often occurs within qualitative research, building my sample was not an entirely clean process, nor what might euphemistically be called an 'exact science'. Not all participants conveniently fell into a binary journalist/non-journalist category and disentangling myriad intersecting professional identities was not always easy. Certain academics, for example, occupied decidedly grey areas between media contributor and external critic.

The decision to include certain transcripts in this sample sometimes rested on qualitative judgments on the capacity in which participants were primarily addressed during hearing sessions. If speaking entirely of research or teaching experience, I would not include academics in this sample despite any previous work within the press. A second phase of research using documents from the same archive involved a smaller sample. This was entirely constructed through the topic addressed within each document, rather than some demographic characteristic of its author.

This phase of research aimed to examine the various solutions for press regulation proposed during the Leveson Inquiry. Sampling, therefore, required an exclusive focus on material relevant to this topic. Fortunately, a readymade sample essentially existed within the archive for this purpose. The Inquiry was divided into four modules each covering a slightly different topic within Leveson's remit. The final module was entitled: 'Recommendations for a more effective policy and regulation that supports the integrity and freedom of the press while encouraging the highest ethical standards' (The National Archives, 2014a).

Participants within this module were asked to respond to draft criteria for press regulation devised by Leveson, as well as submitting proposals and ideas for aspects of a new regulatory regime. A list of the various individuals and groups who responded to the invitation to participate in this module is found in the relevant section of the archive (see The National Archives, 2014b). This formed the basis of this sample.[31]

[31] Another useful source was the Inquiry's report itself. In Part K of the report Leveson (2012a: 1583–1799) outlines the rationale for his recommendations on press regulation. In doing so he cites multiple pieces of evidence presented during the Inquiry which influenced his thinking. This meant I could work retroactively, identifying these influential participants and including their submissions in the analysis.

Thus, the sample was self-selecting to an extent. As the ambition was to gain a holistic understanding of these witnesses' proposals, and considering the comparatively small and manageable sample size, I combined the analysis of hearing transcripts with the full detail contained in written submissions. In accordance with the principles of qualitative research the above descriptions of document selection for both samples, amount to forms of *purposive sampling.* Documents were selected using 'judgment' (Blaikie, 2009: 178) made in line with 'the goals of the research' (Bryman, 2008: 418). The aim was to 'enable detailed exploration and understanding of the central themes' (Ritchie et al., 2014: 113) of this project.

(ii) Hansard and Parliamentary Debate

Later chapters of the thesis focus on events which occurred during the aftermath of the Inquiry, both immediately following the late-2012 publication of Leveson's report, and in the longer term. The intention was to track the progress of recommendations for press regulation once they were delivered to the Government. The primary data source elected for this purpose were transcripts of political debates held within the UK's Houses of Parliament recorded on Hansard (available here: https://hansard.parliament.uk/).

I used a specific search term to sample for Hansard transcripts relevant to my research objectives. This technique has often been used to identify material within digital archives for academic purposes, including within past research using Hansard and, to use an example relevant to my research area, the Nexis UK database of national newspaper articles (e.g., Harker et al., 2017; Ogbebor, 2020: 89–90; Ramsay, 2014: 252). For my purposes one simple search term sufficed to capture all relevant parliamentary debates, the single word 'Leveson'.

By focusing on the relevant period this captured each time politicians directly refenced the 'Leveson Inquiry', 'Leveson's report', and 'Leveson's recommendations' during parliamentary debates.[32] This enabled me to capture different opinions expressed by politicians on reforms proposed for press regulation in the post-Leveson context. I used this term to sample all relevant debates, and extracts within debates, from the publication of the report on the 29 November 2012 to the close of 2016 when the Government announced a

[32] On occasions this generated results entirely unrelated to the research project, although this occurred on a surprisingly infrequent basis. For example, within one debate an MP referred to an entirely separate review Leveson undertook in 2015 'on efficiency in criminal proceedings' (HC Deb 02 February 2016, Col 330WH). Such instances were easily removed for the sample on a case-by-case basis.

public consultation signalling the endpoint of these debates and, by association, my case study.[33]

Defining the unit of analysis

It is worth clarifying the 'unit of analysis' extracted from the above documents, before discussing the analysis itself. Niels N. Grünbaum (2007) claims this is something often left ambiguous within qualitative case study research designs, and argues for the unit of analysis to be clearly differentiated from the overarching case. Grünbaum describes a unit of analysis as 'the "heart" of the case' which exists 'on a lower abstraction level than the case layer' within such research (88). To put it plainly, '[u]nits of analysis […] are those things we examine in order to create summary descriptions' (Babbie, 2016: 98).

We might see these 'units' as bricks, pieced together to build holistic understandings of case studies. Within this research, they built an understanding of the contribution of individual actors and lines of argument to the events related to the Leveson Inquiry depicted within the case study. As with the sampling method employed, this 'purpose […] determine[d] the unit of analysis' (Grünbaum, 2007: 88). Within each document, the section of text subject to analysis varied widely, depending on the content required for each stage of research.

Each shift in focus encompassed a change to the object under study. Perhaps therefore, these *segments* constitute a 'unit' rather than the documents themselves. For example, within journalists' hearing transcripts from the Inquiry, focus was specifically retained on extracts of texts carrying explicit reference to the public interest. This was partly achieved by searching for this term, and variations of it,[34] within each document. This involved making qualitative assessments about which sections or extracts of text pertained to discussions of the public interest.

[33] This endpoint was established inductively, in response to the content of the transcripts studied. As shown in subsequent chapters (see chapter eight) 2016 represents an endpoint whereby the Opposition in parliament lacked any means of influencing the Government's position on the post-Inquiry settlement. Although the formal data sample ceases in 2016, Hansard transcripts from later debates were studied in a slightly less rigorous or systematic fashion to explore the Government's response to their public consultation in 2018. I felt it had become unnecessary to formally analyse these documents as the main themes of the project had been established indicating data saturation. I was primarily interested in the substantive actions of the Government in 2018 for the purpose of writing a summative coda.

[34] Searching for the terms 'public' and 'interest' separately would generally enable me to identify variations on the phrase 'the public interest' by capturing alternatives such as 'the public's interests', 'the interests of the public' and 'the national interest'.

This meant deciding where the boundaries of each segment started and ended within the transcripts. Whether focusing on a journalist's utterances or an exchange they had with the Inquiry Team, I ensured a large enough portion of the text was analysed to capture full qualitative detail of a topic discussed. If a particular newsroom incident or news story was discussed in relation to the public interest, I endeavoured to ensure the entire context surrounding such events was captured and analysed, even if the public interest was seemingly referenced fleetingly.

Similarly, when analysing Hansard transcripts, I focused only on those extracts relevant to my research interests on the post-Leveson settlement on press regulation. This subject might occupy an entire parliamentary debate or be mentioned as an aside during debates on wholly separate matters. It would be wrong to suggest these units of analysis imposed a strong degree of uniformity or order on the data. Due to the unpredictable and imprecise nature of speech and interaction, these units were not some uniform tangible entity simply plucked from the document set.

Identifying relevant pieces of qualitative data was itself an interpretive process. As is common within qualitative research (Blaikie, 2009: 216; Bryman, 2008: 403–4), the variable nature of the text analysed from document to document varied widely. The analogy of the unit of analysis being a brick, evoked above, might be substituted for the process of building a dry-stone wall, whereby the understanding of my case study was constructed through units of varying shape and character brought together in a cohesive structure enabling comprehension and comparison.

Within archival data all control over data collection is relinquished,[35] making any attempt at standardisation impossible. Each hearing transcript, for example, greatly differed in length, detail and nature depending on a participant's approach to answering questions and the level of scrutiny the Inquiry team applied to them. Some witnesses were invited to talk at length,

[35] My research objectives did not entirely align with the purpose for which the documents were originally produced. As with all research using secondary sources, I endeavoured 'to make use of the data as collected' whilst accepting the lack of control over data collection involved a 'compromise' (Bechhofer and Paterson, 2000: 61). There were advantages, however, to using these documents. Compared to other types of secondary qualitative material, I was able to ascertain 'something analogous to' the original 'research design' (ibid: 139) through an understanding afforded by the documents, of the conditions which produced this data. Transcripts contained a comprehensive account of the context and circumstances within which the utterances studied occurred, with the contribution of all interacting speakers being recorded. I also made use of freely available video recordings of both hearing sessions and parliamentary debates to study speakers' tone and non-verbal cues. In some senses this was more accessible than relying on recollections and notes from face-to-face interviews.

while others were given short shrift on the stand. They were mostly questioned individually, but at times the Inquiry would question witnesses collectively.

The latter created transcripts containing data akin to that of a focus group discussion whereby collective meaning was fostered through interaction, contestation and agreement in a manner absent in testimony of single speakers. The same can be said of parliamentary debates. Some speeches, especially by senior government figures and cabinet ministers, were clearly pre-prepared often allowing an individual to talk at length on a given subject. At other points an MP or Peer might 'stand down' to hear a colleague's contribution or question, which appeared more interactive and less contrived.

Identifying the unifying quality of a singular unit of analysis, therefore, remains illusory. The ability to incorporate and compare such variable data whilst remaining sensitive to these nuanced differences is a clear strength of a qualitative approach. Despite these differences, however, it could be argued that at base, the *views* and *perspectives* of the individual actors captured within these documents formed the overarching unit of analysis for this research. The documents simply acted as a means of accessing this wealth of first-hand testimony.

Method of analysis

With the relevant documents and extracts in place, thematic analysis was used to gain an understanding of the core characteristics of the dataset. The organisation of this analysis was aided by the CAQDAS program NVivo. This software allowed for easy navigation through the copious amounts of material cumulatively contained within each of the above samples. With the simple click of a button, it was possible to shift focus between overarching themes which were established and refined throughout the process of coding, and the original location of individually coded data within each document.

Building themes gave me the ability to 'see *across* the data, and *above* the individual documents' (Richards, 2015: 103, [emphasis in original]), whilst simultaneously being able to return to the rich contextual details contained within each document, at any point in the analysis. This was instrumental when drafting substantive chapters whereby the analysis was further refined and crystalised. The ability to, as it were, move back and forth between the full context of each document and the summative thematic analysis enabled me to reassess and evolve interpretations of the data iteratively (ibid: 115).

New meaning was attached to data as their relationship to emergent themes became apparent. Concurrently, themes were modified and added as new findings or realisations emerged on repeated readings of the data.[36] This "toing and froing" helped ensure qualitative detail was not lost in the final analysis of the complex processes played out over the course of the Leveson Inquiry and subsequent attempts to implement its recommendations.

Through this iterative refinement I attempted to avoid doing 'violence to the materials' (Lee and Martin, 2015: 3) serving as my data, through the coding process. According to Lee and Martin this occurs when the organic meaning of a text is distorted through arbitrary coding which 'reduc[es] them to components that are re-assembled in a self-validating ritual' (ibid). Referring back to full transcripts, rather than solely focussing on the fragments of text assigned to codes, meant a responsive approach to the data was maintained as codes were developed on an inductive basis.

Despite being knowingly subjective and representing one of several possible interpretations, my analysis is based on an earnest attempt to respond to material collected, rather than impose an arbitrary coding frame. One advantage of online archival research is that anyone with a working internet connection can query the basis of my conclusions, and indeed offer an alternative interpretation. This, perhaps, goes some way to counterbalance the valid characterisation of thematic coding as obfuscation, preventing the reader from assessing the relationship between the original text and the findings generated (Lee and Martin, 2015: 5).

In this case, the advantages of employing thematic analysis far outweighed these potential drawbacks. Rather than stifling assessments of the full contextual detail within data, coding helped elicit further meaning and aided the production of new knowledge related to my core research objectives. Much of the analysis involved examining competing understandings, ideologies, and courses of action pursued by various individuals and interest groups within the contours of my case study.

Using thematic analysis enabled me to group individuals with similar views or those pursuing similar actions into coherent categories to assess the influence of understandings of the public interest within these groups. On the question of press regulation, for example, those opposing any form of intervention from the state were naturally separated from those supporting

[36] The iterative nature of analysis was, at times, complicated and difficult to manage. The need to revisit and reassess previously coded documents in light of new potential codes meant analysis was protracted and time-consuming.

government action by these sentiments being coded differently. This enabled me to scrutinise nuanced differences and similarities between actors espousing these opposing views, as well as between those individuals appearing to share similar stances.

A more sophisticated understanding of my case study was, therefore, made possible through systematic and rigorous thematic coding. Without the ability to directly compare statements, the attempt to summarise data would have remained broad and ill-defined, involving little more abstraction or refinement than that afforded by a perfunctory and superficial reading. Rather than limiting it, I believe thematic coding enabled a more considered understanding context of the data used.

Attempting to analyse each document separately, in its entirety, would have obscured those broader links between each document, as if the events depicted within them occurred in a vacuum free of context. Building themes across documents enabled me to study the Leveson Inquiry and subsequent events as social and relational phenomena. Like viewing a mosaic, further meaning was attributed to each segment of text, or instance of coding, when viewed as part of a broader ongoing social process.

A longitudinal analysis of the transition of different themes over time was also made possible by this approach. The credibility and political purchase ideas and arguments commanded at different points was a primary focus, especially within later sections of the thesis following the post-Leveson fallout over consecutive years.

Supplementary interviews

Alongside this formal document analysis, four supplementary interviews were conducted with individuals who had participated in the Leveson Inquiry and/or in post-Inquiry political negotiations.[37] These were separate from the data collection proper in the sense that they were designed to help contextualise the findings already developed through the above thematic analysis of documents. As I never intended to subject these explorative interviews to the same level of systematic and rigorous analysis, full transcription was deemed unnecessary.

Although an interview schedule was used, tailored to each interviewee, and based on questions provoked during document analysis, participants were free to discuss unanticipated

[37] One additional face-to-face interview with the BBC's Editorial Director was held at an early stage of this project. In truth this interview was arranged opportunistically after a chance meeting rather than being targeted. It proved however to be very useful for clarifying my thinking on the approach taken to serving the public interest within the BBC when drafting the previous literature review chapters (see footnotes 19 and 28).

subjects which I would often pursue, in line with a semi-structured approach. This was aided by the conversational tone adopted in those interviews which were performed verbally. Mainly because they occurred during the first wave of the COVID-19 pandemic in early 2020, interviews were completed remotely either over the phone or via video conferencing software.

One participant requested that the interview be conducted via email, which I agreed to. To sustain an element of interaction and allow for follow-up questions the interview was conducted over a series of email exchanges. I tried to maintain a similarly accommodating approach to all ethical considerations.[38] Whereas some respondents consented to speak – or write – "on the record", allowing me to record and quote directly from their interviews, others preferred not to be recorded.

These participants were, however, happy for me to take notes during interviews. On the few occasions that I have paraphrased from these interviews within the thesis, I took steps to first share relevant extracts with the interviewee. I ensured they fully agreed with my record of their statements and consented for it to be included in the final draft of the thesis. This provided a good opportunity for limited collaboration and participant feedback following the initial interview and went beyond formal conventions of informed consent.

These interviews provided a valuable opportunity to explore contextual details and perspectives not found within the documents studied. This might be usefully explained through Goffman's (1959: 106-140) distinction, under his dramaturgical analogy of social interaction, between 'front regions' and 'backstage'. The documents contained statements made whilst actors were firmly ensconced in 'front regions'. In fact, I might argue, these settings constitute some of the most apposite examples of 'front regions' outside of purposefully performative spaces such as theatres, comedy clubs or lecture halls.

Whether examining the testimony journalists gave to Leveson, or parliamentarians advocating a policy on press regulation in front of their peers, it is likely that such actors engaged in 'impression management' when addressing these 'audience[s]' (Goffman, 1959: 113). This includes a potentially innumerable unseen audience, not restricted by temporal or physical limitations, able to access and scrutinise the statements made by actors within these judicial and parliamentary settings.

[38] Of course, consent was sought prior to all interviews.

As a researcher, I am a member of this extended audience, as were members of the media reporting the events of this case study, along with anybody inclined to revisit them in the future. The fact that the documents used include statements by actors aware that their speech was being recorded for perpetuity, amid intense public scrutiny and fascination with 'Hackgate' and its aftermath (see introduction), renders this data entirely public in nature.

Along with secondary academic and journalistic writings containing such accounts, these interviews enabled me to obtain a relatively limited and perhaps skewed sense of the discussions held in less public spaces. The cross-party political negotiations played out behind the closed doors of ministerial offices and parliamentary meeting rooms, where a more candid tenor was presumably adopted, amounted to the 'backstage' region of my case study. A small, but valuable, impression of this was afforded by these interviews.

Although personally valuable for clarifying my understanding and interpretation, I should not overplay the significance of these few interviews. I do not suggest a great level of insight into events hitherto unknown was achieved. I am indebted to the small group of people willing to take time to discuss these issues with me, but in reality, they were too few to be in any way representative of the events studied.

They provided additional colour and first-hand experiential insight into specific elements of the analysis already under way. They also provided personal motivation for my research, allowing me to engage with the human aspects of the events studied, from the perspective of stakeholders who had invested much time, thought, and effort into issues around press reform. As you will read, a handful of fleeting references to these interviews are scattered throughout the subsequent pages of my thesis but this is no reflection of the value of insight kindly provided.

A fruitful future research endeavour might build a more comprehensive understanding of the 'backstage' activities and interactions of key actors involved in this period. Perhaps a comparative analysis of public and private statements could build on the themes developed here. This may be achieved once, or if, relevant cabinet papers from this period are released,[39] or if access to a range of cooperative interviewees from different political parties and interest groups, for example, could be obtained in the future.

[39] Cabinet records are generally made available for public viewing at least 30 years after their creation (The National Archives, n.d.).

Theoretical influence

Along with the research objectives outlined above, a body of theoretical and academic literature influenced the interpretive process of coding and thematic analysis. Literature on the journalistic working environment and divergent historical perspectives on the public interest has been outlined in the previous chapter, so there is little need to re-tread this ground here. It is perhaps sufficient to note that researching and writing the literature review had a meaningful impact on my interpretation of the documents.

The ideas presented in this literature acted as 'sensitizing concepts' to 'suggest possible lines of inquiry' within my documents and 'alert' me 'to some important aspects' of the data therewithin when 'begin[ing] coding' (Bowen, 2019). The literature affected how I identified and intuited expressions of the public interest. Being able to apply broader theoretical and historical notions of the concept, such as those differentiating a public-service-oriented definition of the media and one more in line with Miltonian/neoliberal values, was of huge benefit (see chapter one).

Another central theoretical component of my research, yet to be fully addressed, is the analysis of reflexivity and reflexive deliberation. An understanding of this process was primarily gained through the work of Margaret Archer. For reasons explained below, it would be an overstatement to present Archer's work as an overarching theoretical framework, underpinning the approach taken when completing this project. The methods I have employed are not entirely conducive to a detailed examination of internal deliberative processes.

In a series of research projects, Archer (e.g., 2003, 2012) has meticulously outlined reflexive processes. This was achieved through in-depth interviews, whereby participants' personal priorities, goals and objectives were discussed. The author thereby represents reflexivity as an actor's attempts to reconcile these 'ultimate concerns' with their external context. Put rather crudely, Archer's thesis claims actors within a social setting might experience various features of their environment as 'constraints' and 'enablements' in relation to their own idiosyncratic objectives (Archer, 2003).

Reflexivity is the often-creative agential deliberative attempt to navigate these structural features by making decisions over long-term or short-term action in the hope of bringing 'ultimate concerns' into being. Understanding reflexivity in these terms lent weight to the utterances and actions of individuals within the case study. The Leveson Inquiry and the

political process which followed – including actors' attempts to advocate for conflicting objectives as the preferred outcome of this process – were understood as the products of individuals reflexively acting and interacting whilst navigating their structural environment.

In essence, this use of Archer's work maintains an interpretation of events within the case study as 'intrinsically, inherently and ineluctably "peopled"' due to their '*activity-dependent*' nature (Archer, 2020: 138, [emphasis in original], see also 2012: 53; Wright, 2011: 163). I do not claim to advance this understanding of reflexivity, although there is a degree of novelty in using it to analyse the struggle and counter struggle for media regulatory reform, and understandings of the public interest.

Nonetheless, as recommended by the likes of journalist and scholar Kate Wright, utilising and adapting particular aspects of Archer's work to explore these journalistic themes has been fruitful. Wright (2011: 164) argues that 'Archer's conceptualisation of human agency as ''emergent''' and engaged in a reflexive interplay with structure, 'is particularly relevant to Journalism Studies' because the 'description of practitioners reflexively ''weighing'' their commitments to personal, social and practical issues which arise from underlying strata' chime with much of Wright's personal experience as a journalist.

As demonstrated within later stages of this thesis, this approach appears equally relevant to policy development, whereby individual politicians are routinely called to balance various priorities and concerns, including, but not limited to, their personal principles and party commitments. This theoretical grounding influenced me to consistently pay equal analytical attention to individualised actions and statements within the case study, as well as the structural context within which they occurred.

Thus, structure and agency were treated as '*different kinds of emergent entities'* (Archer, 2020: 141, [emphasis in original]) with '*distinctive* emergent properties' (Archer, 1996: 692, [emphasis in original]), ensuring the analysis was aligned with Archer's long-term ontological advocation for 'analytical dualism'. This treats structure and agency as neither entirely separate from one another, as if engaged in a constant battle for contradictory ends, nor as entirely conflated.

Archer criticises such conflation within analysis for failing to provide adequate description of either structural or agential properties (Archer, 2012: 67). Either social structure is depicted as the amalgamation of numerous unrelated individuals acting independently, or internal decision making is rendered entirely pre-determined by an actor internalising their social

milieu. Under Archer's description social structures imbue actors with antecedent – and often fallible (Archer, 2012: 106) – notions of what is possible within a given social setting.

Structure does not, however, determine actors' responses to their surroundings. An actor, or group of actors, may elect a course of action which alters the characteristics of their surrounding social structure itself. Therefore, structure and agency hold distinctive roles within this symbiotic relationship impacting the internal process of reflexivity and the external process of social change. They have substantive causal influence on, without being reducible to, one another.

Archer's approach to reflexivity, therefore, achieves 'a balance between construing everything that human beings are as a gift of society […] and modernity's monad, who is untouched by his social environment' (Archer, 2010: 286). This brings us to the final aspect of Archer's work influencing my analysis: the morphogenic approach (Archer, 2020). This positions reflexivity as the key determinant of social change, or indeed social reproduction, through its influence on actions promoting opposing manifestations of either morphostasis (the status quo) or morphogenesis (change).

All social change is positioned as the result of the collective and 'continuous actions' of individuals operating within a context of 'structured human relations' (Archer, 2020: 138). Change does not simply happen over time. Rather progress, stagnation, and what some would consider social and political regression, are the result of the reflexive actions of agents, often intentionally pursuing a desired outcome (Archer, 2012: 23; 2020: 144).

Like air pumped into a tyre, the contours of social structures may be modified from within if a collective or powerful force is exerted by the reflexive actions of social groups. Groups pursuing novel courses of action can, and often do, restrict or enable the potential activities of others communing within the same space (Archer, 2020: 144). This notion of social change vs morphogenesis proved a valuable basis for analysis, particularly that concerning the post-Leveson political process.

In line with the morphogenic approach, I interpreted the struggle to establish a political settlement on press regulation as a conflict between those seeking to maintain morphostasis in the organisation of self-regulation going forward, and those seeking meaningful morphogenetic reform to regulation. This entire case study represents a 'morphogenic cycle', whereby the existing order of press regulation was threatened by the events surrounding the

Leveson Inquiry, requiring concerted reflexive action on multiple fronts to produce a stable resolution by either stablishing change or reinforcing continuity.[40]

In summary, Archer's work has been utilised in two respects within the coding and analysis of documents: firstly, to operationalise and identify the process of reflexivity within these documents; and, secondly to relate this process to contestation over regulatory morphostasis/morphogenesis evident throughout this case study. These two elements alone do not, I argue, constitute a theoretical or methodological framework as my approach knowingly lacks a core element of Archer's empirical work.

I have not produced a detailed and systematic account of what Archer calls the 'internal conversation', which is the mental – or interpersonal – decision-making process conducted through various 'modes of reflexivity' (Archer, 2003). This was partly eschewed because it lacks relevance for my research objectives. Much of Archer's empirical work aims to unpack the nature of reflexivity and the properties of 'the internal conversation' as actors attempt to define goals and make choices within their everyday lives (Archer, 2003: 163) or when facing novel structural circumstances (Archer, 2012: 8).

In doing so Archer tackles universal ontological questions on the human experience. My current study, however, had narrower perhaps less ambitious aims. As research objectives developed, I became less concerned with the exact properties of reflexive deliberations undertaken by actors within the case study. There was little need to identify, on any consistent basis, what mode of reflexivity was adopted by an actor, rather than to simply establish that reflexive deliberation had taken place.

My objective is to outline the *role* reflexivity played in the political and material events of the case study, rather than to elaborate on the mechanics of reflexivity itself which has, in my opinion, already been convincingly established by Archer. These objectives required firm evidence of purposeful deliberative action taking place, and an understanding of the contextual and personal factors implicated in such actions, including cultural and ideational interpretations of the public interest.

A second, more pragmatic reason for not employing Archer's research as an overarching framework is that I had not collected the data needed to replicate her mode of analysis in any

[40] This does suggest the ontological order established is necessarily enduring. The completion of one morphogenetic cycle can often signal the initiation of another as settled social outcomes are once again contested (Archer, 2020: 142).

meaningful way. As mentioned, Archer gained this insight through first-hand exploratory interviews concentrating on participants' 'ultimate concerns' and highly-personal descriptions of planning and making life choices. I simply did not have access to any equivalent data for actors within my case study. Although vast amounts of valuable direct testimony from multiple actors was used, I could not dictate that this testimony should be framed through description of deliberative processes.

An alternative, aborted, research plan

When first planning and embarking on this project, I did intend to base at least a portion of the research on contemporary interviews with newspaper journalists. Analysis of the Leveson Inquiry would always have been a substantial part of the overall project, perhaps with less analytical focus on the post-Leveson political process. Although this might have enabled me to follow a methodology and analysis more in line with Archer's approach, it would have undoubtably meant some of the valuable detail and broader context which was gained through a systematic study of parliamentary documents would have been lost.

In preparation for this initial data-collection I spent substantial time constructing a suitably diverse purposive sampling frame of journalists with different specialisations working for a range of broadsheet and tabloid national newspapers. The hope was to identify enough willing interview participants to populate the study with the requisite relevant data. I imagined at least twenty journalists from four different national newspapers would be required for meaningful results. When attempting to contact and recruit participants I slowly realised I would struggle to achieve this.

I knew that a certain amount of buy-in and willingness would be required from research participants in order to approximate Archer's approach. Participants would need to openly and willingly discuss their personal experiences and processes of decision-making at work. The fact that I struggled to garner much of a response from working journalists whatsoever suggested this was not the most appropriate technique to use to research this cohort of people or this research topic in general. Perhaps some degree of difficulty was to be expected.

When viewed in the hindsight of my research findings, the press's structural aversion to external scrutiny is relatively evident – not that I was planning any sort of exposé or hoping to uncover malpractice. The mix of silence and outright hostility displayed by both rival newspapers and the PCC when the *Guardian* first reported on phone-hacking at the *News of the World* highlights a broad aversion within the industry to scrutiny (see introduction), as

does the sustained level of resistance mounted by the large sections of the industry in opposition to proposals for external and independent regulatory oversight.

In truth I cannot know for certain why multiple individual journalists declined to participate in this research and, of course, they were under no obligation to. Nonetheless I would argue when considering the major themes of this research project, the fact that journalists are either disinclined or feel unable to discuss their working environment publicly further denigrates their claim to be working in the public interest. Without some level of public engagement and transparency the claim that the press works primarily for the benefit of the public rings rather hollow.

It seems, however, that my experience is not unique. Some researchers have reported similar difficulties when attempting to recruit participants from within the national press for academic research. Angela Phillips, for example, has described encountering similar difficulties despite having worked across multiple titles, including national newspapers, before embarking on an academic career.

As such I would certainly class Phillips as somewhat of an insider, as well as a more experienced academic, in comparison to my own lack of any association with the world of newspaper journalism. When discussing her experience of conducting several research interviews with newspaper journalists for various projects,[41] in particular those with ethnic minority journalists, Phillips told the Leveson Inquiry that:

> when I interviewed these journalists, they were paranoid about me suggesting what newspaper they worked for because they were afraid that somebody might work out who they were. They could not speak publicly (Phillips, 2011b: 34–35).

Whilst anonymisation is a standard research practice, the fact that Phillips characterised her participants' preoccupation with it as 'paranoid' gives an impression of the conflict some working journalists feel when contemplating talking publicly about their professional lives.

This point was commented on and echoed by another journalist-cum-media scholar, Julian Petley, in a hearing session later that day. Petley discussed a similar experience within research contributing to a volume he had co-edited called Pointing the Finger (Petley and Richardson, 2013). He explained that research performed by journalists Hugh Muir and Laura Smith met similar issues. Amongst the 'Muslim journalists working on newspapers' invited

[41] Examples of material from these interviews can be found across multiple chapters and articles (e.g., Francis, 2003: 69–70; Phillips, 2006: 231, 2010, 2011a: 52–56).

to participate ‘not one […] wanted to be identified’, which Petley argued ‘says an awful lot, I think, about the climate’ these participants worked within (Petley, 2011: 71).

Indeed, within the chapter itself, Muir and Smith (2013: 189–190) address this issue. The researchers claim that sharing certain professional and experiential characteristics with their interviewees had ‘enabled them to establish a ready rapport’ which ‘elicited more frank and detailed responses’ than might have been achieved by someone from a strictly academic background. Despite this, the authors maintain that the journalists ‘felt too fearful of the possible repercussions to allow themselves to be identified’.

Considering these senior researchers and comparative insiders struggled to obtain attributable insight from journalists, described as paranoid about the consequences of engaging in academic research, it was, perhaps, foolhardy to imagine I might achieve this feat.[42] Although my research did not specifically target ethnic minority journalists, but would have been oriented around those themes identified as priorities by the interviewees, the above instances may speak to a wider resistance to transparency within the press.

A tacit sense of disapproval or penalisation for those willing to openly discuss the challenges of working within the mainstream corporate press might be intuited alongside many other accepted standard practices (see chapter one). The two above examples of research occurred in a pre-Leveson context, before the hacking scandal brought a barrage of negative public and political attention on the practices of the press. Performing this research in the post-Leveson context I had always considered the possibility that gaining access to working journalists could be an insurmountable stumbling block.

It was, nonetheless, a difficult and angst-inducing decision to categorically stop pursuing interview participants to focus solely on secondary data. Having accrued considerable sunk costs in terms of time and mental energy this was a reflexive deliberative process of my own. The external obstacles encountered during this initial period of research, and the time constraints of the PhD process, spurred me on to design the project I have outlined in this chapter.

[42] I requested my participants spoke primarily ‘on the record’ as I felt it was important to be able to discuss specific stories a journalist had worked on, or the specialist role they occupied within a newspaper. Full anonymization would likely have made this impossible if the data was to remain meaningful for analysis and presentation.

Although this was initially unsettling, in retrospect I don't feel a great deal of mourning for the abandoned research agenda. The pivot to secondary data has enabled me to embark on research which I have found personally illuminating, allowing me to unpack the events of the Leveson Inquiry in detail. It means I have been able to consider the broader ramifications of the Leveson Inquiry, rather than overly concentrating on the first-hand perspective of journalists.

I might not have the credentials, or access, to offer practical insight into the working conditions faced by employees of the newspaper industry, beyond that already put in the public domain during the Leveson Inquiry. The final research plan has meant, however, that I am less beholden to specialist insights provided by a select number of research participants. In some sense, I have a more personal stake in the political arguments and perspectives which have been explored.

I am qualified, as a citizen, to apply a critical lens to the arguments made by our elected representatives about press regulation and have been free to interrogate data through a personal perspective on what the public ought to be provided by our press. I can imagine the protection, support and means of recourse I would require if ever unlucky enough to find myself at the centre of a media storm.

It is not just representatives of the press or the state who have a stake in this debate and a right to contribute to it. We all do.

CHAPTER THREE

The Leveson Inquiry: How Journalists Defined the Public Interest

Within this chapter the oral testimony of newspaper journalists during hearing sessions within the *Leveson Inquiry into the Culture, Practice and Ethics of the Press* is studied to explore evidence of the reflexive definition and operationalisation of the public interest (see chapter two for breakdown of methods). To unpack this topic two related questions are asked of this data from the Inquiry: i) how were professional structures within newspaper organisations shown to influence definitions of the public interest, and ii) what definitions of the concept did journalists subscribe to? This analysis concurrently highlights some of the issues presented to Lord Justice Leveson, which the judge would subsequently attempt to tackle through his recommendations.

At a time when the news media, and especially newspaper organisations, faced a clear imperative to assess their professional practices, these Leveson Inquiry transcripts carry evidence of individuals engaged in reflexive considerations of their working environments. As we shall see, this partly involved journalists questioning and defending different aspects of their working practices, in this very public forum, through various definitions of the public interest (abbreviated to *tPI* for this chapter).

The prevalence of the public interest

In keeping with the primary focus of this thesis, analysis was performed on extracts of Leveson hearing transcripts containing explicit reference to the concept of *tPI.* Whilst enabling efficient identification of relevant data, this also provided a clear indication of the centrality of this concept to the Inquiry and, by association, to the representatives of the British Press in attendance. Before embarking on an in-depth qualitative description of the data it might be worth briefly outlining this centrality in a quantitative sense.

Of the ninety-five journalists whose transcripts were analysed, around three quarters (seventy-one) engaged in discussions about *tPI* at some point during the Inquiry. This includes instances where newsworkers introduced the concept themselves during a hearing session (in twenty-nine cases) or embarked on such discussions after the subject was broached by a member of the Inquiry Team (in forty-two cases). The concept's general prevalence within this Inquiry supports the claim *tPI* remains central to journalists' professional identities (Carey, 1987: 5; Moore, 2007: 38; Morton and Aroney, 2016: 20).

Beyond this numerical prevalence, the qualitative emphasis certain journalists and editors appeared to place on the concept when describing their professional activities to Leveson highlights this centrality. This was summed up nicely during the Inquiry by then *Guardian* editor Alan Rusbridger (2012b: 110) who stated, 'the longer this Inquiry goes on, the more public interest becomes the two most common words', reflecting that the 'public interest is at the heart of everything we [journalists] do believe in, we argue for and we should believe in'.

As demonstrated across the following two chapters, the concept was evoked in multiple contexts throughout the Inquiry, including when discussing editorial decisions on publication and investigatory techniques, and in discussion of future regulatory frameworks.

A time for reflexivity and promised change

The Inquiry transcripts studied contain multiple evocations of *tPI* from the perspective of individuals working within an industry facing opprobrium and intense scrutiny (see introduction). Such pressures, it must be assumed, could only have been exacerbated by participation in this highly scrutinised Inquiry. The Leveson archive thus represents a good resource for studying reflexive processes within the press, shedding light on a time when the industry grappled with an 'existential challenge' (Rusbridger, 2012a: 135) and was forced 'to have a conversation with itself' (ibid: 136).

Within the Inquiry, journalists were asked to both diagnose the issues embedded within their working environments and suggest solutions. Reflexivity was required to identify and articulate convincing arguments in support of those aspects of their working practice journalists most valued, as well as to suggest improvements for those structural features deemed undesirable or ethically problematic. In short, if solutions were to come from within the press, the reflexive ability of journalists, newsworkers and other industry representatives would be required.

This responsibility was not lost on some Inquiry participants. During his hearing session the then political editor of the *Independent,* Andrew Grice (2012: 85–86) purportedly echoed the sentiments shared by fellow journalists when acknowledging that 'the dramatic events of recent years and the practices that have been exposed mean that a lot has to change'. These sentiments were echoed by the editor of the *News of the World* Colin Myler (2011a: 67–68)

who told Leveson that 'it's a time for the industry to reflect on certain matters of decency […] I do believe that reflection, actually, has taken place'.[43]

Whether such statements truly reflect the intentions these individuals had, or whether such participants were 'capable of delivering' (Cathcart, 2016a: 8) this ethical and structural change from within the industry remains a matter of conjecture. As will be detailed in later chapters, beyond limited 'cosmetic change' (ibid: 9) to regulation, temporary scrutiny placed on the industry during the Inquiry, and greater awareness brought about by the *Guardian*'s reporting, seemingly little of consequence was put in place to deliver on the sentiments expressed above.[44]

Leaving their implications on future actions to one side for the time being, the arguments constructed and vocalised within the Leveson Inquiry remain significant exemplars of reflexive processes. Even if never acted on, the ability to identify problems, suggest solutions, or indeed mount a defence for certain features of working structures within the press, inevitably involves an active process of reflexive deliberation in line with Archer's description (see chapter two).

Many journalists' testimony during the Inquiry, demonstrated the 'strenuous work' (Archer, 2020: 126) involved in promoting and defending existing social – and in this case professional – practices. When external events provide an impetus for change, elements of contextual continuity are only retained through reflexive action. The hacking scandal certainly provided a legitimate case for meaningful structural change within journalism, forcing journalists, editors and a host of interested parties to grapple with questions of which elements of their professional practices should be retained for the good of the public.

The working environment(s) of the press

Under Archer's 'analytical dualism' (see 1996: 692), any exploration of an individual's or group's reflexivity is intrinsically linked to their understanding of the environment within which they are based. To account for reflexive deliberation, we therefore must understand the structural features acting as a 'constraint or an enablement' in relation to 'specific agential

[43] Myler was conscious of the 'guffaws of moral indignation' (2011a: 68) his statement was likely to receive coming from someone in his unenviable position at the centre of a national scandal.
[44] It remains plausible that substantive and meaningful action was taken within individual newspaper organisations to facilitate this ethical shift. It would be later argued that this was the case by then Home Secretary Matt Hancock when justifying his decision to cancel the planned second part of the Leveson Inquiry (see: Hancock, 2018; Hancock and Rudd, 2018: 15; HC Deb 07 March 2018, Col 326-327).

enterprise[s] as subjectively defined' (Archer, 2012: 56). Thus, how individualised notions of *tPI* are acted upon within the press will partly be shaped by what journalists' professional structures permit.

Within this section, an analysis of journalists' ability to act on their reflexive deliberations of *tPI* within their professional environment is presented, according to the accounts they gave to the Leveson Inquiry. The use of the collective term 'journalists' should not be interpreted as referring to an amorphous group operating out of identical contexts. One striking feature of this testimony requiring little analytical effort to identify is the divergent way various journalistic working environments were described.

There was, however, an apparent bias toward more senior editorial staff in terms of Inquiry participation. Of the ninety-five newspaper journalists sampled from the Inquiry forty-two were either current or past editors, assistant/deputy editors, or associate editors of one or more national or regional newspapers. There was also a high prevalence of senior reporters, correspondents, and section editors. This most likely reflects Leveson's understandable desire to question those most responsible and culpable for making important decisions within the press.

When analysing this data, I remained conscious of the fact that the bulk of insight into newspapers' organisational structures came from the perspective of those at, or near, the top of a hierarchy. This was compounded by general newspaper reporters often spending a shorter amount of time being questioned by Leveson and his team, on a restrictive set of issues, compared to more senior colleagues.[45] Despite this difference in quantity, there was

[45] A startling gender imbalance is also evident with only eleven of the ninety-five transcripts sampled belonging to women. Although clearly not a definitive representative statistic, this might point to a structural male dominance in the upper echelons of the British Press at the time, with a professional culture one witness called 'very laddish and very male dominated' (Myler, 2011b: 50). Although not specifically focused on senior editorial roles, the latest report of the Global Media Monitoring Project found the number of stories written by women journalists in the UK and Irish national press had increased by only 5% in the five years since the previous report. This, the report notes, is not a 'dramatic' shift (Global Media Monitoring Project, 2020: 20) and reflective of broader media issues whereby 'women might be entering the profession but are not progressing into the more prestigious beats at the same rate as men' (ibid: 11). The Sutton Trust's latest *Elitist Britain* (2019) report highlights similar trends in the proportion of privately and/or Oxbridge educated employees in the news media. This is particularly acute amongst newspaper columnists with 44% having been privately educated compared to just 19% state educated. This again represented no progress since findings in 2014. Such long-term trends, the report argues, 'paints a picture of a media elite growing more socially exclusive over time' (ibid:41). These reports lend credence to the depiction of mainstream journalism as a profession stagnantly populated by individuals from a select social strata, with similar experiences and points of view, curtailing the critical capacity of the media to truly hold elite actors and authorities to account (see chapter one).

nonetheless valuable insight to be gained from the statements of general reporters as well as editors as I hope to have highlighted below.

A rigid hierarchy and delineation of responsibility was evoked within the Inquiry by both those journalists claiming ownership over major editorial decisions, and those with a purportedly limited influence over the approach taken by a newspaper, or indeed over the publication of their own work once 'copy' had been submitted to the news desk. One thematic indication of this within several Inquiry transcripts was the differing descriptions of the role of the editor.

(i) Editorial sanctioning, vetting and approval

During the Inquiry, editors were often depicted as sanctioning or approving the actions of less senior, although seemingly trusted colleagues. This appeared to encompass a relatively lenient approach to hierarchical relationships enjoyed by some journalists. Under this description the newsgatherer has opportunity to identify potential stories and/or propose investigatory methods before the editor, perhaps in tandem with their legal team, decides on whether they should be permitted.

Such negotiations purportedly involved deliberation over *tPI* being taken by the sanctioning editor, with a variable level of input from reporting journalists. This process was described within the Inquiry by journalists with various specialisms working for tabloid, broadsheet, and regional newspapers. The showbiz editor for the *News of the World* at the time of its closure, Dan Wootton (2012: 32) for example, told Leveson that 'it would be the decision of the editor in the end whether a story was in the public interest or not'.

Whilst Wootton claimed he might have initial input through 'discussions', and room to air his 'opinion', an assessment of *tPI* would ultimately reside in the editor's decision 'whether to publish' (Wootton, 2012: 33) a particular story. A colleague at the same paper, the infamous Mazher Mahmood, known under the moniker of the 'fake sheikh',[46] painted a similar picture of initiating a course of action, although seemed to suggest he took a more active role in assessing *tPI* when seeking the approval of senior editorial and legal staff.

Mahmood told the Inquiry the process involved him 'submit[ting]' an 'initial proposal by email' containing 'justifications for why I felt this story was in the public interest' often

[46] Mahmood was later charged with the conspiracy to pervert justice for falsifying evidence he gave to court pertaining to an investigation he performed for the *NOTW*'s sister paper the *Sun.*

seeking approval for his journalistic modus operandi, 'the use of subterfuge' (Mahmood, 2011: 5–6). In a broadsheet context then *Independent* editor, Chris Blackhurst, described the process from the reverse end of this hierarchical exchange within his Inquiry testimony. Blackhurst (2012: 95–96) claimed he had sole responsibility to 'sanction' certain investigatory approaches, such as using private investigators, depending on whether he 'felt that a story was of such paramount importance in the public interest'.

Finally, from a regional context editor of the midlands-based *Express and Star,* Adrian Faber (2012: 33), outlined a process whereby 'each story that is brought' to him containing any 'potentially contentious, or […] public interest issue is tested to the nth degree before we publish'. The editor of the *Irish News* told Leveson that a 'claim of an issue of public interest' would 'generally start off with a reporter' before being considered for publication by himself (Doran, 2012: 71).

Such descriptions depict a process where journalists are afforded prior opportunity to consider the relationship between a prospective news story and *tPI* before presenting it to their editors. Of course, this is not to suggest these journalists have complete autonomy. Their actions ultimately depend on being sanctioned by higher-ups, but compared to the testimony of other journalists at the Inquiry it highlights a degree of freedom to engage reflexively with *tPI*.

Perhaps the statement which conveyed the greatest impression of such agency being afforded to staff was provided to the Inquiry by the editor of *The Sunday Times* John Witherow, who claimed relative non-involvement in such issues:

> the cases that are brought to me have already been sifted, in a sense. The ones that aren't clearly, in the view of the senior editors, in the public interest don't even reach me (Witherow, 2012: 10).[47]

This delegation to 'senior editors' shows a hierarchy is still very much in place, but also suggests the methods and processes for dealing with *tPI* differ significantly between publishers.

[47] This depiction of the editor allowing his staff latitude jars with an account provided by a former employee during an employment tribunal. This related to an infamous story written by Andrew Norfolk containing false accusations about a Muslim foster family. It was claimed that despite 'severe misgivings', Norfolk was pressured to pursue the story by Witherow, who himself was acting at the behest of an 'oligarch friend' (Cathcart and French, 2019: 51; Gerard, 2019). Witherow and Norfolk denied this accusation, although even if true, it does not necessarily contradict the idea that on other occasions the editor was quite happy to delegate issues relating to *tPI*.

Withrow was one of the few editors not to emphasise the importance of his personal judgment for assessing *tPI* within the journalism published by his newspaper. This is perhaps explained by the editor's belief, stated in his hearing session, that the process of identifying *tPI* is 'generally, in my experience, […] fairly clearcut' because most 'right-minded people' share a 'definition of public interest [which] is pretty clear' (Witherow, 2012: 10). In essence this is an assessment anybody should be equipped to make so there is no need for him to be involved.

This suggests the definition given to *tPI,* especially by an editor, can affect not only how they interpret the broader justifications for news stories or journalistic practice, but is reflected in structural and organisational processes established within newsrooms. This speaks to the relationship between structure and agency under 'analytical dualism' as individualised agential notions of *tPI* have a material impact on professional structures. We shall see later that Witherow's description of a common notion of the concept being shared throughout the industry does not hold water.

The editorial vetting outlined in this section, does however make it likely that a common approach to *tPI* will be intuited by journalists working within *the same* newspaper organisation when seeking approval for their stories. Along with other criteria subjectively defined by editorial teams such as newsworthiness, accuracy and the editorial line/style adopted by a particular newspaper, journalists are likely to pre-empt any decision by tailoring their work to comply with the accepted standard for *tPI* within a news organisation.

We can find some evidence for this in the hearing transcripts. Again, the *News of the World*'s Colin Myler exemplified this when he described the expectation that his decision not to publish a story would have a corrective effect on the future decisions of his staff, hoping 'that the experience that follows from not publishing a story explains to them why you chose not to publish it' (Myler, 2011a: 65–66).

A similar case was made by *Daily Express* editor Hugh Whittow (2012: 96), who told the Inquiry the 'editorial line' is 'absorbed' by his staff within multiple daily 'conferences' where 'a complete picture of what is going on in the newspaper' is provided. Under such systems, where it appears the editorial decisions are taken unilaterally by those at the top of a hierarchy, there is little point attempting to justify a story through a definition of *tPI* completely out of kilter with that established within a newspaper organisation.

Archer (2012: 18) claims certain institutional and relational contexts maintain social practices which reproduced 'distinctive situational logics'. These logics facilitate certain priorities whilst precluding others. This perhaps speaks to the frustration some actors working within mainstream newspapers have expressed about the ability of these institutions to accommodate the definition of *tPI* to which they personally ascribe (see Kennard, 2019; Younge, 2021; and chapter one).

Essentially the reflexive process means that if contextual structures do not support an actor's agential concerns, which in this case might include journalists' investment in particular notions of *tPI,* to avoid perpetual frustration either these concerns must be modified or, if shared amongst fellow group members, contextual change must be realised to accommodate them.[48] As such, 'it is the relationships accompanying and surrounding' an actor's 'concerns that promote both the *subjective* sense of compatibility and objectively make concerns *compatible*, or the opposite' (Archer, 2012: 114, [emphasis in original]).

This reaffirms the depiction of structure and agency as separate properties which, nonetheless, impact one another considerably (see chapter two). Within some newsrooms, journalists are required to engage in an innately reflexive process of recognising and tailoring their work in line with various immutable 'constraints' and 'enablements'.

(ii) Explicit editorial control

If this sanctioning by editors and senior staff represents the more lenient end of the scale, evidence of limitations being placed more directly on journalists' ability to engage reflexively with *tPI* was also aired during the Inquiry. This included insinuations that journalists had their activities dictated to them regardless of the level of *tPI* they personally attributed to a task.

Former deputy editor of the *News of the World* Neil Wallis (2011: 98), for example, refuted the characterisation of the system for processing 'tips' coming into the newsroom presented

[48] A third option is for journalists to extricate themselves, or be extricated from, these professional structures altogether. Examples include Peter Oborne's decision to leave the *Telegraph* in 2015 due to what he considered the encroachment of commercial and advertising objectives into editorial processes within the newspaper. Oborne cited a longstanding pattern of refusal by the paper to give due prominence to criticism of the banking group HSBC, including refusing to publish his article on the unexplained closure of Muslim bank accounts (Oborne, 2015). John Pilger expresses similar sentiments towards the *Guardian,* for whom he wrote a regular column until 2015. He claimed the newspaper 'got rid of people like me and others in pretty much a purge of those who were saying what the Guardian no longer says anymore' (Walker, 2018), having earlier cited the paper in a criticism of the media's aversion to '[d]issent once tolerated in the mainstream […] as liberal capitalism moves toward a form of corporate dictatorship' (Pilger, 2018).

to him by Robert Jay QC, whereby a ‘staff journalist’ elects to write a story based on the information received, asserting instead: ‘You offer me a tip. I decide I'm interested in it. I then task a reporter to go and make that story work’.

Under this description, at no point does the reporter have any opportunity to employ reflexive deliberation of *tPI* to decide whether to pursue the story; instead their only active role is to decide how to ‘make it work’. A contributing editor for the *Financial Times,* John Lloyd, explicitly laid the blame for the types of transgressions which occurred during the hacking scandal on submission to such forms of editorial control.

Lloyd (2012: 34) claimed during his hearing session that the industry’s reputation was put at risk by reporters who understood their professional roles as being ‘the servants of a news desk, an editor, a proprietor’. Although I am personally minded to class blaming those with least autonomy for the failures of an entire industry as illegitimately ‘punching-down’, such sentiment nonetheless points to a perception within the press of the autocratic practices of certain newsrooms.

The solution Lloyd proposed involves journalists asserting their own reflexive values and agency to maintain ‘some sense that there are limits to what we will do for those who hire us’, including ‘writing stories which […] do not, grievously, egregiously and for no real public interest purpose, impinge on people’s privacy’ (2012: 35). Individual journalists were thus encouraged by Lloyd to prioritise their own understanding of *tPI.*

As discussed, if this is to be a viable guard against press transgression, the working environments of newspaper organisations must be structurally conducive to meaningful reflexive deliberation. Some of the accounts provided to Leveson pointed to the obverse being the case, with the reflexive capacities of some journalists being impeded to the extent that they became resistant to any engagement with *tPI.* This demonstrated a total disconnect between the concept and actual newsgathering processes.

As Dan Wootton demonstrated above, the structures within news organisations were sometimes referenced to avoid meaningful discussion of *tPI* within the Inquiry. For example, when asked within the Inquiry how the concept might be used to assess disclosing details about politicians’ personal lives, the *Mail on Sunday*’s political editor responded, ‘my editor would make that decision’ (Walters, 2012: 39).

Gordon Smart, the *Sun*'s Showbiz Editor, replied the 'backbench and the editor will […] weigh up the public interest argument' (Smart, 2012: 65), when asked during his hearing session about the concept's relationship to a story about a celebrity's hospital visit. Although this can partly be explained by the temptation to allocate blame to others when being publicly questioned during the Inquiry, the readiness of such witnesses to defer reflexive considerations upwards may also reflect their familiarity with institutional constraints.

Such accounts of working environments with an ingrained resistance to introspection chime with some of the analysis and commentary relating to the events which preceded the Leveson Inquiry and further examinations of the workings of the British Press. The lack of newspaper coverage devoted to the initial uncovering of phone-hacking at the *News of the World*, beyond the *Guardian*'s reporting (see introduction), may be indicative of a general aversion to outside scrutiny within the press. Bennett and Townsend (2012: 155) suggest newspapers were 'wary of shining a light on' this story 'in case some of their own practices were subsequently interrogated'.

This displaying an 'inclination […] not to regard scandal within their own industry as "newsworthy"' (Bennett and Townsend, 2012: 156, see also Fenton, 2021: 172). The political journalist Peter Oborne famously labelled this state of affairs 'a system of omerta so strict that it would secure a nod of approbation from the heads of the big New York crime families' (Oborne, 2010: 25). Thus, it appears that some journalists are not only discouraged from pondering the ethical implications of their own professional activities but are tacitly inured to avoid scrutinising their counterparts.

The then editor of the *Independent*, Chris Blackhurst, admitted as much during the Leveson Inquiry, claiming 'whenever we look at what another paper's done, we're very wary, and I think they're wary about having a go at us, and there is a sort of unwritten code between us that we don't do that sort of thing' (Blackhurst, 2012: 119). We can perhaps see why this might be the case if we look at the treatment of those few journalists who have dared to buck this trend and lent a critical eye to the workings of the industry and performance of fellow journalists.

Roy Greenslade, for example, followed a long career as a senior editor on numerous national titles including the *Sun*, *the Sunday Times* and the *Daily Mirror*, with a role at the *Guardian* as a media commentator writing regular columns on matters relating to media ethics. It is perhaps the nature of these articles which gives context to a claim by Nick Davies (2014: 30)

that whilst the editor of the *News of the World*, Andy Coulson, who purportedly 'didn't like Roy Greenslade', attempted to have him removed from his professorship in the prestigious Journalism Department at City, University of London.

Coulson threatened to remove funding for two student scholarships at the university if Greenslade was not sacked, a threat he followed through with when Greenslade remained in place. Greenslade's media orientated journalism might also provide some context to the furious reaction which his post-retirement revelations about his political leanings in relation to Irish republicanism was met with by some of his former counterparts in the media. A reaction which was described as being exacerbated by the fact that 'Greenslade's frequent criticism of the shortcomings of the industry has prompted many on the receiving end of that criticism to condemn him this week' (Ponsford, 2021).

Brian Cathcart who also established a journalistic career across titles such as the *Independent*, Reuters and the *New Statesman* before embarking on academia as a journalism professor, was met with similar hostility from many within the journalistic fraternity for his part in founding the campaign group Hacked Off and calling for reform to press regulation. In one attack, for example, Cathcart was traduced by one former colleague as having metamorphosised from a 'priggish, lower-middle manager' who he had shared a newsroom with to a 'suburban Mussolini' (Cohen, 2013).

For his part, Cathcart described what he clearly felt was hypocritical treatment by fellow journalists in an interview:

> All my working life I have written critically about various police forces and government departments and other institutions. And yet when I am part of a challenge to News International, Trinity Mirror, the Telegraph Media Group and Associated Newspapers, then I am no longer someone trying to expose wrongdoing. I am suddenly a traitor. (Thorpe, 2013)

It seems the mistake Cathcart made was to fail to recognise, or perhaps willingly ignore, the unwritten omerta which dictates that the press must not turn its own scrutiny on itself, no matter how necessary it seems.

Peter Oborne, a journalist who had previously displayed his willingness to break the omerta against press criticism at the expense of his own career prospects (see footnote 48) did so again some years later in a move which he later claimed 'marked the end of my thirty-year-long career as a writer and journalist in the mainstream British press and media' (Oborne, 2021: 132). In an article published on the openDemocracy website Oborne (2019) criticised

the accuracy of the political reporting of numerous publications and broadcasters in relation to the Boris Johnson Government including the *Mail on Sunday*, *The Sunday Times*, the *Spectator* magazine, Guido Fawkes, the BBC, and ITV.

As well as naming and scrutinising the conduct of several senior journalists, Oborne reserved criticism for the paper where he was employed at the time to write a weekly column, the *Daily Mail*. The result, Oborne claims, is that '[t]he mainstream British press and media is to all intents and purposes barred to me' (Oborne, 2021: 133). Oborne acknowledges that he was only able to survive the loss of earnings that his article provoked by the fact that he was nearing the end of his long journalistic career.

As has been explored, several of the journalists who provided evidence to the Leveson Inquiry, as well as many journalists employed today, appear in no such position to take a similar stance.

Examples of encumbered reflexivity

(i) The disappearance of Madeleine McCann

To return to the data from the Inquiry, at points in journalists' testimony the above inability to reflexively define a course of action in relation to *tPI* was presented as a source of tension and displeasure. This appeared most common when discussing certain much criticised stories, now emblematic of the problematic and harmful tendencies of sections of the British Press. Principal amongst those was the reporting of the 2007 disappearance of three-year-old Madeleine McCann in Portugal, and the subsequent police investigation which Leveson returned to many times throughout the Inquiry.

This coverage has attracted much criticism, not least due to the unfounded accusations, carried by some newspapers, that the child's parents had been implicated by the investigation (Cathcart, 2012; Davies, 2014: 363). A strong social desirability bias on the responses given by journalists questioned about their involvement in this much-maligned coverage needs to be considered. These witnesses would clearly have been keen to present their own actions in the best possible light and, where possible, avoid implicating themselves. This, however, does not devalue an analysis of journalists' reflexive attempts to justify their role, and the role of the press more broadly, in these events.

Due to the extensive coverage of the story in the paper, a high proportion of the Inquiry's discussion of this case focused on the *Daily Express.* Three journalists who recounted their

experience of working for this paper from Portugal in 2007 provided strikingly similar accounts. One description of the disjunction between the reporter 'on the ground' and the senior staff responsible for publication decisions is given by a journalist who had by the time of the Inquiry moved on to work for the *Daily Mail*.

The seemingly candid nature of Nick Fagge's hearing testimony may partially reflect this cutting of professional ties. Fagge (2011: 22–23) explicitly described filing reports from Portugal despite personal concerns over the 'credibility' of the information he was able to acquire. Despite reporting the dubious provenance of his information to the news desk, the editor purportedly 'decided it was the only story he was interested in and put it on the front page almost regardless of how strong the story was'.

Another *Express* journalist, Padraic Flanagan (2011: 10), similarly positioned the 'huge appetite for this story on the news desk and […] with the editor' as his motivation for passing on what little information was available, rather than spending time deliberating whether 'there [was] anything worth writing about' (ibid: 12). Finally, David Pilditch (2011: 95) told Leveson that he felt 'uncomfortable writing stories like this' and having 'personal concerns' with his knowledge that they were likely to be published.

Pilditch told the Inquiry these concerns were based on the tenuous nature of the information he was gathering, and the fact his reports were likely to add to the McCann's already considerable trauma (2011: 90–91). He described his ineffectual negotiations with the news desk regarding this dilemma: 'I was explaining where my sources were coming from and I was explaining that this isn't something that I can prove or confirm', again relying on those 'further up the chain' to determine the viability, legality and presumably the level of *PI* in these reports (ibid: 94).

The impression fostered by these Inquiry participants from the *Express* is that they were precluded from carrying out any meaningful reflexive deliberation about the broader public purpose of the work they were undertaking on behalf of their employer. Despite citing personal reservations, it seems, at least from their perspectives, that refusing to submit their reports, which amounted to little more than sensationalist rumour, was simply not an available option, leaving no room for deliberative purposeful action.

These journalists seemed keen to emphasise the multiple structural impediments within these events, including those originating from the demands of their employers as well as the situation they encountered whilst in Portugal such as language barriers and a lack of prior

contact with the local police force. Their descriptions share some qualities with Archer's notion of 'fractured reflexivity'. This occurs when an actor is subjected to egregious and traumatic impediments to their reflexive capacity, resulting in a loss of ability to deliberatively engage with their environment (Archer, 2003: 299).

Instead, fractured reflexives fall victim to 'the vicissitudes of the external environment' (Archer, 2003: 301) able to 'exercise their agency solely in relation to the present moment and current circumstances' (Archer, 2012: 250). We don't have the level of insight, here, required to assert that fractured reflexivity became these journalists' dominant mode of reflexivity during their stints in Praia da Luz. Because of these descriptions, however, we can argue that their reflexive capacity to consider *tPI* in relation to this story was severely impeded.

The professional structure of the *Express* demanded their reflexive capabilities be firmly oriented towards obtaining the most compelling and accurate information from the menagerie of distortions, half-truths, and hearsay in circulation. A final account suggests such problematic newsgathering cannot entirely be blamed on the practical difficulties encountered when reporting from a foreign country. The deferral of deliberation and reliance on superiors' ethical judgment was also not confined to the *Daily Express,* nor driven by the demands of one editor.

Daniel Sanderson (2011: 74) claimed within the Inquiry that he 'was probably the most junior reporter' at the *News of the World* at the time of these events, throughout which he was based in the paper's London office. He said he was asked by his news editor, Ian Edmondson, to obtain and translate a copy of Kate McCann's diary and to write a story based on this information, which he did despite acknowledging the obvious fact that this diary 'was clearly a private document' (ibid: 78).

Sanderson (2011: 82) described reservations, emphasized through his repetition when saying '[t]he whole thing caused me concern. The whole thing caused me concern'. He told Leveson he had consistently 'considered things like privacy, [and] public interest' (ibid: 78) throughout his career, but simultaneously described the familiar reliance on his superiors to action such principles. On multiple occasions he referred to the notion that he proceeded with this work on the understanding that his editor would seek the McCanns' consent prior to publication, despite having no role in this process which was outside his 'sphere of responsibility' (ibid: 88).

Like his Portugal-based counterparts from the *Express,* Sanderson's newsgathering was entirely separated from decisions on whether *tPI* justified disclosure of this material. This account means the argument aired during the Inquiry that missteps during the McCann story were caused by factors external to the newsroom (e.g., Lawton, 2012: 84–88; Wallis, 2012: 55–57) are not entirely convincing. The internal constraints of working within what Sanderson labelled 'a high pressure environment' (Sanderson, 2011: 89) must shoulder at least partial blame.

An additional internal factor to consider is what the disappearance of a British infant on foreign soil represented as a news story. In line with Tuchman's observation of the journalistic typography she labels "What-a-story" (1980: 62),[49] multiple accounts within the Inquiry claimed this unusual disappearance carried the hallmarks of a *big* or *major* news story. Premium value was seemingly placed on any tangential detail regarding the McCanns by avaricious editors and news desks.

The focus on this story by what, according to Flanagan (2011: 10), appeared to be 'every newspaper, TV, [and] radio reporter', meant he described it during the Inquiry as a 'snowball going down the incline'. Pilditch (2011: 67) similarly described it as a 'huge story' acting as a 'sort of vortex'. Both quotes position these journalists as being at the mercy of events, passively swept along by their sheer scale and momentum.

This pervasive force was created by competing media outlets, rather than being imposed on them. The relational and professional understandings which dictated the significance of this news story drove an atmosphere unconducive to the task of reporting the facts of the case. The perceived scale of the story meant that other competing priorities and concerns, such as doubts over the provenance of information and *tPI* in disclosure, were relegated to secondary concerns against the need to keep pace with other publications.

This was described by the editor of the *Daily Star* when questioned at the Inquiry about the decision to carry accusations against the McCanns in her newspaper. Dawn Neeson (2012: 85) stated:

> I honestly don't recall what my thought process was. It was a story that was a huge story, it was the only story everybody was talking about whenever [sic] you went, and the interest was huge.

[49] See footnote 26.

This inability to elaborate on a thought process suggests the eschewal of serious reflexive deliberation. Asked by Robert Jay QC to clarify if 'the size of the story' was 'the predominant consideration' Neesom replied in the affirmative: 'Yes. Obviously big stories are big stories, yes' (Neesom, 2012: 86).

Perhaps in such cases newsworkers employed across all levels of certain publications attune their own deliberative and reflexive powers to accord with the collective definition of a 'big story'. In such circumstances the publication is geared towards obtaining and publishing any available information, with reflexive deliberations focusing on an attenuated number of potential viable courses of action to fulfil this goal. The sense that this represents a trope within journalistic practice was reinforced within the Inquiry through the similar treatment of other events.

(ii) The undue suspicion of Christopher Jefferies

Another prominent example within the Inquiry were reports related to Christopher Jefferies, a suspect in the murder of his tenant Joanna Yates in 2010. Jefferies has subsequently claimed that a sustained, intrusive, and extremely negative portrayal of his personal life within the media contributed to the prolongation of his time on bail, even beyond the point where police had obtained a confession from the real killer (Smith Fullerton and Jones Patterson, 2013: 128).

Jefferies launched multiple successful litigations against the press, including against the *Daily Mirror* and the *Sun* who were charged with contempt for potentially prejudicing a trial (Halliday, 2011). James Murray, the investigations editor of the *Sunday Express*, cited this widescale media response as mitigation, when asked within the Inquiry to explain his rationale for penning a seemingly intrusive article based on a former employer's account of Jefferies.

Murray, whose report at least largely painted Jefferies in a positive light, appeared to somewhat lament the general media attention heaped on the retired schoolteacher during this period, despite his own contribution to it. He told Leveson, in hindsight 'there probably shouldn't be [a] debate' about Jefferies' character played out across the press, but explained 'whether you or I think there should or shouldn't be a debate, the debate goes on' (2012: 39).

The reporter said he felt duty bound to contribute his own character assessment of Jefferies because 'these situations arise when there's huge public interest on major stories' (Murray,

2012: 40). This sentiment was echoed in the Inquiry by the *Mirror*'s Ryan Parry (2012: 52) who claimed that despite 'everybody' at his paper feeling retrospectively 'very regretful of the coverage' and apologetic towards 'Mr Jefferies for vilifying him', the 'high profile' nature of the case and 'huge public interest' explains the character of this reporting.

The same delineation of decision-making highlighted in the McCann case can also be seen in Parry's testimony. Despite the negative outcome for his paper, Parry (2012: 53) claimed to be 'happy' with his contribution to a background piece on Jefferies, because he had discharged his journalistic responsibilities correctly, by 'present[ing] as balanced an article as possible'. In Parry's view this was an entirely separate issue from 'decisions […] made at an editorial level' which he claimed were 'out of my hands'.

Thus, when asked by Mr Jay if he was able to demonstrate the reflexive implementation of lessons he might have learnt after working on the Jefferies story, Parry replied that no examples 'jump to mind', explaining 'I don't have any involvement with those decisions. I mean, that's certainly something for the content desk and the executives of the newspaper' (Parry, 2012: 62). Again, reflexive deliberation was presented as the sole province of those whose seniority affords them the opportunity to design courses of action and carry them out.

Frustration at the inability to engage more actively and critically with the concept of *tPI* was not expressed universally during the Inquiry. A contrast to the conflicted statements of some journalists above was testimony given by the *Sun*'s Gary O'Shea regarding his work on the Jefferies case. Although this reporter described similarly limited personal control over the publication of his work, and deference to those 'better able than me to make judgment calls' (O'Shea, 2012: 70) on legal and ethical matters, he appeard to place a firmer emphasis on his own deliberative powers.

O'Shea described his collaboration with 'three or four [fellow] general news reporters on the ground in Bristol' whom he claims operated 'as a co-op of equals' working in a 'diplomatic fashion [to] decide each day what each of us should be doing', with 'guidance' provided by 'the desk in London' (O'Shea, 2012: 70). It is debatable whether these statements reflect a substantive difference in the working environments described by the likes of Ryan Parry and those reporting on the McCann story.

The previous Inquiry participants emphasised their lack of control over publication decisions rather than direct interference in newsgathering, albeit with pressure from newsrooms seemingly limiting their room for manoeuvre in this regard. There is certainly a difference in

tone and emphasis within O'Shea's Inquiry testimony with its focus on diplomacy and active decision making. Perhaps then, we should regard those accounts of the restrictions other journalists described so vividly as inhibiting their deliberation and causing them internal conflict, with suspicion.

On the contrary, I believe Parry's version of events adds more weight to the argument that reflexivity and agential disposition play a central role in all these experiences. As established, the account of reflexivity used within this thesis sees actors respond to environmental stimuli in individualised manners, in accordance with their own priorities and 'ultimate concerns' (see chapter two). What some experience as punitive 'constraints' on their ability to act in accordance with their own goals or values simply does not register with others.

Actors may also purposefully navigate what would otherwise be experienced as constraints in a manner which renders them enablements to their priorities. O'Shea appears inured to the negative effects of the hierarchical structures of his workplace. Perhaps his values and goals neatly aligned with the *Sun*'s working environment, meaning the disjunction others appeared to experience was absent – at least in response to the two 'major' news stories cited above.

Or, perhaps more realistically, in achieving or seeking to facilitate his 'ultimate concerns' through his role at the paper, O'Shea resolved to compromise and live with the less desirable aspects of his work, which may or may not include his inability to grapple with questions of *tPI* in any meaningful way. The ability to achieve this 'dovetailing' (Archer, 2003: 163) between our various concerns and external environment is not solely a matter of accounting for actors' subjective priorities. It is equally dependent on external structures being able to accommodate our concerns.

Stratified autonomy

These discussions of the McCann and Jefferies examples within the Leveson Inquiry provide concrete illustrations of a general tendency to compartmentalise reflexive deliberation of *tPI* along hierarchic lines. This perhaps illustrates, as Natalie Fenton (2016: 53) argues

> how the […] constrained autonomy of journalists and their freedom to act ethically towards the collective gains of the profession can be eroded for the competitive gains of the commercial newspaper.

Those Inquiry participants who appeared to limit expressions of professional pride to their technical competence in newsgathering and writing, as opposed to some broader societal role,

seem a far cry from the journalists lauded by advocates of the free press for their commitment to ‘fourth estate’ ideals (see chapter one).

The reality of the supposed centrality of *tPI* to journalists’ professional identity is now brought into question. Rather than being solely the result of journalists’ personal motivation, the transcripts suggest this apathy toward *tPI* may be equally reflective of the structural makeup of their working environment. Certain journalists are clearly afforded more freedom and autonomy to act in accordance with their own reflexive deliberations, perhaps due to their perceived experience, expertise and status.

This sense of autonomy was exhibited by a senior crime reporter who had worked at the *Daily Express* for twenty-four years at the time of the Inquiry. When asked by Mr Jay whether he ever experienced ‘tension’ with his ‘news editors’ due to decisions he had made not to pursue stories which might ‘harm the public interest’, John Twomey claimed ‘there can be tensions, and you just have to trust your own judgment and stick to your own judgment’ (Twomey, 2012: 23–25).

Clearly this represents a different tactic from Twomey’s colleagues, for example, involved in the McCann story who felt they had no choice but to report what little information they could obtain. It is unlikely that this difference is solely due to Twomey having the courage of his convictions to resist the news desk, and at least partially a reflection of this journalist being afforded more autonomy within his working environment.

Other Inquiry participants strongly advocated for independent deliberation as a key tenet to their journalism, particularly more established journalists with a reputation for campaigning and/or investigative journalism. The *Mail* journalist responsible for much of the paper’s well-known coverage of the criminal investigation into Stephen Lawrence’s murder, for example, emphasised his role as an ‘independent journalist’ (S Wright, 2012a: 75) whose personal decisions were a key factor in this campaign.

Stephen Wright (2012b: 4) claimed in his hearing session that his ‘interest[] in the case’ and desire ‘to write about it, advise the editor, deputy editor whatever, in a knowledgeable way’ resulted in uncovering what he describes as ‘matters of great public interest’. Then *Telegraph* political commentator, Peter Oborne (2012: 33), promulgated similar ideals and values by warning against the dangers of ‘the journalist los[*ing*] his true independence’ in their relationships to outside sources such as political parties.

When discussing his training of journalists in a teaching role at City University, the *Guardian*'s investigative editor David Leigh stressed to Leveson the importance of maintaining an independent reflexive capacity when negotiating *tPI:* 'you find problematic areas and if you think very hard about this, you will work out your own position about what the public interest is' (Leigh, 2011: 66). Such statements appear paradoxical to those depicting the professional journalist as encumbered and overwhelmed by internal and external constraints. It is as if two entirely different professions were described during the Inquiry.

Taking the Inquiry as a whole, it appears that editors and a selection of senior investigative and specialist journalists or columnists were in positions to act on deliberative decisions to consider, or indeed disregard, concerns for *tPI.* This suggests a substantive difference in the levels of autonomy afforded to individual journalists depending on the structure of their place of work, or their position within that structure. It might be argued that amongst others, those senior journalists like Oborne, Leigh and Twomey fulfil a secondary symbolic function for their employers.

Certainly, the *Mail*'s campaign to bring Lawrence's murderers to justice has 'gained a special place in the story and self-image of modern British newspaper journalism' often being evoked as a 'leading example […] of editorial brilliance and bravery' (Cathcart, 2017a: 640; see also Anthony et al., 2015: 35). Perhaps these select individuals are used emblematically to demonstrate that *tPI* remains alive and well in today's British Press, with journalists free to act as society's watchdogs. Such journalism legitimises classic Miltonian definitions of press freedom (see chapter one) in a manner the top-down version of newsgathering described above does not.

The Inquiry evidence from a range of newsworkers suggests that to maintain their ability to demand reporters generate the material most desired by editors and executives, news organisations need to provide a degree of latitude and flexibility to other journalists. At times, as was the case with Oborne (see footnote 48), and to a degree in Nick Davies's reporting on the hacking scandal (see introduction), this selectively conferred autonomy may come at a price as the professional value these journalists place in ideals of freedom and independence means they are prepared to bite the hands that feed them.

Ambiguity, subjectivity, and the public interest

Whether deliberations of *tPI* were presented within the Inquiry as rigidly separated from newsgathering journalists by overzealous editors, or the duty of independent newsgatherers themselves, or alternatively as a collaborative process between both parties (see Doran, 2012: 71–72; Gilson, 2012: 112; Gordon, 2012: 13–15; Hanning, 2011: 44; Lewis, 2012: 54; Morgan, 2011: 93), the fact remains that these deliberations were described as taking place at some point in the newsgathering and publication process.

One clearly detectable theme in journalists' Leveson testimony is a pervading sense of uncertainty and ambiguity surrounding *tPI* as reflected in much academic and journalistic literature on the concept (see chapter one). This ambiguity means the attempt to incorporate this concept into working practice is far from straightforward. One relatively prominent expression of this ambiguity within the Inquiry was the depiction of *tPI* as an unseen line or boundary which the journalist is forced to negotiate on a regular basis whilst carrying out their professional activities.

This analogy was utilised by Nick Davies, the freelance journalist responsible for much of the *Guardian*'s coverage of phone-hacking (see introduction), when describing the difficulty of applying *tPI* in a consistent or coherent manner to Leveson. Davies (2011a: 75) described asking himself, 'do I or do I not have the public interest on my side?', of which he answered, 'I don't have the faintest idea because we don't know where the boundary lines are'.

This seems an explicit example of Archer's internal conversation in action, whereby actors 'continually converse with ourselves, precisely in order to define what we do believe, do desire and do intend to do' (Archer, 2003: 34). Mike Gilson (2012: 111–112), editor of the *Belfast Telegraph*, similarly described asking the question of both himself and his staff, 'have we overstepped the mark?', in relation to a proposed use of subterfuge in an investigation. Gilson told Leveson he approved this action 'because the public interest, in my view, made it necessary', but the above questioning of where the 'mark' lies positions this as a reflexive response to an ambiguous concept.

Similar imagery of a supposedly obscure boundary line demarcating *tPI*, was evoked by other journalists and editors throughout these transcripts…

> Every story's different from every other story, and you can't make rules on these matters because the line between the public interest and the interest of the public is sometimes quite vague (Hill, 2012: 16).

> …it's about the balancing act, I think, really, between the public interest and the individual's right to privacy. […] There often is a grey area there, but I think it's something we -- we walk that line every day (Smart, 2012: 53).

The hearing transcripts are littered with terminology and descriptions which appear to emphasize the abstract nature of *tPI.* This includes: the concept being labelled a 'grey area' or 'not black and white' as seen in the above quote from Smart (see also Hanning, 2011: 45; Wallis, 2011: 88; Weaver, 2012a: 10–11); adjectives such as 'slippery' (Davies, 2011a: 74) 'fuzzy' (Hanning, 2011: 45) and 'vague' (Hill: as above) being applied to the term; and, repeated assertions that assessments of *tPI* are, for better or worse, based on personal subjective judgment (e.g., Brooks, 2012a: 52; Davies, 2011a: 76; Greenslade, 2012: 17; J Harding, 2012: 80–81; Leigh, 2011: 66; Weaver, 2012a: 9).

Some descriptions emphasised the difficulty of applying the concept to the various possible scenarios encountered when reporting on unfolding and unpredictable external events.[50] Holding a unitary definition when 'the ground can shift' (Gallagher, 2012: 86) and external events show a 'sliding scale' between public and private interests (J Harding, 2012: 80) was presented to Leveson as a difficult task.

This was particularly true in description of instances, where the perceived level of *tPI* in a story changed as more information came to light (Dacre, 2012a: 120–121; Davies, 2011b: 25–26; Gallagher, 2012: 86; J Harding, 2012: 84, 2012: 80; Owens, 2012: 73; Thurlbeck, 2011a: 68–69; Weaver, 2012a: 15). Perhaps this theme of ambiguity was best encapsulated within an exchange between the Inquiry Counsel's David Barr and the deputy editor of the *Independent on Sunday,* James Hanning:

> Q. You're a man of immense experience and a deputy editor of a national newspaper. If you're having difficulty, if I may say so --
>
> A. Yes.
>
> Q. -- formulating a succinct, concrete definition of public interest, might that be because it's not amenable to a succinct concrete definition?
>
> A. Yes, I think that's fair (Hanning, 2011: 46–47).

Some testimony, on the other hand, showed participants seemingly less flummoxed by the concept. We have already seen *the Sunday Times* editor tell Leveson that the concept is

[50] This recalls Archer's (2012: 46) description of the difficulty of negotiating the 'contingencies of life in an open system'.

'fairly clearcut' (Witherow, 2012: 10). Another perspective, perhaps rather unique in its bluntness and honesty, on the ease by which *tPI* can be defined was offered by former *News of the World* journalist turned whistle-blower Paul McMullan. [51]

McMullan (2011: 39) memorably told the Inquiry that 'circulation defines what is the public interest. I see no distinction between what the public is interested in and the public interest'. If correct this would preclude the need for any nuanced deliberation of the concept when deciding on a course of action in relation to a story. The ability of an article to maintain or increase circulation would be sufficient justification. This represents an extreme and unrefined version of the neoliberal argument for the facilitation of a 'market-place of ideas' through open competition (see chapter one).

Regardless of the merits of this argument, it does represent a counterpoint to those accounts depicting *tPI* as opaque and ambiguous. McMullan's statement clearly had some impact on the Inquiry team as thereafter the idea of equating *tPI* with the interest of the public was discussed with other witnesses, the majority of whom explicitly disassociated themselves from McMullan's standpoint (e.g., Mahmood, 2011: 16; Neesom, 2012: 49; Smith, 2011: 41; Weaver, 2012a: 10).

Participants ranging from McMullan's former *News of the World* colleague Neville Thurlbeck – prior to being charged during the phone hacking investigations – who perhaps melodramatically labelled the statement 'a travesty of what public interest is all about' (Thurlbeck, 2011b: 18), to the *Guardian*'s David Leigh who called McMullan's an 'absurd position' (Leigh, 2011: 74), were keen to demonstrate their disagreement to the Inquiry's audience.[52] Such stark disagreement exemplifies the subjective nature of responses to *tPI* according to both the agential dispositions and contextualized roles of various actors.

Somewhat counterintuitively therefore, when examined in comparison with all the testimony of journalists taken from the Inquiry, those who position *tPI* as a singular clear-cut concept further highlight its abstract nature and the need to engage with it reflexively. McMullan's attempts to define it in terms which allowed for the broader social significance of his work to

[51] Albeit someone who appeared to spend an unusual amount of time on the stand defending the ethical status of the very practices he was busy blowing the whistle on.
[52] McMullan's definition was somewhat in line with the testimony of other participants who defended the tabloid press on the basis of its larger circulation compared to broadsheets, meaning tabloids were therefore capable of keeping a larger section of society informed (see Brooks, 2012b: 14; MacKenzie, 2012: 35; Mohan, 2012: 54–55).

be ignored is as reflexive of those accounts of journalists' earnest attempts to grapple with the nuances of the concept.

This variation was also highlighted at points within the same testimony where the concept was represented as both too vague and at risk of becoming too narrow and restrictive. Such contradictory sentiments appeared in discussion of the use of *tPI* as a legal defence against litigation. For example, when discussing 'privacy laws' the then *Sunday Mirror* editor claimed that recent legal judgments made in relation to *tPI* have shown the concept to be 'very subjective' (Weaver, 2012a: 9), whilst nonetheless maintaining that 'the interpretation of what's in the public interest is too narrow' (ibid: 8).

This perspective was mirrored within the Inquiry by a former *Times* Managing Editor turned academic, George Brock (2011: 65), who claimed that the industry had 'been much too nervous for much too long in debating and building in proper public interest defences'. He later claimed in the same hearing session, however, that any definition of the concept would need to be as 'wide as it could be made' whilst remaining functional, explaining 'you don't want to limit what might be important and useful to a democratic citizen' (ibid: 105).

Such statements, along with others who expressed a desire for more recourse to legal defence through *tPI* (e.g., Davies, 2012: 63–64; Evans, 2012: 55; J Harding, 2012: 116; Leigh, 2011: 82; Oborne, 2012: 54–55; Rusbridger, 2012b: 111; Webster, 2012: 98; Witherow, 2012: 48), may highlight reflexive oscillation between two different priorities which are, if not mutually exclusive, at least difficult to dovetail. I would argue this highlights the crux of the matter in terms of the problematic application of *tPI* to the professional practices of the press.

During the Inquiry, several journalists appeared to be stuck between wanting the guidance and legal protection provided by a clear definition of *tPI* for those occasions when they are called to make controversial decisions about disclosure or breaching privacy whilst at the same time hoping to avoid any unnecessary restriction on their practices caused by a rigid definition being too widely or rigorously applied. In short, they would like to accrue all the benefits of a less-ambiguous definition without any of the inevitable commitments this would involve on their part.

For this very reason the veteran investigative journalist David Leigh (2011: 53) admitted to Leveson that he had not previously given much credence to the official definition provided by the PCC (see introduction) 'because their exceptions about public interest are so broad that'

any guidance or ethical framework offered by these documents is ‘negated by their remarks "except if it's in the public interest"’ (Leigh, 2011: 53).

Differing definitions

We have seen that this ambiguity meant differing working structures, professional roles and priorities of journalists affected how *tPI* was reflexively defined by representatives of the press during the Leveson Inquiry. The final matter to address is how exactly these reflexive definitions manifested themselves in this testimony. By addressing this we gain a better understanding of how the concept substantively impacted decisions made and actions taken within the newsroom.

Beyond deferring responsibility for *tPI* onto other colleagues, evidence can be found of several journalists and editors attempting to align a definition to their practices within their Inquiry testimony. As a result, several divergent explanations of the concept emerged within the Inquiry to fit the various contexts within which it was evoked. In what follows, a cursory summary of the more dominant thematic definitions found within these transcripts is offered. This represents neither an exhaustive list nor a set of mutually exclusive binary categories.

As should become clear, the ambiguity of *tPI* and the reflexive approach to defining it in alignment with the multiple overlapping concerns an individual journalist may carry, means it is not conducive to clinical categorisation. A degree of overlap between the broad and malleable definitions outlined below is evident as single journalists often touched on multiple aspects of *tPI* when justifying their professional decisions and behaviour. Nonetheless, several thematically linked definitions of *tPI* reflecting the nuanced, complex and at times contradictory place this concept holds within the industry are summarised.

(i) The provision of information

A broad definition evoked by several Inquiry participants was perhaps unsurprisingly centred on the base function of all journalism. This was the idea that the provision or disclosure of information itself is constitutive of *tPI*.[53] This was partly expressed through descriptions of a journalistic duty to educate and inform the public in what might be an allusion to Reithian notions of public service (see chapter one).

[53] As echoed by the definition provided in the PCC/IPSO editor’s codebook (see introduction).

Unlike the strict selectivity of output at Reith's BBC however, if the requirement for fulfilling *tPI* is simply that information is provided, a range of journalistic activity can be indiscriminately justified through this definition. As such, the *Sun*'s editor Dominic Mohan used this definition as a catch-all assertion of the positive societal role of his newspaper, and tabloid journalism in general.

Mohan told Leveson 'the Sun and mass market newspapers are in the public interest in themselves' because they provide 'very quick, digestible summary of very, very complex issues […] in an accessible way' meaning 'millions of people learn of serious issues on a daily basis' (Mohan, 2012: 54–55). Perhaps this definition has the most impact on journalistic decision-making when conceptualised as a public right, rather than simply a service which the journalist attempts to provide.

The public's 'right to know' was evoked by multiple Inquiry participants as a justification for the disclosure of information. This was evoked in multiple contexts, including: to justify the use of unauthorised information when investigating the police (Murray, 2012: 10; Penrose, 2012: 96); to defend the appropriateness of journalists' close relationship with a police force (Pickles, 2012: 26; Wallis, 2012: 6; S Wright, 2012b: 34–35); and, to defend disclosing the private life of public figures such as politicians (Wallis, 2011: 88; Walters, 2012: 39; P Wright, 2012: 105).

This definition was also employed within the Inquiry to justify the much-derided sting on the sex life of motor racing mogul Max Mosley. Despite the fact that Mosley had successfully sued the *News of the World* for damages, Neville Thurlbeck (2011b: 21), who played a leading role in the story, told Leveson that a *PI* existed in this reporting due to the fact that the people who had elected Mosley president of the FIA, the sport's governing body, 'had a right to know' about his private life, no matter how 'distasteful' the revelations seemed.

The range of contexts in which this definition of *tPI* was evoked suggest its easy incorporation into the reflexive deliberations of journalists. The definition effectively serves as an eternal 'enablement' requiring very little reflexive effort to negotiate or utilise.

(ii) An aid to democracy

A related descriptor given during the Inquiry was the traditional definition of journalism's capability to aid, or even insure, the successful functioning of democracy and parliamentary

processes (see chapter one). This argument claims that *tPI* is upheld when the media perform the vital function of providing citizens with the information required to meaningfully engage with the democratic process. Retired journalist Peter Riddell, for example, claimed

> I always regarded my job, both […] as a political reporter on the FT and a commentator on the Times, as being interpreting and explaining what was happening in the political world to readers. That is my absolute function (Riddell, 2012: 30).[54]

As well as promoting the general role of the press this notion was again employed by Inquiry participants to justify specific news stories and campaigns. The context of such evocations varied widely. Examples ranged from an argument for *PI* in a story on 'corporate tax avoidance' being partially explained through the revelation of evidence of 'the frustration of the Parliamentary will' (Davies, 2011b: 10), to the right to disclose details of an MPs 'extramarital affair' due to how this would affect the voters' ability to 'trust him to represent' them (Mahmood, 2011: 55).

(iii) Misuse of public office/impairment of professional performance

Two criteria with a degree of thematic congruence which became apparent during the Inquiry involve uncovering evidence of the misuse of public office, or some peripheral factor impacting an individual's professional conduct. Such definitions were relied on to justify scrutiny being placed on high-profile public servants such as politicians. The *Mail on Sunday*'s political editor Simon Walters appeared to air both these perspectives on the public interest when claiming legitimacy in disclosing politicians' private lives depended on 'whether it had any bearing on their fitness for public office' (Walters, 2012: 40).

An example evoked by three separate broadsheet journalists during the Inquiry which incorporated both these definitions was the case of an extramarital affair involving a Home Secretary. Each journalist claimed that a legitimate *PI* in this story was only identifiable once a link between the affair and the subject's professional conduct was proven. In this case, this was a possible link between this affair and the cabinet minister's role in fast-tracking a visa application (Davies, 2011b: 25–26; Gallagher, 2012: 86–87; Leigh, 2011: 66).

Such arguments were not solely reserved for stories on politicians, or other figures one would automatically think of as 'public servants' (Penrose, 2012: 96; Twomey, 2012: 38) such as

[54] For similar sentiment see (Brock, 2011: 105; Oborne, 2012: 8; Wallace, 2012: 43).

members of the police force or judiciary. Throughout the Inquiry a similar basis of argument was used to claim *PI* for investigations into a range of prominent figures. The aforementioned Max Mosley sting was justified by the editor overseeing the story on the basis that, as 'the president of the FIA', Mosley 'should have […] displayed ethical standards to merit the status and the position' (Myler, 2011b: 62–63).

Former sports reporter Matthew Driscoll,[55] argued for *tPI* in disclosing details of the health of a Premier League football manager as 'a prominent figure who works for a very large company' (Driscoll, 2011: 17). If this suggests a blurring of the definitional boundaries of *tPI* to include those working for nominally private companies, this is starkly reinforced by the argument that certain roles carry an extra-professional duty to act as a 'role model'.

Reports on both the sex life of a professional footballer (Wallis, 2011: 71) and the alleged drunken behaviour of a well-known sitcom actor (Dacre, 2012: 103) were defended during the Inquiry on a *PI* basis for allegedly revealing the failure of these figures to act as a 'role model'. Multiple subjective judgments aired throughout the Inquiry about who is considered a role model exacerbated the definitional ephemerality of *tPI* (e.g., Mahmood, 2011: 14–15; Myler, 2011b: 74; Smart, 2012: 54), as did this idea being challenged by others (Leigh, 2011: 76).

The precarious nature of negotiating this particular version of *tPI* was highlighted by the *Independent*'s James Hanning (2011: 45–46) when describing the 'great anxious debates' he and his colleagues engaged in when assessing the level of *PI* in reporting the extramarital affair of an unnamed television presenter. Despite deciding against publication, Hanning told Leveson these deliberations focused on whether the presenter 'could do their job as an interviewer and so on, given what was in their closet'.[56]

Such agonising within this deliberative process of 'communicative reflexivity' – whereby internal deliberations are reinforced or questioned through communication with a select

[55] Driscoll gave evidence of his mistreatment whilst working for the *News of the World*, culminating in him being awarded £800,000 at a tribunal for unfair dismissal and bearing the brunt of what they described as 'a consistent pattern of bullying behaviour' (Davies, 2014: 189). At the Inquiry, Driscoll (2011: 66) referred to 'a culture of lying a lot of the time' at the newspaper. He also recounted his role as a source for the *New York Times'* reporting on Andy Coulson's knowledge of phone-hacking along with the then deceased former colleague Sean Hoare (see footnote 4).

[56] There is a paradox here. Without the story becoming public knowledge presumably the presenter could quite easily continue with their work, meaning this criteria of *tPI* would be fulfilled by the disclosure itself rather than the actions uncovered.

group of trusted interlocutors in a process of ‘thought and talk' (Archer, 2003: 167) – provide further evidence of the ill-defined, ambiguous and subjective nature of *tPI.*

(iv) Criminal and moral wrongdoing

Discussions of the moral probity of role models links to a further definition of *tPI* based on the identification of an element of wrongdoing. The term ‘wrongdoing’ was directly used by several journalists within the Inquiry when defining *tPI* (e.g., Gilson, 2012: 113; Lewis, 2012: 61; Mahmood, 2011: 12; Oborne, 2012: 52; Weaver, 2012a: 15; Witherow, 2012: 10, 16). Synonyms such as ‘impropriety’ (Leigh, 2011: 72), ‘err’ – as in to err – (Dacre, 2012a: 11), and the designation of ‘inappropriate’ behaviour (S Wright, 2012b: 18) were also evoked.

This definition was, again, applied to a wide array of reporting on divergent subjects throughout the Inquiry. The certitude with which it was evoked, however, varied greatly. Investigations into illegality and corruption represented the less dubious end of the spectrum. When discussing a story which resulted in a prosecution for bribery, the *Sun*’s editor claimed, ‘I felt there was a clear public interest in exposing that criminality’ adding ‘they're not often as clear cut as that’ (Mohan, 2012: 54).

Andrew Penman (2012: 34–35) of the *Daily Mirror,* a journalist who specialised in his words in investigating ‘crooks and conmen’, told the Inquiry he felt so confident in this definition that a ‘public interest defence’ existed for every time he had chosen to invade a subject’s privacy, and whether he chose to afford them ‘prior notification’ of publication. Nick Davies emphasised the undeniability of this definition by stating that ‘top of everybody's league table of what is in the public interest is the exposure of serious crime’ (Davies, 2011b: 17).

Despite this certitude, the nature of criminality required for this definition of *tPI* is not readily apparent. Inquiry participants cited criminality as a reason for publishing stories focused on what might be considered personal misdemeanours, with seemingly little-to-no impact on the public at large, such as a celebrity’s or public figure’s recreational drug use (Myler, 2011b: 73; Wootton, 2012: 42). As indicated by those examples of affairs and apparent drunkenness already cited, wrongdoing did not necessarily involve a crime but depended on the perceived social desirability of someone’s actions (Morrison and Svennevig, 2007: 47).

(v) Hypocrisy

Hypocrisy was quite possibly the vaguest criterion for defining *tPI* aired during the Inquiry and again appeared to accommodate various subjective moral judgments. Several witnesses explicitly used the term 'hypocrisy' to define *tPI* (Leigh, 2011: 76; Mahmood, 2011: 12; Smart, 2012: 54; Thurlbeck, 2011a: 68–69; Witherow, 2012: 17) and the term took on various guises alluding to responsibilities individuals or social groups have beyond their professional or official capacities.

Some journalists appeared to suggest that a legitimate *PI* defence using 'hypocrisy' required explicit evidence of a contradiction between public statements and the behaviour being reported. For example, when asked by Leveson to explain his general view on privacy using a hypothetical example of a footballer, *Daily Express* editor Hugh Whittow (2012: 112) exclaimed 'if he says something and then we find that he's going and doing something completely opposite […], he's fair game'.

In a political context, the *Sunday Times'* John Witherow (2012: 17) claimed *tPI* would be present in instances whereby an 'MP […] become[s] a particular exponent of a policy' which they privately contravened. The same was said of those who 'proclaimed that they were a family man or a family woman' when seeking election, only for it to be proved that 'the opposite was the case' (Walters, 2012: 40).

A similar proposition was made by a *Sunday Mirror* reporter recounting to the Inquiry his deliberations over reporting details of various celebrities' cosmetic surgeries. Nick Owens stated a justification for publishing these stories might have been 'something that the celebrity may have said before' such as a public denial of having undergone a procedure, 'clash[ing]' (Owens, 2012: 72) with new evidence. In the reporter's view this proviso alone demonstrated him being 'alive to the fact that there would need to be a public interest justification for using any of the information' (ibid: 94).[57]

Whilst this attempt to retrospectively identify contradictory statements might seem cynical, other journalists appeared to employ an even lower threshold for hypocrisy. This can be seen in claims made during the Inquiry of hypocrisy of individuals promoting a false 'image' (Dacre, 2012a: 103; Myler, 2011b: 75; Thurlbeck, 2011a: 70). Here, there is no need for

[57] Owens was quizzed at the Inquiry about an exchange he had with a supposed source, who in reality was candidly recording their interaction for the documentary *Starsuckers* (2009).

evidence of explicit contradiction, as a subjective judgment about the image an individual has supposedly cultivated will suffice.

Perhaps this attitude was best enunciated by the *Daily Mail*'s notoriously hard-line and socially conservative editor (Greenslade, 2003: 594), Paul Dacre (2012a: 11), who told Leveson 'latitude' should be afforded to journalists investigating transgressions committed by those 'who intrude […] into their own privacy' and 'make a lot of money by revealing their lives to the public'. The journalist and academic Roy Greenslade (2012: 17–18) on the other hand posited hypocrisy as the most problematic aspect of official definitions of *tPI* such as that offered by the PCC, describing it to Leveson as 'one of the reasons for much […] tabloid intrusion' which highlights:

> that we have two presses in this country, […] a press which is dedicated to acting in the public interest and a press which is dedicated to publishing material interesting to the public.

This impression is perhaps reinforced by the *Daily Star* editor's description of her deliberation of publishing details of an individual's private life centring on considerations of their 'public persona' (Neesom, 2012: 50). During a hearing session Neesom conjured the entirely subjective description of an individual who 'has the public image of being a family man, happily married, et cetera, et cetera', claiming that such characterisation would mean disclosing this figure's infidelity or drug use would be in *tPI* (ibid).

When pushed by Mr Jay QC to explain how someone's 'public persona' is determined, Neesom (2012: 50–51) appeared to insinuate this was intuited from her readership, claiming 'most of the time the public perception, readers' perception of a figure is pretty much what they tend to be'. Neesom did however appear to concede the ambiguity of this position by following the above statement with a telling exchange with Jay:

A. Does that make sense?
Q. It might do.
A. I don't know either. (Neesom, 2012: 51)

(vi) The public's response

Neesom's explanation merges with our final definition heard within the Inquiry. This is the argument that *tPI* within the press is preserved through the unique ability of newspaper journalists and editors to gauge the views and values of their readership, or indeed the public at large. This might include a supposition of a story's significance in relation to *tPI*, due to its

likely resonance with readers, as was highlighted in the above discussion of the reporting on Christopher Jefferies and Madeleine McCann.

TPI was sometimes described in quite emotive terms suggesting journalists channelling the response of a readership. One journalist cited the 'huge controversy' generated by a news story (Gallagher, 2012: 77), and another described 'huge public interest and concern' (Parry, 2012: 52). The publication of a photograph surreptitiously taken of the Duchess of Cambridge in a supermarket was described to Leveson as being in *tPI* because '2 billion people had watched her on television' (Larcombe, 2012: 89) during the royal wedding some days earlier.

Rebekah Brooks employed a similar argument during her Inquiry appearance to dispute the claim that editors such as herself – prior to becoming CEO of News International – have sole responsibility for defining *tPI*, much as I have interpreted above. Brooks (2012a: 50) instead depicted the process of constituting the 'public good' as involving 'a combination of reacting to the readers, understanding the readers, but also putting issues and stories in front of the readers for their reaction'.

Quite how this omnipresent perspective on readers' preferences and needs is achieved remains an open question (see chapter one). A similar argument was made by the editor of the *Sunday Mirror* Tina Weaver, who claimed 'readers should have a greater say' in defining *tPI* because the reaction of readers can act as a 'pretty good barometer of what […] we should consider is in the public interest' (Weaver, 2012a: 10). Again, we are left to ponder the logistics.

Beyond some limited references to what appears to be fairly unsystematic correspondence from readers (Russell, 2012: 38; Weaver, 2012b: 98; Whittow, 2012: 100) it is difficult to ascertain, from the evidence provided to the Inquiry, how this perspective was achieved in a manner which could usefully inform the various complex deliberations journalists and editors described. Indeed, Peter Riddell criticised the working structure of *The Times* on this basis, having retired from the paper two years before the Inquiry after some two decades of service.

Within his hearing session Riddell (2012: 51) questioned journalists' dubious claims to report the views of the readership when, in his experience, newspapers 'don't actually analyse what their readers think' as 'in most cases, most newspapers' opinions are formed by half a dozen people'. This was a process Riddell said he had become 'very cynical' towards (ibid). It is,

therefore, hard to avoid the conclusion that most evocations of the public's perspective used to justify definitions of *tPI* remain almost entirely reflective of internal news values and assumptions made about a readership (see McDevitt and Ferrucci, 2018).

This likely occurs in a similar vein to the reflexive deliberative process outlined by David Leigh during his hearing appearance. Leigh seems to describe responding to an imagined readership, or to use sociologist Erving Goffman's (1959: 81) terminology an 'unseen audience', to screen potential actions taken in *tPI.* Again, this is described as an internal conversation where Leigh asks himself: 'is this something that ought to be made known? You know, would people agree generally that this is something that society ought to know about?' (Leigh, 2011: 75). In reality, the public have only a tangential and assumed relationship to this process.

Issues to be tackled

It should now be clear that the treatment of *tPI* within the British Press, at least judging by accounts given by its representatives during the Leveson Inquiry, raises several issues. The above account of various definitions and descriptions should give some indication of the malleability of the concept. Not only are there several competing definitions above but the way these definitions were reflexively applied verged on incoherence. Crime as serious as murder or as petty as cannabis use could be absorbed within the same definition.

A public servant actively misleading the public commands the same treatment as a celebrity acting counter to some vague notion of their status as a role model. In these circumstances a newsworker has little choice but to reflexively define *tPI* against their own subjective values and, more pressingly, the priorities of their workplace. If *tPI* is to guard against the sort of wilful privacy invasion and disregard for the unfortunate subjects of stories which necessitated the Inquiry, a more uniform definition is surely needed.

Attributing notions of *tPI* to journalistic actions and decision making is not something solely performed by internal actors within newspapers such as journalists and editors. In the UK a body of court rulings made in cases involving newspaper publishers and news workers, particularly those rulings reached in privacy cases involving often high-profile claimants, provide an external framework for understanding which activities fall within the legal definition of *PI* journalism.

Since the establishment of the Human Rights Act in 1998, which was used to bring aspects of the European Convention of Human Rights (ECHR) into UK law (Moosavian, 2014: 234), privacy cases have largely revolved around balancing two fundamental human rights given equal status in this legislation. The rights in question are 'the right to freedom of expression' as inscribed in 'article 10 of the ECHR' and 'the right to respect for private and family life in article 8 ECHR' (Stolte and Craufurd Smith, 2014: 129; see also Wragg, 2010: 295).

As the ECHR gives both these rights equal standing, meaning neither one trumps the other by default (Moosavian, 2014: 240; Wragg, 2010: 297), claims of privacy intrusion by the press are often settled on a case-by-case basis in relation to the particular context surrounding individual instances of media disclosure – or proposed disclosure when injunctive relief is sought by a claimant to prevent publication (Moosavian, 2014: 242). In these circumstances the deciding factor often used by courts to determine whether a breach of article 8 is considered justified in the pursuit of the rights outlined in article 10 is whether the disclosure in question is in *tPI*.

This means 'the approach taken to the definition of "public interest" is pivotal to determining the weight of the media's free speech claim' (Wragg, 2010: 298) within the courts. Thus, the development of common law jurisprudence in this area which has cemented 'a doctrine termed misuse of private information (MPI)' (Moosavian, 2014: 234), provides those editors and journalists willing and able to take notice of it, at least a partial steer of how *tPI* is defined in a legal context (Stolte and Craufurd Smith, 2014: 134).

On one hand, after the introduction of the Human Rights Act '[t]he appropriate weight to be attached to privacy-invading speech by the media remain[ed an] unresolved issue' (Wragg, 2010: 295). Schisms in the way the Act has been applied by judges in different cases can be identified (ibid: 299). This means it would be wrong to depict court judgments made in privacy cases as producing an entirely coherent or consistent definition of *tPI* and how it applies to breeches of privacy (Stolte and Craufurd Smith, 2014: 141).

Nonetheless, a privacy tort has developed throughout both Strasbourg and UK jurisprudence which largely underlines the idea that newspaper content which does little more than satisfy readers' prurience and curiosity does not fulfil a public interest (Wragg, 2010: 300). As such a distinction has been established in the courts whereby '[e]xpression in the public interest is

afforded greater weight in the Article 8/10 balancing process' than that which is merely 'interesting to the public' (Moosavian, 2014: 243).

Weight is certainly given to material which explicitly fulfils the watchdog function of the press by addressing topics which aid political understanding or democratic debate (Moosavian, 2014: 249). Invasions of an individual's or group's privacy in pursuit of gossip or evidence of some seemingly personal transgression will most often fail to be justified in a legal setting even when the publisher's legal team subjectively frames this as part of a moral crusade or debate on social standards (Wragg, 2010: 302).

The evidence summarised in this chapter, however, indicates that many journalistic actors do not happily or routinely subscribe to these standards established by the courts. This is something which should have become easier in the aftermath of the Inquiry whereby the Crown Prosecution Service published guidance for media actors in assessing *tPI* to 'encourage greater consistency in prosecution practice' and indicate the 'factors that journalists should […] consider and document, wherever possible, prior to taking illegal action' (Stolte and Craufurd Smith, 2014: 140).

As explored in later chapters (see chapter seven) the act of bringing court proceedings against a news publisher is often exorbitantly expensive for the claimant, as well as the publisher. This effectively restricts access to justice to those able to commit a sizeable financial outlay to pursuing a ruling through the courts. This restricts access to justice to the rich and powerful. Under these circumstances where no alternatives to the court readily exist, rather than assessing their actions in relation to *tPI* on a consistent basis newspapers may instead assess the likelihood of the subject of a story being able to afford a legal challenge.

This suggests that those within the Leveson Inquiry who utilised *tPI*'s ambiguity to claim the concept applied to stories which appeared to contribute little to public knowledge or meaningful democratic participation, did so in spite of the availability of a number of court judgments highlighting the opposite. This disjunction between how the courts and sections of the press define *tPI* suggests a general lack of ability of the law to meaningfully impact newsroom culture. The often-heard argument that the need to revise or improve press regulation is rendered redundant by existing laws appears unconvincing in these circumstances.

At the very least an independent body with the ability to hold the press accountable against a version of *tPI* which is not so vulnerable to the vested interests of editors and news executives must be established. As things stand *tPI* appears to represent an eternal enablement within the press, permitting virtually any action through its capricious definitions by different journalists and editors. This enabling definition is often housed within a working structure replete with multiple competing material constraints for the journalists attempting to negotiate their roles.

Pressure from news desks and editors appears, at times, to entirely dictate the viable actions a working journalist has available to them. Under such hierarchical constraints there is little space to even associate the activity of newsgathering with its broader social significance for the public. The process of deliberating on *tPI* is often bureaucratically syphoned off to editorial teams, so that the journalists interacting with sources and assessing their lived experience are barred from assessing the impact of their reporting – or at least from acting on these assessments in any meaningful way.

These are some of the issues which presented themselves within the Inquiry. In the remainder of this thesis, I will attempt to outline the solutions that were posed and track attempts to implement them.

CHAPTER FOUR

The Leveson Inquiry: Regulatory Proposals

This chapter provides an analysis of the ideas and recommendations for future press regulation, offered by various parties participating in the Leveson Inquiry (see chapter two for breakdown of methods). Several participants expressed differing views on the best solutions for the lack of accountability and oversight of the press made apparent by the hacking scandal (see introduction). Lord Justice Leveson and his Inquiry Team sought to establish a set of effective and workable recommendations for a future regulatory framework for the British press through this process of evidence gathering.

One aim of this chapter is to examine the reflexive adaptation of elements of traditional perspectives on the public interest (see chapter one), within these attempts to propose optimal future regulatory arrangements. The evidence brought by external participants and the concluding recommendations contained in Leveson's final report were interpreted in line with this objective. The analysis highlights the continuing role played by longstanding and ideologically divergent perspectives on the media's role in modern democratic society.

For example, a contemporary perspective stressing the need for a press entirely independent from the state originates from the role early newspapers and publications played in previous struggles for democracy. There is evidence that such heritage, interpreted from a contemporary perspective, had a concrete effect on regulatory proposals aired within the Inquiry and in turn, on Leveson's recommendations.

The input of some actors and organisations close to the industry, who argued against any avenue for accountability and external oversight being facilitated by the state, appeared to limit the options for press regulation which availed themselves to Leveson. Such refutation was expressed by those claiming to represent the view of the press, such as the heads of the organisations underpinning the existing much-criticised system of self-regulation, Lord Black and Lord Hunt.

Lord Black was the chairman of the Press Standards Board of Finance (PressBoF), 'the co-ordinating body for the newspaper and magazine publishing industry's trade associations' (Black, 2012c: 1) which procured finance from the publishers to fund self-regulation. Black was a previous director of the Press Complaints Commission (PCC), who were funded by

PressBoF.[58] Within the inquiry the PCC – the regulator underpinning the failed self-regulatory system in place (see introduction) – was represented by its then recently appointed chairman, Lord Hunt.

Together, Hunt and Black developed the 'industry proposal', which purportedly represented the consensus of the industry,[59] having been developed through extended consultation with the publishers within PressBoF. Traditional libertarian notions of the public interest equating the concept with press freedom provided the rationale for this model. Also analysed below are other proposals which were underscored by traditionally collectivist or reformist definitions of the public interest (see chapter one), supporting purposeful intervention from authoritative public bodies – often belonging to or facilitated by the state – to provide public goods which remain unserved, or denigrated by contemporary market conditions.

Other proposals, including Leveson's recommendations themselves, appeared to strive for a third way by navigating a path between these divergent definitions. Throughout much of the evidence provided to the Inquiry, the need to balance these competing notions of 'the public interest' was stressed. This was often evoked through reference to the competing needs for social intervention to protect victims of press abuse, and for preserving freedom of expression and the free press.

[58] PressBoF and the PPC were themselves products of dissatisfaction with an incumbent self-regulatory regime, having replaced the Press Council in 1991 on the recommendation of the Calcutt Inquiry held the year before (Conboy, 2011: 60; O'Malley and Soley, 2000: 89). This Inquiry came at a moment when press conduct was under fire for scandals including the *Sun's* false depiction of football fans in their coverage of the Hillsborough disaster and various privacy invasions of public figures (Bingham, 2007: 79). The Press Council was also weakened by the withdrawal of the National Union of Journalists for its inability to 'reform' or provide effective regulation (ibid: 81). David Mellor MP famously proclaimed the press were 'drinking in the last chance saloon' as, in what now seems an entirely ironic stance, the Government claimed the PCC represented a final opportunity to demonstrate that self-regulation can work, with some form of statutory intervention promised should it fail (Bingham, 2007: 84). The latter realisation of the PCC's shortcomings (see introduction) ought not have been entirely surprising. Calcutt had highlighted the bodies' weaknesses from the outset, in a follow-up review two years on from his initial Inquiry (ibid: 86). The barrister categorically labelled 'the PCC a failure' (O'Malley and Soley, 2000: 93). The Government of the day, however, failed to act on his recommendations for a statutory body or to bring in the accompanying laws on privacy also recommended (Bingham, 2007: 88) as '[t]he report was shelved' (Curran and Seaton, 2018: 470), despite their promises two years earlier. Thus, 'the issue [of press regulation] gradually slipped off the political agenda' (ibid) until it reared its head during the hacking scandal. The reforms called for by Calcutt were not dissimilar to those 'which had been made, periodically' in previous Inquiries and Royal Commissions 'since 1953' (O'Malley and Soley, 2000: 88–89) with threats of statutory intervention repeatedly negated by unfulfilled promises to reform self-regulation; a pattern shown in this case study and likely to be repeated whilst a highly concentrated commercial press remains a going concern.

[59] In the context of the finding of the previous chapter, it is likely this meant the consensus of select newspaper editors, executive and proprietors, the only actors in a position to make strategic decisions at certain news organisations.

Politicians, academics, victims of press abuse, as well as representatives from think tanks, charitable organisations and campaign groups all provided suggestions for aspects of future press regulation. Such witnesses rightly claimed authoritative specialist expertise and/or interest in debates on the correct constellation of freedoms and obligations to be inscribed in media regulation. Most had a categorical view on where the power to administer and oversee this regulation should reside.

The persuasive attempts of the 'industry proposal'

Several regulatory suggestions were brought forward to the Inquiry with the implicit, or on occasion explicit, ambition of influencing Leveson's recommendations. The ideas contained in the 'industry proposal', for example, were couched in outwardly persuasive terms with the clear aspiration of having the Inquiry facilitate the press's desired outcome. This was demonstrated within the written and oral submissions of Lords Hunt and Black.

Having outlined his criteria for a new regulator Lord Hunt, a parliamentarian and solicitor with experience of working on regulatory matters within the financial industry, explicitly framed his written proposal in relation to forthcoming events. Despite the acknowledgement that 'all, some or none of my recommendations may be endorsed by this inquiry', Hunt (2012d: 44) strongly advocated for the importance and expertise of the body he headed. He wrote of his 'sincere[] hope' that the 'invaluable experience' amassed by the PCC would be 'carried forward directly into a genuinely new regulatory system' (ibid).

Hunt demonstrated this tendency again in person. Following one of several occasions throughout the hearing sessions where Leveson presciently reminded those present of the possibility that his recommendations may not be taken up by the Government, Hunt attempted to dissuade the judge of this concern. He stated that Leveson had an 'unrivalled opportunity' at his disposal 'to set the agenda', adding in no uncertain terms that 'I hope I can influence you in what that agenda should be' (Hunt, 2012a: 8).

Such direct appeals for Leveson to adopt the PCC's proposals were evoked through an emphasis on the assumed authority of the regulator. Despite it being much maligned, Hunt argued that the PCC remained the only group with relevant and direct experience of handling the public's complaints against the press. Hunt wrote that such experience had enabled the development of a specialist knowledge and skill set through 'the gradual accretion of judgments […] especially with regards to the public interest' (Hunt, 2012d: 44).

This assertion of the regulator's authority to identify and assess the public interest brings to mind the notion of a disinterested expert professional class developed in tandem with the deceleration of industrialisation (Hind, 2010: 53; Owen, 1996: 72; Perkin, 2002; see chapter one). More broadly we can understand Hunt's statement as the expressed desire for substantial alignment between any future regulatory arrangements and the personnel and structure preceding it.

As mentioned, this was a far from uncontentious position to maintain. It arguably flew in the face of a consensus on the PCC's reputation developed by the time of the Inquiry (Frost, 2016: 299; Moore and Ramsay, 2012: 34–5). The regulator's credibility had been profoundly damaged by its handling of the hacking saga, including the regulator's initial flawed investigation into the scale of phone hacking at the *News of the World* (Ogbebor, 2020: 43), and their aggressive refutation of the *Guardian*'s reporting (see introduction).

On this basis some Inquiry participants proposing regulatory reform argued, in opposition to Hunt, that the PCC 'cannot be allowed to form part of the new regime' (Working Group led by Lord Prescott, 2012: 4; see also Gray, 2012b: 6; Petley, 2011: 48). Although the need for a *degree* of change was openly recognised by Lord Hunt (2012a: 32, 2012b: 46, 2012c: 70) and his PressBoF counterpart (Black, 2012a: 21, 37, 2012b: 28), these engineers of the 'industry proposal' displayed a clear preference for retention of large parts of the existing regulatory structure.

PressBoF's Lord Black demonstrated this preference in a similarly direct manner to Hunt. Within his third written submission, Black penned a commentary accompanying a more formal document outlining the most fully developed version of the 'industry proposal' seen within the Inquiry. Within said commentary Black, again, explicitly pointed to Leveson's obligation to produce recommendations which will 'be passed to Government' (Black, 2012c: 3) framing his attempt to influence this process.

This attempt was partly made by citing the widescale support of the industry for this proposed model which Black labelled in a subsequent hearing session as 'independently led self-regulation' (Black, 2012b: 45). One by-product of the 'industry proposal' being developed through consultation with publishers was that Black felt able to reference the willingness of 'the industry' to expedite the implementation of his proposals 'as is appropriate' (Black, 2012c: 3).

In other words, if Leveson wanted his proposals to be quickly and enthusiastically taken up by the press, he would be well advised to incorporate some, if not all, of the Hunt and Black fronted plan. This point was later enthusiastically reiterated by Lord Hunt when referring to the readiness of the PCC to 'immediately move to set up the new body' once given a notional 'green light' from Leveson (Hunt, 2012a: 5).

The imperative for persuasion

These overt attempts to sway Leveson's thinking arguably showed Lords Black and Hunt compensating for the relatively vulnerable platform they had inherited from the hacking scandal. Both participants would likely have expected a degree of scepticism from within the Inquiry, as well as the wider public reception (see: Cathcart, 2012a: 74–78). Being the most senior representatives of a regulatory system perceived to have failed to instil baseline ethical standards across all sections of the press, surely represented an uphill battle.

These expectations could only have been compounded by the nature of the proposal the two Tory peers attempted to advocate. Being the result of extensive consultation with the industry meant these regulatory suggestions incorporated and arguably prioritised the needs of publishers at the expense of more universal public interests, in much the same way that the previous regulatory regime had been censured for. This was something addressed by Leveson and his Inquiry team.

Robert Jay QC forcefully put the notion to Lord Black that 'your system merely reflects what some would say the industry wishes to get away with' (in Black, 2012b: 34). Leveson was explicitly critical of this insular approach to consultation within his final report. The complete lack of public engagement was described as 'extraordinary' by the judge, and 'symptomatic of the approach that the press has consistently taken towards regulation over many decades' (Leveson, 2012a: 1612).

The perception that vested interests played a dominant role in this consultation was reinforced by the substance of the proposal. Compliance from publishers would be obtained through a voluntary contractual relationship with the prospective regulator. This was sure to raise alarm bells for those primarily concerned with curbing the unchecked and non-transparent power seemingly enjoyed by a small number of corporations dominating the national press, and an increasing proportion of regional newspapers.

A negative reaction was surely anticipated by Lords Black and Hunt which may have manifested itself in the explicitly persuasive stance adopted. In some sense what I have described as attempts to persuade amounted to the 'industry proposal' being framed as a set of concrete expectations, rather than suggestions which Leveson could adapt as he saw fit. It was an ultimatum outlining how far the press was willing to move, and perhaps more importantly where it would not.[60]

Considering the shortfalls of the proposal's substance, this gambit possibly represented the most realistic means of securing Leveson's assent for the plan. This stands in contrast to the seemingly nonprescriptive tentative stance outwardly adopted within some evidence, explored below, provided by participants from professional bodies adjacent to the press, rather than directly dependent on its continuing patronage as PressBoF and the PCC were.

One witness, who alluded to the benefits of providing written testimony at a remove from the corporate and regulatory structures of the press, was someone previously central to the self-regulatory body which preceded the PCC (see footnote 58). Sir Louis Blom-Cooper QC, who served as the chairman of the Press Council from 1988 to 1990, outlined a shift in his support from the type of system being proposed by the industry.

Within his submission the former lawyer described this change in his thinking away from having 'profoundly believed in self-regulation' (Blom-Cooper QC, 2012: 2) prior to taking on his role on the Press Council. Blom-Cooper attributed this change in perspective to a combination of the experience of working for the press regulator and, perhaps more tellingly, his subsequent position 'as an outsider viewing journalism sporadically over the last two decades, and assessing its role in a civilised democracy' (Blom-Cooper QC, 2012: 3).

In contrast to the likes of Lords Black and Hunt, this participant provided testimony now unshackled from the institutional pressures and vested interests of the industry, meaning he was able to suggest change to the regulatory status quo. On the other hand, a lack of patronage undoubtedly had its drawbacks. Witnesses proposing alternatives to the industry's plan were in no position to communicate their ideas for press regulation with the same certitude about the press's willingness to participate.

[60] This was summed up by then Shadow Culture Secretary Harriet Harman (2012: 72), who described to the Inquiry her sense of the consensus within the press based on her own consultations with the industry: 'there's been, I would say, more of a sense of what they don't want than what they do want'.

A tacit threat can be sensed throughout Hunt and Black's contributions to the Inquiry. If a regulatory system commanding less industry support was pursued post-Inquiry, an uncooperative press would seek to curtail its implementation and render the system unworkable. This threat was perhaps implied by Hunt when he described alternatives to the 'industry proposal' as having adopted an 'adversarial' (Hunt, 2012a: 3) stance towards the newspaper publishers whose practices they were seeking to influence.

This potential tension between regulator and regulatees was expressed via Lord Black's prediction that an alternative system outside the bounds of the PressBoF/PCC proposal would inevitably result in 'constant legal challenge to the decisions of a regulator', with publishers likely to 'challenge the whole basis of the system in the first place' (Black, 2012b: 13). These statements specifically warned against the consequences of introducing a system incorporating the use of statute, or for that matter any mechanism residing within the authority of the state.

The industry was presented as having a resounding preference for privately negotiated regulatory arrangements. The inclusion of some level of statutory intervention acts as a point of demarcation between those proposals broadly antithetical to the industry's view and those supporting it.

Some less prescriptive examples

(i) Sir Charles Gray

For reasons partly established, regulatory solutions offered by participants who were external to the press and the existing self-regulatory system were often couched in less explicitly prescriptive language. One example was the testimony of retired barrister Sir Charles Gray. Gray's proposal focused on the incorporation of a dispute resolution mechanism for publishers and the public, in cases of alleged defamation or unwarranted privacy invasion by the press.

Admittedly, an element of common ground appeared to exist between Gray's position and what was presented by Lords Black and Hunt as the industry consensus. The press appeared to acknowledge potential benefits in some form of easily accessible redress, allowing both complainants and defendants to avoid costly court-based adjudication. When asked by Leveson to comment on the possibility of attaching a 'cheap, quick and immediate' arbitral

arm to a new regulator, Black referred to 'significant support' for the idea within the press (Black, 2012b: 56).[61]

Gray (2012a: 23) himself cited 'a number of editors, including' those of 'the Financial Times, the Guardian, the Independent and the Daily Telegraph' as having 'expressed their support for the sort of arbitral scheme' he proposed. Scant detail, however, was included within the official 'industry proposal' on how this would work. In fact, the topic was only broached within the document to strengthen the case for contract-based regulation, claiming this would create a regulatory system flexible enough to incorporate arbitration at some point in the future (Black, 2012c: 23).

A seemingly choreographed confluence between then *Daily Mail* editor Paul Dacre's testimony and the 'industry proposal', which he enthusiastically called 'the excellent proposals being put forward by Lord Hunt' (Dacre, 2012b: 2), was evident. Powerful figures like Dacre, who was also the chairman of the Editors Code Committee (see introduction) and editor-in-chief of Associated Newspapers, are likely to have had substantial input into the proposal.[62]

Dacre claimed a body dealing with 'privacy and defamation cases' would 'benefit' the 'newspaper industry' reportedly 'reeling from the extraordinary costs involved in no win no fee cases' (Dacre, 2012a: 26). He remained, however, similarly non-committal on the finer details and appeared unconvinced of the financial viability of such a system, stating 'I welcome it, but I have my doubts' (ibid). Sir Charles Gray was decidedly more forthcoming on this topic.

Gray proposed a solution less accommodating to the press's apparent intent to avoid committing to any binding exact formulation for arbitration. He proposed a compulsory statutory based system for dispute resolution which both complainants and publishers would

[61] Although the reality of the arbitral arm eventually established by IPSO did not quite amount to the equalizing force envisaged by Leveson (see chapter seven).
[62] Lord Blunkett, a senior sitting MP during this period, affirmed that 'Paul Dacre […] played a really critical role' (email correspondence with the author, 24 February 2021) during negotiation between the Press and the Government after the Inquiry's conclusion. The above suggests he played a similarly central role prior to the Inquiry.

be obliged to use. It was designed to have most cases bypass the courts. At the very least, the use of statute would compel both parties to engage with the service prior to any court case.[63]

Sir Charles submitted this proposal through the non-profit organisation which he founded, Early Resolution. This organisation provided a similar 'fair, rapid and cost-effective resolution of disputes involving the media' (Gray, 2012b: 1) on a non-statutory and therefore voluntary basis. Perhaps the expertise and experience built here explain the bulk of Gray's contribution being dedicated to outlining how this arbitration and adjudication system could function.

Less attention was paid to how this service could be successfully integrated into a wider regulatory structure, a topic Sir Charles appeared resistant to discuss in any detail. The one opinion Gray offered on this matter contravened the industry proposal for contract-based membership, claiming instead membership should be compulsory and enforced through statute. For this disputes service to work in tandem with a regulator, he argued both would require the same non-voluntary approach (Gray, 2012a: 36).

Despite this divergence on the 'industry proposal', Gray appeared relatively agnostic towards the other functions of the regulator. When pressed by Leveson for his assessment of the record of the PCC Sir Charles deferred from providing his own opinion, referencing the findings of an unspecified House of Commons Committee. He then more explicitly refused to answer by stating that the topic was 'rather outside the role that I feel able to play. […] I don't know what the solution to that is. My Lord will have to wrestle with that' (Gray, 2012a: 37–38).

This self-imposed limitation to Gray's remit, coupled with an apparent tentativeness regarding the likelihood of Leveson adopting his proposal, stands in stark contrast to the types of prescriptive predictions for total system failure made by those fronting the 'industry proposal'. Before entering into details of his proposal in oral testimony, Gray stated 'the first thing that I think I ought to stress is that the role that ER [Early Resolution] plays, *if it's going to play a role in the future,* is all after publication' (2012a: 20 [my italics]).

[63] A similar idea was made by free speech organisations Index on Censorship and English PEN. Under their joint proposal parties would be incentivised to engage with a regulator's 'alternative dispute resolution' by incurring additional court costs if they did not. Unlike Gray however, these groups unsurprisingly baulked at the prospect of compulsion through statute which could amount to the 'statutory regulation of the press' they fundamentally opposed 'even if the statute is said to be enabling' due to the risk of political interference (Index on Censorship and English PEN, n.d.).

Although, as discussed, Hunt and Black also alluded to the potential ramifications of the Inquiry, they did so in more explicitly persuasive terms expressing their 'hope' of securing Leveson's agreement, bolstered by the threat of a non-compliant press. Gray's stance, at least outwardly, appeared comparatively neutral towards the possibility of his proposal being overlooked. His less didactic tone surely did not reflect a lack of personal conviction.

Sir Charles recounted establishing Early Resolution alongside colleagues on 'the media bar', precisely because of 'concern[s] about the way costs [of media disputes] seemed to be going up inexorably' (Gray, 2012a: 12); meaning 'court proceedings' became so 'prohibitively high as effectively to deny access to justice to many prospective litigants' (Gray, 2012b: 2). This background in media law and experience of assessing complex competing interests in media related disputes might have lent Gray a degree of sympathy with Leveson's plight.

Perhaps an appreciation of the issues meant the ex-barrister was less inclined to make categorical demands, especially considering, as stated by Leveson, the two had 'known each other for a very long time' having worked together in the House of Lords and 'on the bench' (Leveson in Gray, 2012a: 11). This did not prevent a robust and frank airing of divergent views between the sometime colleagues around the appropriateness of a regulator intervening in decisions made prior to publication (see Gray, 2012a: 43–49).

The idea that this provisional stance and tone was solely due to personal empathy or a disinterestedness is further discounted by the contribution of other parties.

(ii) Core Participant Victims

The contribution of a collective labelled Core Participant Victims (CPVs) for the purpose of the Inquiry was made by individuals who had suffered abuse and privacy invasion from the press. The nine participants included celebrities and public figures, such as Hugh Grant, Lord Prescott and Max Mosley (see chapter three).[64] They also included individuals who had found themselves the centre of media storms in deeply unfortunate circumstances, such as the fathers of Millie Dowler (see introduction) and Madeleine McCann (see chapter three).

[64] Some CPVs occupied, or have gone onto occupy, formal roles within the campaign group Hacked Off (see introduction) who supported a number of victims throughout the Inquiry process and beyond (Cathcart, 2012a: 103). Jacqui Hames, a former police officer and television presenter who was targeted by the Press for her husband's role as the Senior Investigating Officer in the Daniel Morgan murder investigation (Hames, 2021) has been a board member of the organisation since its inception. Hugh Grant, often acting as the public face of the campaign, has been on the board since 2012. Evan Harris, the former Liberal Democrat MP, was its founding Associate Director. Although Max Mosley had no formal ties with Hacked Off, he was a long-term supporter of press reform and later helped fund the Leveson compliant press regulator, IMPRESS (see chapter eight).

Despite the obvious motivation for sharing their important first-hand insight into existing problems within the press and press regulation, this group again refrained from overreaching. They decided against 'putting forward a revised structure' for regulation, instead 'hope[ing]' their evidence would 'assist the Chairman to identify the common concerns and objectives they share' (Core Participant Victims, 2012: 1).[65] Clearly a different proposition to Lord Hunt's 'hope' to directly influence the content of Leveson's recommendations.

Some CPVs, however, such as Lord Prescott and Max Mosley, did outline more detailed proposals under their own steam. Even within these individual submissions however, a theme of tentativeness carries through. In similar vein to Gray, Mosley's contribution largely contained proposals for a free statutory adjudicatory process for media disputes. When elaborating on this Mosley (2012a: 25–26) explained that his 'scheme' was not intended to be treated as a final 'blueprint'.

There was no expectation of it being implemented. Rather, Mosley positioned his submission as an illustrative example of how a regulatory system could resolve the issue he saw as most pressing: a lack of free public access to redress from media intrusion. In Mosley's own words this was 'a regulatory scheme which works but without claiming that it's the ultimate. I'm sure it can be improved' (2012a: 25–26).

Lord Prescott similarly made the limitations of his proposal known. Within his collaborative submission, written through a working group he had convened,[66] it was stated that 'this Paper does not seek to address all aspects of press regulation' (Working Group led by Lord Prescott, 2012: 2). On one such topic the submission stated: 'this Paper is not best placed to comment on what combination of incentives for membership will bring the right press organisations into the Scheme' deferring instead to 'the press themselves and associated commentators and experts' (ibid: 6).

This impulse to defer to the press is particularly telling, highlighting the advantage the likes of Lords Hunt and Black had in being able to, at least notionally, evoke the press's consensus and rely on the backing of senior figures within certain national newspaper groups and

[65] This is another commonality between the CPVs and Hacked Off. The campaign group chose not to support any one proposal during the Inquiry (Cathcart, 2012a: 71), but, as below, its co-founder Martin Moore co-authored the proposal of the Media Standards Trust and Hugh Tomlinson QC wrote the proposals of the Media Regulation Roundtable.

[66] This included two members from the consultancy firm Promontory Financial Group, specialising in privacy and data protection, and two legal experts including the Director of the law reform organisation JUSTICE, Roger Smith.

industry bodies. Such tentativeness extended to a self-deprecating comment made by Prescott when first making his intention to draft the above proposal known in a prior hearing session.

Leveson welcomed this, stating 'I'll be […] grateful if you have some very clever ideas', to which Prescott replied 'I can't promise the clever. I'll certainly give the contributions' (Prescott, 2012: 100). Although clearly intended as a comedic aside, when viewed in light of the subsequent proposal, the comment reinforces a pervading sense of tentativeness and nervousness from some non-press actors about being too prescriptive in their suggestions.

The tenor of such proposals may reflect an appreciation of an essential fact: without support from powerful senior figures within the industry, pushing for reform of the British press is a difficult and perpetually elusive task. If the likes of Hunt and Black thought they faced an uphill battle to bring the Inquiry and watching public on board, the same can be said of those participants attempting to advocate proposals unpalatable to some in the upper echelons of the press.

Arguments for regulatory morphostasis and morphogenesis

This contrast between the tentative approach of some non-press actors and the seemingly inflexible cautionary tone adopted by proponents of the 'industry proposal' is not an aspersion on the validity of the latter. The threats evoked tacitly by Lord Black forecasting the press's non-cooperation with anything other than sustained self-regulation should not be confused with empty threats. The well-established ability of the industry to shape its own regulatory obligations gave this threat meaning and weight.

As discussed by Martin Moore (2012: 21) within the Inquiry, history suggests the presence of some level of support, at least amongst the most dominant and powerful sections of the national press, is a key factor in determining the likely uptake of a new regulatory approach. Although different opinions were expressed on whether such dependence amounted to a malign or positive influence, Inquiry participants from both sides of this debate recognised the importance of press approval.

As well as being tactically deployed to dissuade Leveson from deviating from the 'industry proposal', this was also acknowledged as a potential barrier by witnesses pushing for more substantial regulatory reform, including those advocating some form of statutory intervention. This included Goldsmiths' media academics Professors James Curran and Angela Phillips[67]

[67] See chapters one and two for discussions of these authors' academic work.

who represented the Co-ordinating Committee for Media Reform – now the Media Reform Coalition – within their joint hearing session.

This committee's proposals (Co-ordinating Committee for Media Reform, 2011, n.d.) included various measures necessitating statutory intervention, including a cap on the concentration of media ownership and/or obligations to promote plurality being placed on any company or individual owning a disproportionate section of the national media.[68] Both these participants alluded to the ability of the press to derail such plans. Curran stressed that any regulatory body attempting to tackle the press will inevitably be operating within a context highly influenced by the industry itself.

In a somewhat prescient remark directed at Lord Leveson, Curran claims 'I suspect that is something that you will realise when you deliver your report: that thinking about press regulation is strongly influenced by the press' (Curran, 2012: 21).[69] Phillips similarly stated that in order to effect cultural change through regulation the involvement and active engagement of 'journalism and journalistic organisations' (Phillips, 2012: 31) was required.

In contrast to Lord Black, who repeatedly presented the industry's purported support for his plan as a positive sign of their willingness to implement meaningful change (see Black, 2012a: 28, 35, 37, 2012b: 28, 45, 77), Phillips claimed to 'worry' about the unavoidable dependence on ideas 'generated by the newspapers themselves' (Phillips, 2012: 37). Her concern was partly caused by the substance of the industry proposals which, in her view, replicated the lack of independence between the regulator and the industry under the PCC (ibid: 38).

The potential for the industry to arrest progress by doing what Labour's Harriet Harman (2012: 71) called 'circl[ing] the wagons around the status quo', was stressed by both these academics, well versed in the long campaign for media reform. On this basis, in relation to

[68] Other suggestions included a statutory right of reply and replacing the PCC with a regulator with voluntary membership but statutory powers (for similar suggestion see: Media Regulation Roundtable and Tomlinson QC, 2012).

[69] This perspective might be partially informed by Curran's seemingly frustrating experience as a consultant for the Third Royal Commission on the Press (1974-77). Curran has been described as '[a]mong' the 'most severe critics' of this Inquiry for its failure to consider proposals to strengthen 'the state's approach to restraining concentration of ownership in the mainstream press' (Hutchison, 1999: 177–178). In one such criticism alluding to the press's influence on the Commission's thinking, Curran claims of the 'McGregor principle' which amounted to a ban on targeting certain types of publication for state subsidisation, that 'perhaps it would be more accurate to say the principle successfully pressed upon the McGregor Commission by press proprietors' (Curran, 1978: 2).

the comparatively dramatic changes sought by some participants, it can be argued that ardent supporters of the 'industry proposal' represented a drive to retain the status quo within the press.

This was clearly recognised by the CPVs, who claimed to be united in the view that the 'industry proposal' for a contractual self-regulatory body did not represent a satisfactory solution. They considered this an insufficient break from the failed PCC (Core Participant Victims, 2012: 2). The purposeful effort by some within the industry, on the other hand, to preserve aspects of the existing regulatory structure displayed hallmarks of an attempt to promote what Margaret Archer refers to as 'morphostasis' (see chapter two).

The rejection of any alternative to the 'industry proposal' shows certain 'members' within this profession 'repelling idiosyncratic suggestions' (Archer, 2012: 21) in a manner entirely consistent with Archer's description of the promotion of morphostasis. The corporate and editorial actors who benefited from light-touch self-regulation (see introduction) had a vested interest in maintaining the status-quo. We can therefore interpret certain contributions to the Inquiry as actors' agential efforts to reflexively promote their goals – or 'ultimate concerns' – of morphostasis or morphogenesis within the press.

Within the Inquiry we plainly see the type of '*competitive contradictions'* (Archer, 2012: 26, [emphasis in original]) between actors which is conducive to social and structural transformation, as populations divide '(non-exhaustively) into those with vested interest in prolonging the *status quo* versus those whose interests lay in transformation' (ibid: 31 [emphasis in original]). As noted, the Inquiry and the hacking scandal which necessitated it represented a time when future practices and regulatory systems were susceptible to change, as recognised by participants on both sides of the mophostasis/morphogenesis divide.

Across various oral and written testimonies, the Inquiry was described as: 'potentially […] a transformative moment in British public life' (Barnett, 2012: 81); an 'opportunity […] to analyse the things that have gone on in the past […] and rectify them for the future' (Black, 2012b: 28); 'an unrivalled opportunity […] to set the agenda' (Hunt, 2012a: 8); and, 'a tremendous opportunity to put the future development of the press in this country within a well-constructed framework' (Moore and Ramsay, 2012: 6; See also Eustice, 2012: 1; Harman, 2012: 67; Mosley, 2012b: 13; Working Group led by Lord Prescott, 2012: 4).

This pivotal moment for potential cultural and structural morphogenesis was starkly emphasised by Blom-Cooper. Writing in relation to his proposal for a statutory 'Commission

on Media Affairs' the former lawyer implored, ‘the time has come for bold and imaginative action’ (2012: 19). The central weapon for those resistant to such action was the implied mobilization of the industry against such moves.

Just as Archer suggests the reassertion of existing ideas and practices is used to resist change, I argue that this supposed consensus was partially expressed through a reversion to longstanding ideas of the public interest. As with individual journalists’ and editors’ justifications for their practices (see chapter three), those arguing for regulatory proposals often aligned a definition of the public interest to their preferred outcome.

Negotiating public interest principles

In an essay written shortly after the cessation of the Inquiry’s evidence gathering, Brian Cathcart noted a tendency of Lord Justice Leveson to ‘interrupt[] the formal questioning to discuss points with the witness’ during hearing sessions, and ‘share his thoughts and concerns in a surprisingly candid fashion’ (Cathcart, 2012a: 1). Such input from Leveson and the expressive nature of questioning by his Counsel, particularly Robert Jay, demonstrated the development of various concerns which the final report and recommendations attempted to resolve.

These included pragmatic concerns over the viability and effectiveness of different regulatory models. Interventions from the Inquiry Team also, however, provided indications of their ongoing negotiation of more abstract, culturally constructed, principles. Concepts such as the public interest required equal attention to more material questions when constructing recommendations for future regulation. One such surprisingly candid exchange with Lord Black highlights Leveson’s acknowledgement of the need to balance competing esoteric concepts.

This appears in a criticism the judge aimed at Black’s unrelenting advocation of self-regulation, whereby Leveson admitted to valuing ‘certain principles which I've made no secret about as the months have passed’ (in Black, 2012a: 28). Within the same breath Leveson maintained, however, that if he had approached his Inquiry with the same inflexible ‘mindset’ displayed by Lord Black, he ‘would probably be wasting a lot of people's time because somebody would say, from a different perspective, "Well, we think actually the answer is very different"’ (ibid).

Here, the judge explicitly recognises one aspect of his task: balancing the interests and perspectives of key actors embroiled in the relationship between civil society, the state and the media (see chapter one). Leveson's report has been interpreted as an attempt to 'bring key stakeholders along with it', by both 'persuad[ing] the press the recommendations had taken account of their concerns' whilst being able to 'satisfy the many victims of press abuse' (Fenton, 2016: 55) that the proposed reforms included the substantive improvements they called for.

The solution Leveson outlined in his report, published just four months after the cessation of formal evidence gathering, was to recommend the introduction of a regulatory structure he labelled 'voluntary independent self-regulation' (Leveson, 2012a: 1757). In the concluding two sections of this near two-thousand-page report, Leveson summarises various options available for future press regulation, primarily based on those suggestions provided by Inquiry participants such as those outlined above (ibid: 1587-1817).

The report concisely illustrates the divergent approaches to press regulation potentially available to some combination of the state, the industry, or an independent third party. Leveson also used this section to justify the choices made when constructing these recommendations at the request of the Prime Minister. Amongst these explanations the need to find a compromise between many competing perspectives and principles, as expounded during the Inquiry, is formally inscribed.

This is never more apparent than in Leveson's explicit assertion of the need to placate 'many different aspects' of 'the public interest' present within the 'context' of press regulation (Leveson, 2012a: 1585). Leveson claims that to be considered 'effective', his recommendations needed to simultaneously protect journalists' ability to 'hold authority to account, or to investigate wrongdoing by the powerful', whilst preserving equally vital 'public interests' in the 'rule of law' and 'the protection of the private rights of individuals, including the right to privacy' (ibid).

This tension between a public interest focusing on freedom and another giving priority to protectionism appears as a latter iteration of the nineteenth century split between liberal collectivists and liberal individualists (see chapter one). Leveson describes this balancing act as 'one of the most difficult challenges for any regulatory regime' (Leveson, 2012a: 1585). Despite the obvious difficulty in attempting to resolve seemingly mutually exclusive

interpretations of the public interest based on rights and interests which appear to contravene one another, Leveson appeared intent on doing so.

He included this as a primary objective in the draft criteria he put forward for a new regulator during the Inquiry (see point 1.1 (b) of draft criteria: Leveson, 2012a: 1583). This challenge was perhaps exacerbated by the inclusion of a secondary requirement for the new regulator to employ and promulgate a definition of the public interest which was 'accepted as reasonable by press, industry and public alike' (see point 1.1 (c): ibid).

This criterion shows competing definitions of 'the public interest' concretely influenced Leveson's thinking and approach to his task. The judge was not intent on simply paying lip service to competing definitions but identifying a unifying middle ground through his recommendations. These divergent interpretations of the public interest align with the arguments for and against regulatory upheaval. The definition prioritising the watchdog role of the press focuses on the ability of newspapers to operate untrammelled by outside interference, and therefore bolsters the argument for the continuation of unmonitored self-regulation.

The emphasis journalists placed on the public interest when describing their profession and decision-making processes within the Inquiry (see chapter three) would only have underlined the importance of this concept, perhaps confirming an impression already engrained by Leveson's experience of grappling with the concept in a legal context. The judge's agential recognition of the importance of this concept, reinforced by social structures examined within the Inquiry and the wider social importance of the concept in modern democratic society, meant the public interest acted as a 'constraint' on Leveson's reflexive deliberation on press regulation.

Perhaps acknowledging both interpretations of the public interest acted as a check and balance. Attempting to accommodate competing definitions may have prevented the proposed reform from moving too far in one direction, towards catering for autocratic impulses for media control which may or may not reside in some state actors, whilst in the other, ensuring the corporate interests of media owners are not prioritised over the democratic functions of the press.

Anybody attempting to design a new system of press regulation – or at least one with any prospect of maintaining widescale acceptance and credibility – does so with the heavy weight

of the historical baggage associated with these divergent positions on the public interest hanging around their neck.

The question of statute

As established, the major dividing line between different approaches to press regulation was the role allocated to statute. What, if any, could be considered an acceptable degree of statutory intervention in press regulation? Is it legitimate, for example, for the state to commence legislation mandating full industry participation with a regulator structurally separated from the vested interests of the corporate press, whilst equally shielded from government interference (Leveson, 2012a: 1673)?

Within his report Leveson outlined various options at the state's disposal including introducing a regulator whose remit is defined and powers backed through statute, or using statute to impose obligatory criteria for self-regulation (Leveson, 2012a: 1680). Leveson claimed the main determinant for the way forward was the need for compromise and balance. Equal attention must be given to safeguarding a press regulator's 'independence from industry', and 'the risk that the use of statute might introduce some element of state control of the press which is clearly unacceptable' (Leveson, 2012a: 1680).

The compromise Leveson pursued avoided statute being applied directly to either individual news publishers or any prospective regulatory body. To consolidate press freedom, statutory intervention would occur at a site twice removed from the processes of publication, newsgathering and editorial decision making. This would be achieved by using legislation to establish the responsibility of an external independent body to monitor the performance of any new press regulator(s), 'place[ing] regulation at least two arms' length from government' (Fenton, 2021: 177). The purview of this body would be firmly concentrated on regulator(s) rather than publishers themselves.

In theory, this satisfied the industry's demand for continued self-regulation (Leveson, 2012a: 1711) whilst introducing meaningful accountability. The main purpose of these statutory responsibilities would be to monitor, ratify and accredit the self-regulatory system. Leveson expressed preference for these responsibilities to fall to Ofcom, both due to the organisation's existing expertise and the fact that such duties were likely to be carried out too sporadically – Leveson suggested a biennial ratification process – to sustain a permanent workforce (Leveson, 2012a: 1773–1775).

Regardless of which organisation fulfilled the function of a 'recognition body', they would provide accreditation to regulators which met a set of objective standards set out in legislation. In this case, Leveson argued, statute would be used solely to 'ensure an appropriate degree of independence and effectiveness on the part of the self-regulatory body' (Leveson, 2012a: 1718). Introducing a statutory basis for this ratification would allow such decisions to be formally recognised by other public institutions, such as the courts and the Information Commissioner's Office.

This could facilitate a set of tangible incentives engendering more responsibility throughout the entire press. It could, for example, enable courts and judges to increase the damages paid by publishers who are not members of a formally ratified regulator (Leveson, 2012a: 1771–1772). This increase would reflect the fact that claimants had been denied access to the cheap and quick adjudicatory system offered by a regulator, if forced to pursue a complaint against an unregulated paper through the courts.[70]

Without this oversight a regulator would not have the credibility, authority, or *teeth* to implement such measures. Maintaining standards of un-monitored self-regulation, as recommended by the 'industry proposal', was entirely reliant on the purported determination of the press to amend its reputational damage without any external objective measure for their success at having done so. Leveson claimed his proposal which enabled publishers to continue to organise their own regulation, with additional external scrutiny, amounted to 'statutory underpinning' rather than 'statutory regulation' (Leveson, 2012a: 1677).

Thus, Leveson attempted to strike a balance between the public interest in press freedom and the need to instil an actionable reminder of the press's social responsibilities to serving the public interest in a wider sense. The nature of the regulatory structure Leveson recommended appeared to have some genesis in the Media Standards Trust's submission to the Inquiry. This submission proposed many of the functions of Leveson's 'recognition body' in what it called a 'Backstop Independent Auditor (BIA)' (Moore and Ramsay, 2012: 65).

This is, again, a body set in statute responsible for overseeing 'Self-Regulatory Organisations' rather than publishers themselves. Throughout this proposal the requirement to balance the divergent 'needs of press freedom and the needs of the audience' (Moore and Ramsay, 2012: 65) was stressed. The authors claimed their model ensures 'the best

[70] See chapter eight for discussion of Section 40.

functioning of the news media and maximises freedom of speech' (ibid: 67) by allowing for 'the highest possible degree of self-regulation, while ensuring effectiveness and adequate representation of the public interest' (ibid: 68).

In a discussion with me (26 February 2020), one of the proposal's authors, Dr Martin Moore, expanded on his thinking when contributing to the MST's submission alongside his colleague and co-author Gordon Ramsay. According to Moore, research performed by the trust, including that contained in the opening sections of their submission, meant the authors had an acute awareness of the history of attempts by past governments to reform press self-regulation.

Within this context their proposal for a BIA was intended to break the longstanding cycle of successive governments resisting the need to implement meaningful reform on press self-regulation, for fear that this would constitute a direct and illegitimate impingement on press freedoms. In what he described to me as a 'lightbulb moment', following much reflection on these past constraints on progress, Moore proposed a BIA as a means of resolving these barriers to the implementation of effective regulation.

In this sense, a BIA would act as a 'firewall' preventing the Government from interfering in press regulation – whilst, I would imagine, hoping to quash any fears residing either in Government or sections of the Press that establishing such a body could represent the proverbial thin end of the wedge (see Dacre, 2012b: 5; Harman, 2012: 71; Mosley, 2012b: 13) in terms of encroaching political control of the press. It should have meant, according to Moore, that there was no longer a binary position between the use of statute and self-regulation.

In this case statute could be used to bolster self-regulation by introducing an independent and effective basis from which it could operate. Moore expanded on this theme in one of his hearing appearances when explaining the rationale behind this proposal:

> we started out from saying: how far can you go in terms of strengthening and making more effective the current system without touching any statutory mechanisms. […] Then we moved on to say: well, if these don't work and these aren't enough, what statutory mechanisms at the very minimum are necessary to make the system work? (Moore, 2012: 41–42)

Despite such efforts to minimize statutory oversight through an intricate separation of responsibilities, those arguing for the 'industry proposal' maintained that the press had a right

to oversee its own regulation, without any such statutory interference. This was their conception of press freedom.

This convergence between the lofty principle of press freedom and the perhaps more prosaic questions of regulatory structures and oversight mechanisms is evident in an exchange between Lord Hunt and Mr Jay QC on the former's then recent appointment as chairman of the PCC. Jay commented on a requirement specified in the advertisement for this position 'that the candidate must be committed to the principles of press freedom and to self-regulation' (in: Hunt, 2012c: 59).

The inclusion of this requirement indicates a self-imposed ideological limitation in the PCC's response to the hacking scandal. Lord Hunt's appointment being contingent on a belief in the existing system of self-regulation means assertions that he was afforded freedom to plan an overhaul of the PCC ring hollow. On multiple occasions Hunt claimed he was afforded what he called 'a blank piece of paper' (Hunt, 2012c: 74, 2012b: 45) to establish the post-Hackgate reorganisation of the PCC without any undue pressure or influence from existing staff.

Hunt (2012c: 74) claimed this was something he demanded from his prospective employers prior to his appointment, a request reportedly 'met with some degree of support and respect'. There is no need to doubt this account; the newly appointed chairman may have been free to implement whichever piecemeal changes to the regulator he saw fit. The unusual requirement of a belief in self-regulation[71] would, however, suggest at least an implicit understanding, if not overt expectation, that any changes would be restricted to those which would not disrupt the overarching regulatory framework.

This obligation is clearly abided by within 'the industry proposal'. Of this employment criterion Lord Hunt happily affirmed he:

> applied for the job because I have a passionate belief in freedom of the press. I think it's one of the most valuable assets we have in the UK and it's much envied across the world. I also have seen for myself how state regulation can go very badly wrong, and it's always preferable if it can be the self-regulation which is the basic structure (Hunt, 2012c: 59).

This coupling of press freedom and self-regulation promulgated by Hunt and institutionally by the organisation employing him essentially positioned all other regulatory arrangements as inimical to this version of the public interest.

[71] Lord Black revealed similar predilections by repeatedly citing his 'philosophical objection' (see 2012b: 13, 33, 47, 57) to any use of statute, even if conceived in a manner preventing political interference.

This entirely ignores the possibility that relying on the self-interests of senior editors and executives to preserve the ethical standing of journalism whilst remaining untethered from any external obligations builds a set of distinctive demands and restrictions within the newsroom precluding meaningful reflexive considerations of the public interest (see chapter three). Freedom from the state does not amount to journalistic freedom when curtailed by various competing demands in a highly commercialised workspace (see Co-ordinating Committee for Media Reform, 2011: 15).

Whose public interest?

Leveson's proposed solution was designed to enable the press to retain some capacity for self-direction, whilst introducing a mechanism for external oversight and accountability to tackle the most damaging consequences of the existing self-serving model of regulation. By doing so he attempted to bridge the gap between the industry's desire to be responsible for putting their 'own house in order' (Black, 2012a: 66) and what he posits are justifiable demands from the public for greater accountability, transparency, and scrutiny.

Leveson was clearly intent on voicing the concerns of the public during the Inquiry to counter the industry's solipsism. When Lord Black reaffirmed the intention of the industry to institute its own change, Leveson welcomed this statement claiming, 'for the last four months I have been saying to the industry that this is their problem and they have to solve it', adding the proviso that this must 'satisf[y] the public' (in Black, 2012a: 36).

Leveson subsequently affirmed, 'I am representing at least one aspect of the public in the conduct of this Inquiry' (in Black, 2012a: 36). In a similar exchange with Lord Hunt, Leveson underlined his role as a proxy for the public when describing the need for a proposed regulator to meet his approval, adding 'I've said "me", but by "me", I of course mean the public' (in Hunt, 2012c: 66–67).

Although Leveson was probably just as capable of misdiagnosing the ambiguous wants and needs of the public as any newspaper editor participating in the Inquiry (see chapter three), this suggests the judge's impulse to protect the public against some of the more wanton tendencies of the corporate press. Perhaps by positioning himself as the embodiment of the public, and the representative of their needs, Leveson revealed a paternalistic understanding of the public interest.

If this was the case, however, it was clearly an instinct he attempted to temper through the compromises inscribed in his recommendations. Leveson's appreciation of the delicate balance between competing notions of the public interest can be contrasted, again, with the approach of Lord Black who similarly adopted what he claimed to be the perspective of the public when challenged by Robert Jay QC on his refusal to consider any sort of statutory intervention within regulation.

Black claimed, '[t]he public has two interests in this area' (2012b: 34). Firstly, a 'complainant who is aggrieved or a group who is aggrieved or whatever' must feel able to have 'their grievances […] dealt with'. Secondly there exists what Black labels 'a broader public interest' in which people would state '"[w]e don't want the chilling impact which flows from state intervention to have an impact on how our newspapers scrutinise those who are in positions of power"'.

The imbalance of emphasis in this statement makes it clear which principle, and which public is most valued. As unfortunate as the victims of privacy intrusion and defamation are, they must be sacrificed for the press's ability to trumpet the value of its own freedom from any form of oversight. Such inflexible intolerance of any statutory provision highlights the impact of newspapers' longstanding conception of the public interest and press-freedom. Bolstered by the regulatory and corporate structures in place, this definition may act as an enduring barrier to institutional change.

CHAPTER FIVE

The Reception of Leveson's Report

The focus of previous chapters on the various impacts of competing notions of the public interest during the Leveson Inquiry informs this chapter on the initial reception of Leveson's report. As we have seen, attempts to balance divergent public interest principles had a stark influence on the model of press regulation outlined by Leveson. The nature of the mechanism for regulatory oversight proposed by Leveson portrays a reflexive attempt to negotiate firmly entrenched divergent definitions of the public interest.

Such definitions were – and are – promoted by various stakeholders, experts and interest groups embroiled in the complex relationship between the media, the market, the state, and society at large. This appeared to motivate Leveson to avoid suggesting the establishment of a statutory regulator. Instead, the perhaps more nuanced suggestion of a statute-backed independent recognition body, used to ratify and certify any future regulator, was offered.

If, as I argue, this proposal indicated a concerted attempt to negotiate disparate concepts of the public interest, the question remains how did such definitions, and the actors and groups ascribing to and maintaining them, go on to influence the reception of these recommendations once published? An attempt is made in this chapter to explore this reception and its implications for the prospects of press reform.

As previously established, differing interpretations of the public interest can broadly be divided into those evoking watchdog journalism to demand complete freedom from external obligations, especially those emanating from the state, and those conversely emphasising the necessity for press accountability to wider social obligations, ensuring publicly beneficial journalistic standards are met. These arguments did not simply stop taking effect once Leveson published his report.

In fact, it could be argued, they played a more decisive role in what followed as attempts were made to interpret and recontextualise the report. As never intended, Leveson's recommendations were treated as starting blocks from which the structure for press regulation could be reconfigured and rebalanced to suit various ideological and political needs. By attempting to address competing concerns within his report, it might be argued that Leveson unintentionally provided room for manoeuvre for those implementing his recommendations.

The political setting

To examine how Leveson's recommendations were manifested in policy, it is necessary to shift focus from one institutional setting to another – from the judicial context of a public inquiry to the overtly political sphere of Westminster (see chapter two for breakdown of methods). In certain regards this involves a narrowed perspective. As previously noted, the Inquiry allowed for the participation of multiple actors and groups from different sections of society.

Analysis of the Leveson archives therefore provided some plurality of perspectives, at least extending to those voices and spheres considered important by those organising the Inquiry. Such plurality is less evident in this chapter and those which follow which primarily focus on parliamentary debates in the House of Commons, along with the activities of the select group of actors who were able to influence policy-oriented decisions on press regulation.

The ground ceded by Leveson to the press's preference when devising a compromise, was further diluted in the parliamentary setting. As explored in detail below, the Prime Minister, David Cameron appeared initially intent on watering down Leveson's recommendations to maintain a distance between the state and the organisation of press regulation, beyond that suggested in the report. This immediately indicated the impact that notions of the public interest would play in the political settlement on press reform.

This is not to suggest all politicians and parties acted purely out of a staunch belief in a binary *press freedoms vs press accountability* debate. A broad acceptance of the need to balance these principles was expressed by various political actors. From the outset Cameron, for example, could be heard acknowledging the need to 'build a new system of press regulation that supports our great traditions of investigative journalism and free speech, that protects the rights of the vulnerable and the innocent' (HC Deb 29 November 2012, Col 449).

As with Leveson's report, this framed the coming political negotiations on press regulation reform as focused on identifying the correct calibration between libertarian and more public-service-oriented instincts. Nonetheless, the binary nature of longstanding perspectives on the public interest (see chapter one), particularly definitions averse to any form of state intervention, markedly influenced the political environment in which these negotiations took place.

As the post-Leveson political process subsequently described demonstrates, these definitions skewed and perhaps determined what was considered a pragmatic and advantageous political intervention in press regulation and what was understood to be a dangerous abandonment of British democratic traditions of free expression, at any one time. Political negotiations moved in erratic fits and starts, as parliamentary debates oscillated between the two poles of these public interest perspectives.

External influences

The involvement of non-political interest groups and stakeholders exacerbated the need to explain the decisions and compromises struck during these negotiations in relation to the public interest. Both regulatory reform campaigners such as Hacked Off (see introduction) and representatives of the press including PressBof and the trade bodies represented within it such as the Newspaper Society,[72] consulted directly with government and opposition political actors driving these negotiations.

Such groups explicitly and very publicly utilised traditional interpretations of the public interest to support their arguments. Hacked Off cited the press's failure to 'regulate itself in the public interest' or 'protect blameless citizens from abusive, bullying and dishonest treatment by journalists' (Cathcart, 2012a: 98), whist drawing on insight of victims when 'campaigning for support of the Leveson recommendations' (Fenton, 2016: 56).

Those advocating the press's commercial interests, on the other hand, emphasised the dangers associated with slipping into a system of state regulation. This supported arguments for avoiding what Peter Wright (2013: 2), Editor Emeritus of Associated Newspapers, called 'a literal acceptance of Leveson's recommendations' when corresponding with cabinet minister Oliver Letwin on behalf of 'a number of senior figures in the industry' (ibid: 1).

Although my analysis primarily focuses on the statements of politicians, their testimony makes clear that external groups influenced attempts to institute Leveson's recommendations. As during the Inquiry the press, as an industrial bloc, continued to push for a largely unchanged system of self-regulation and regulatory morphostasis, whilst groups such as Hacked Off campaigned for morphogenesis (see chapter four). Such influence was referenced by politicians, sometimes to advocate for regulatory solutions, and at other times to denigrate them.

[72] The Newspaper Society is now part of the News Media Association (NMA).

For example, within one debate at the conclusion of initial cross-party negotiations, Hacked Off were both derided for having 'taken over both the Liberal Democrat and the Labour party positions on this issue' by then Conservative MP, Mark Reckless (HC Deb 18 March 2013, Col 761), and thanked by Liberal Democrat, Simon Hughes, for acting as 'the assembly of people speaking on behalf of victims' (ibid, Col 721). The role of the press in these negotiations was met by similar suspicions from some.

Opposition MP Andy Slaughter, for example, accused the Government of 'colluding with the proprietors of newspapers' when announcing their intention to deviate from Leveson's recommendations (HC Deb 03 December 2012, Col 668). Slaughter's Labour colleague Chris Bryant commented on the lack of transparency in the Government's meetings with press representatives, which might have indicated a 'pretty shabby deal' being struck 'between the Government and proprietors' (HC Deb 13 February 2013, Col 865; see also HC Deb 11 March 2013, Col 35).[73]

In fairness, the Government had consistently voiced the need to gain the approval, or at least willing co-operation, of the press for any regulatory changes. The decision to use a charter rather than legislation to underpin a recognition body, discussed in more detail below, was explained in relation to this. Conservative MP George Eustice, for example, claimed that 'one advantage' of taking this decision was that it was an option 'the press are more comfortable with' (HC Deb 18 March 2013, Col 667).

Similarly, when recounting the basis of this decision for a Digital, Culture, Media and Sport (DCMS) select committee, the main architect of the Charter, Oliver Letwin, claimed that it was 'put forward […] as an alternative to make it easier for the press to move forward' (HC Select Committee, 16 April 2013). At times, the task of finding solutions which would engender co-operation from the press whilst appeasing victims of past mistreatment by this industry and preventing such victimisation in the future, seemed impossible.[74]

[73] Hacked Off's Hugh Tomlinson made a similar point to the DCMS Select Committee when defending the role his campaign group had played. Tomlinson claimed the Prime Minister was 'six months behind in terms of the details he promised to release-how often he met with the representatives of the press' (HC Select Committee, 19 March 2013). He contrasted the approach to transparency adopted by Hacked Off who had 'published [*details of all meetings with politicians*] on our website. We have made our whole activities entirely public. The press have done this behind closed doors' (ibid). A record of these details would later come to light (see chapter six).

[74] David Cameron (2019: 263) describes being 'stuck in the middle, trying to get something the press could live with that didn't damage democracy, that satisfied the victims and pressure groups like Hacked Off, and that stopped anything like the hacking scandal from happening again' in his autobiography.

The politicians' statements above allude to the pressure applied through the activities of industry bodies such as the PCC, PressBoF and the Newspaper Society. Campaign groups such as Hacked Off and the Media Reform Coalition (formally Co-ordinating Committee for Media Reform) similarly mobilised through research, targeted lobbying, and publicised engagement with the political process (Fenton, 2016: 55). This all had a concrete effect on the post-Leveson political climate.

Perhaps counter-intuitively, the actions of these politically engaged third parties reinforces my research decision to focus squarely on the deliberations of politicians during this period. The concerted effort of these groups to influence the views of parliamentarians underlines the importance of policy decisions in engendering change within mainstream journalism. Once the Inquiry had concluded and the report had been published, the deliberative and reflexive negotiations of political actors would have the most profound effect going forward.

In short, this was a moment where the onus was on government and parliament, above anybody else, to produce a lasting framework for press reform.

A reflexive imperative for political actors[75]

The publication of Leveson's report encompassed a change to the political landscape, and with it a need for politicians to engage reflexively with the issue of press reform for the first time since the conclusion of the Calcutt Inquiry two decades before (see footnote 58). This was a structural shift which parliamentarians had no choice but to reflexively incorporate into their deliberations.

The call for a statutorily backed recognition process to certify any future press regulator meant new political possibilities for press reform became tangible. Leveson's report meant there was a chance of a government substantively intervening in press regulation for the first time since the abolition of the 'taxes on knowledge' in the mid-nineteenth century (see chapter one), albeit whilst safeguarding editorial independence.

[75] This subheading alludes to Archer's *The Reflexive Imperative in Late Modernity* (2012) focused partly on the need for a high proportion of the population reaching working age in the period since the 1980s, in developed European countries, to rely on individualised reflexive deliberation. This is because this period was defined by rapid contextual discontinuity and morphogenesis caused, in part, by 'the synergy between multi-national production and information technology' (54) whereby familial or class-based socialization failed to provide a stable basis for young people's future decisions due to a lack of transferable 'relational goods' (98-102). I argue, in a far narrower sense, the recommendations produced by Leveson created a similar onus for reflexivity in politicians, in relation to press regulation.

This imperative for meaningful reform was bolstered by the support from the wider public for decisive action to tackle the type of abuse carried out by the press which was now common knowledge. The results of 'regular and repeated public opinion polls' (Ramsay and Moore, 2019: 96) highlighted support for Leveson's recommendations and claimed to show that the public were broadly 'in favour of legally underpinned regulation' (Ramsay, 2013a: 30).

Members of parliament were best placed to utilise these new features of the political environment if they chose to. Using Archer's description, we could argue that these situational factors facilitated the emergence or reinforcement of a distinct set of structurally generated 'causal powers' residing within parliament. We can see here the interplay between the emergent properties of 'structure and agency', a combination which Archer (2003: 130–131, 2012: 5) argues is vital for any understanding of 'agential doings' and social 'outcomes' (see also chapter two).

The outcome I attempt to make some sense of here is the complex and confused system of press regulation which has transpired from the post-Inquiry political negotiations. These 'causal powers' amounted to an enablement of new options or courses of action being available to the politicians working in a post-Leveson context. This meant the internal reflexive deliberations of political actors were unquestionably altered by the structural context within which the negotiations on Leveson were taking place. The structure itself had been influenced by the outcome of the Leveson Inquiry.

Of course, this does not mean that most politicians would necessarily *choose* to utilise these new structural enablements and, as already suggested, the considerable causal powers residing within sections of the corporate press would simultaneously be mobilised to counteract their effects. The Leveson Inquiry itself had been an animal of existing political and judicial institutional structures underlining the purpose and format of such an endeavour, perhaps influencing the reception Leveson's final report received.

The effect of institutional understandings on the workings of previous public inquiries has been outlined in the literature. In an analysis of the highly controversial Hutton Inquiry, for example, Diana Coole (2005) argues that the concluding report was fashioned through an adoption of a dominant pre-existing 'judicial model'. Coole explains that this model, which is primarily associated with criminal trials, meant an overly 'empirical' (472) rationale informed the approach to collecting and interpreting evidence within the Inquiry.

Hutton's findings were therefore framed around the ability to categorically prove or disprove the veracity of charges aimed at individual actors.[76] According to Coole, this forensic analysis came at the expense of a more nuanced and wider understanding of the unintended consequences of collective cultural practices within institutions such as the Government, the MOD and the BBC. The nature of 'public inquiries and the reports they produce' are described as ceremonial and 'centrally concerned with establishing the legitimacy of organizations and institutions' (Brown, 2002: 47–48) when thrown into crisis.

Similar accusations have been levelled at the Leveson Inquiry with Des Freedman (2014: 134) noting its:

> emphasis […] on individual 'bad apples' and its reluctance to confront any structural issues meant that, despite overwhelming evidence to the contrary, corrupt organizations, complicit relationships and corrosive institutions were individualized, decontextualized and stripped of their systemic characters in order to pursue politically pragmatic resolutions.[77]

Freedman also notes the Inquiry's ritualistic qualities via a quotation from Richard Keeble (2012) who called the Inquiry 'spectacular theatre' displaying 'the illusion of moral intent by the state and its propaganda institutions' (in Freedman, 2014: 134).

The highly structured nature of his own Inquiry was alluded to by Leveson when describing his approach to the DCMS Committee, almost a year after the publication of his report. Leveson described his attempts to ensure the process was 'conducted […] judicially'. His recommendations on press reform were shaped by a legalistic procedure and rationale which meant, at least in the judge's eyes, they were equivalent to court-based judgments on criminal cases:

> I spend my life normally passing judgment in ways that affect people's lives enormously in court. I give a judgment. It is in writing. Everybody can see it and anybody can challenge it in a higher court. (HC Select Committee, 10 October 2013)

As per Archer's approach, such institutional influences do not render Leveson's recommendations entirely the result of pre-existing structures. Although these influences were likely to have conditioned, in part, the Government's decision to commit to an inquiry soon after the Millie Dowler revelations, along with the format of that Inquiry, and the

[76] One difference between this previous Inquiry and Leveson's terms of reference was that the latter was prevented from straying into an exploration of individual culpability due to the risk of prejudicing criminal court cases (see chapter eight).

[77] Freedman (2014: 135) proceeds to mount a partial defence of the Inquiry, for highlighting the collusive nature of the political/press nexus and potentially galvanising 'victims' groups, other media reform campaigners and indeed ordinary members of the public' to question the need for media accountability.

drafting and reception of its recommendations, these processes must also be understood in relation to the reflexive autonomous efforts of those actors participating at each stage.

Leveson's reflexive negotiation of competing principles – including public interest definitions – when putting forward his recommendations (see chapter four) provide one example of individualised reflexivity. It is highly likely that another judge, one equally qualified and committed to conducting the Inquiry in a judicial manner, would have produced a different set of recommendations when attempting to balance competing priorities presented by witnesses.[78]

The argument stands however, that owing to these structural and personal processes, the publication of Leveson's report materially altered the political context. Politicians were now confronted with a new set of conditions and choices to negotiate through reflexive deliberation. Additional political legitimacy was attached to ideas of improving press regulation through legislation. Leveson had also detailed steps for the Government to incentivise full participation, by all major national titles, in the new regulatory system (see chapter eight).

If Leveson's recommendations were followed, the state could facilitate a means of holding privately owned media organisations accountable for their actions, whilst extracting itself from the oversight process once the system was established. In the immediate aftermath of the publication of Leveson's report the prospect of substantively reconfiguring the relationship between the press and the state was firmly in the balance and in the hands of the reflexive deliberations of politicians.

The altered nature of these deliberations provides an illustration of the interdependent nature of 'structure' and 'agency' (Archer, 2012: 51). Structural conditions emanating from the Inquiry, including the specific content of Leveson's report, had a substantive effect on the agential deliberation of individual politicians.[79] It was now necessary for politicians of all stripes to grapple with the argument for a system of regulation underpinned by statute whether engaging in debates, or simply voting on this matter.[80]

[78] For example, David Calcutt QC – a barrister rather than a judge – eventually called for an end to self-regulation (Curran and Seaton, 2018: 470; and see footnote 58 of this thesis), which Leveson stopped short of.
[79] See chapter two for Archer's description of the interplay between structure and agency.
[80] It might be thought that voting with the 'whip' on such issues requires little reflexivity, but just like journalists prioritising the demands of their editors must first recognise these demands as 'constraints' (see chapter three), the prioritisation of Party affiliation, or decision that press regulation is not a priority worth voting against a party for, necessarily involves reflexivity.

Regardless of a parliamentarians' established views on the matter, they were compelled to engage with Leveson's report reflexivity, to decide how best to promote it or finesse their lines of attack. These reflexive deliberations would necessarily include the potentially fallible identification of the qualities of this new political context. Politicians accordingly oriented their personalised priorities and 'projects' (Archer, 2012: 56), including their desired post-Leveson outcome, in relation to these novel circumstances.

Competing priorities and vested interests

As noted earlier, politicians' pre-established vested interests and personalised ultimate concerns conditioned their reaction to Leveson's recommendations. Such priorities might include the partisan need to support their party's stance on press reform. The concentration of power within major political parties in leaderships, cabinets or shadow cabinets, limits the number of individual actors able to meaningfully influence issues such as media reform through their own reflexive choices.[81]

The effect of such top-down partisanship on the political process was complicated in this period by the hung parliament produced by the 2010 General Election. No one party could rely on its own MPs alone to vote measures through the Commons. A high value appeared to be placed on cross-party agreement throughout the post-Leveson process, resulting in many formal talks between each party leader and senior party figures.

This need for broader consensus was cited by incumbent Culture Secretary, Maria Miller, within a previously cited DCMS select committee. Miller discussed how the coalition arrangement affected these behind-closed-doors negotiations: 'this is difficult and it is complicated. It is a coalition situation and we had an imperative to get this sorted' (HC Select Committee, 16 April 2013). This statement, and similar sentiments expressed during Commons debates, presents a lack of cross-party consensus as a potential barrier to progress on press reform.[82]

As will be returned to, this need for consensus was starkly demonstrated by the abortive attempts of the Conservative Party to push through a charter on press regulation without the

[81] As explored below, this was arguably compounded by using a royal charter which resulted in less opportunity for wider parliamentary scrutiny than would be afforded by an act of parliament or parliamentary bill.
[82] Examples of comments within the Commons stressing the need for parliamentary consensus during these negotiations include those made by Clegg (HC Deb 29 November 2012, Col 470), Miller (HC Deb 03 December 2012, Col 597; HC Deb 13 Feb 2013, Col 868), Blunkett (HC Deb 03 December 2012, Col 636), Paisley (ibid, Col 672), Hanson (ibid, Col 690), Cameron (HC Deb 05 December 2012, Col 860), Rotheram (HC Deb 13 Feb 2013, Col 864), and Hughes (HC Deb 13 Mar 2013, Col 320).

agreement of either their coalition partners or the Opposition. Additional competing vested interest for politicians and political parties included the perennial need to appeal to the electorate whilst avoiding negative media coverage.

What has been called 'the exposure […] of the anti-democratic relationships between […] press and politicians' (Freedman, 2014: 15) during the Leveson Inquiry highlighted another set of longstanding vested interests between elite media stakeholders and those at the top of government. A host of past and present political figures could be seen engaging in a form of public self-flagellation during the Inquiry, lamenting the inappropriate tightening of their personal and professional bonds with various prominent figures within the press (Curran and Seaton, 2018: 164–166).

The need felt by the Government to gain the press's approval was likely to have been as much about self-protection as the practicalities of ensuring compliance with a new regulatory system. Politicians and journalists often enjoy a mutually beneficial relationship, albeit one characterised by 'uneasy exchange and reliance' (Davis, 2009: 205). Journalists are given access to policymakers as a primary news source through on and off the record briefings, and politicians are provided with a platform through which to air their messages to the public.

The ability of news organisations to lobby government sometimes overtly on behalf of their readers (see discussion of 'Sarah's Law' in introduction), and at other times privately,[83] is also embroiled in this relationship. It could be difficult, if not impossible, to 'dovetail' (Archer, 2003: 163) a desire to maintain these relational enablements whilst imposing unwelcome regulatory conditions on the press. An individual politician's commitment to the types of dominant traditional definitions of the public interest previously explored (see chapter one) could impact their response to reinvigorated calls for state-based solutions to press regulation.

The interplay and prioritisation of these competing concerns – along with the myriad idiosyncratic priorities not identified here – with the altered political context on press reform, uniquely shaped the reflexive deliberation and actions of those politicians involved in the post-Leveson process. Collectively and relationally these deliberations would cement the

[83] For example, Peter Oborne (2008: 265) claims former Prime Minister Tony Blair discussed one of Rupert Murdoch's commercial interests with his Italian counterpart, before feeding information back to the mogul, labelling Blair one of 'the media tycoon's personal leg-men on business deals'. Previously, Murdoch 'secretly met Mrs [Margaret] Thatcher for Sunday lunch at Chequers' in 1981when acquiring *The Times* and *Sunday Times.* A bid the Government subsequently appeared to enable to bypass the Monopolies and Mergers Commission (Davies, 2014: 211).

structure of regulatory reform going forwards as the 'morphogenic cycle' played out (Archer, 2020).

An analysis of the political process is, therefore, vital for any understanding of the long-term legacy of the Leveson Inquiry, which unfortunately appears to have amounted to a version of self-regulation which is equally insular and more disjointed than what went before. The current system has been characterised as 'a plethora of complaints-handling procedures more likely to confuse than to enlighten the public' (Jempson et al., 2017: 278).

Although the Press Recognition Panel (PRP) has been established as the recognition body which Leveson recommended, ready to credit the independence and capability of any prospective regulator, no mainstream national newspaper publisher is currently a member of a regulator certified by this body. Most of the national press are regulated by the Independent Press Standards Organisation (IPSO) which is funded by the industry and has never sought accreditation through the PRP – although IPSO does not meet many of the PRP's criteria for independence from the industry (Media Standards Trust, 2013c, 2019).

Two national titles, the *Financial Times*, and the *Guardian*,[84] as well as other major legacy newspaper organisations such as the *Evening Standard* in London and the *Independent* which now solely operates online, have elected to work outside both IPSO and the PRP's recognition system. Instead, these news organisations run 'their own internal complaints and standards processes system' giving a named individual oversight and responsibility such as a 'readers' editor', 'Complaints Commissioner' or 'Executive Editor', or running a collective process conducted by a 'review panel' (UK Parliament, 2020: 14).

Although these arrangements are mostly described as independent by those operating them, the fact that certification through the PRP has been avoided means such claims are difficult to verify. Despite the various warnings of potential consequences of Leveson's recommendations circulated at the time of the Inquiry and beyond, this disjointed, partial and ineffective regulatory situation was surely not an outcome anybody anticipated.

[84] As the paper which pursued and broke the hacking scandal (see introduction), the *Guardian's* decision to withdraw from the Government's post-Leveson regulatory framework has been criticised by academics and campaigners. Fenton (2021: 172) claims this decision meant the paper 'made itself a silent accomplice in the very corruption it once seemed determined to root out' meaning, as Cathcart (2021: 55) notes it 'was now the enemy of what it had once stood for and the ally of papers whose intransigence it once decried.'

It certainly does not provide any sense of resolution for those who recognised the need for meaningful change within the industry in light of the hacking scandal and hoped Leveson's recommendations might be the catalyst (Jempson et al., 2017: 283). It might be argued that the existing system does benefit those whose professional and economic interest lie in the avoidance of any stringent journalistic obligations being employed outside the immediate control of the industry.

The structural isolation of a judicial inquiry

The need to turn attention to the post-Inquiry political process when attempting to make sense of this outcome was pre-empted by Leveson himself, both before and after the publication of his recommendations. At points in the Inquiry the judge emphasised the limited nature of his role in any future regulatory reform. These constraints were inscribed in the terms of the Inquiry and perhaps influenced by the judicial conventions underpinning it.

Leveson's role in producing a report and set of recommendations for the Government appeared to curtail his ability to intervene in wider events pertaining to regulatory reform once the Inquiry had disbanded, whether or not he had any desire to do so. An exchange with Lord Hunt analysed in the previous chapter for different purposes highlights this. In this instance Hunt asserted the PCC's willingness to initiate the changes contained in the 'industry proposal' in an expedited manner, putting onus on Leveson to give the organisation what Hunt called a 'green light' to do so (Hunt, 2012a: 5).

Hunt claimed he was 'pleading' with Leveson 'for an opportunity to make progress now' (Hunt, 2012a: 7). Leveson did not comply with Hunt's request for immediate approval, or indeed disapproval. In fact, he emphatically rejected the premise that he had the power to sanction any such action taken outside of the Inquiry by the PCC or presumably any other party. In Leveson's words, such approval was not within his 'armoury' (in Hunt, 2012a: 8) of judicial powers.

Leveson underlined this point by emphasising the determining role the Government would play: 'I will provide a report which will make a recommendation but it won't be my decision' (in Hunt, 2012a: 8). Once these recommendations were published, at least as far as Leveson was concerned, the baton of responsibility would be firmly passed to parliamentarians to implement his recommendations as they saw fit.

These limitations on Leveson's ability to intervene in wider events are clearly outlined in the terms of reference set for the inquiry (The National Archives, 2014c) which limit Leveson's duties to the primary tasks of: 'inquir[ing]' and 'make[ing] recommendations'. Admittedly these terms covered a wide remit,[85] giving Leveson space to address multiple issues including the press's relationship with Westminster.

Leveson was certainly not inhibited when producing a detailed critique of the 'industry proposal' in his report, but it would be for politicians to ensure that these concerns were assuaged within a new regulatory system. Beyond the above impact of Leveson's report on the political context, the judge eschewed any further intervention, refusing to pass comment on the political process which unfolded. This intention to remain aloof from the political fray was underlined by his speech in the press conference accompanying the publication of his report.

Here, Leveson let it be known that this was the final public 'comment' he intended to offer on the report's contents. His keenness to demonstrate his distance from the constitutionally sensitive political negotiations which would inevitably follow was shown by the final line of this speech: 'the ball moves back into the politicians' court: they must now decide who guards the guardians' (Leveson, 2012b: 8).

The author of these recommendations being unable, or refusing, to play any role in their implementation, affirms that politicians were uniquely burdened with responsibility for establishing effective press regulation. Although understandable, and most likely driven by a perception of his personal and professional responsibilities, Leveson's self-imposed silence had consequences. At times during the ensuing political wrangle the lack of a unifying authoritative voice on what it meant for a regulatory system to be 'Leveson compliant' was noticeable.

This encouraged, or at least enabled, the content of Leveson's report to be reflexively repurposed by politicians attempting to balance their own political priorities against the model of regulatory reform put forward. Leveson's policy of non-intervention, however, must also be understood in relation to traditional roles fulfilled by the judiciary and the state within liberal democracies. Just as Leveson was free to conduct his Inquiry without political interference, so too the political processes which followed could not be dictated by an

[85] See introduction for discussion of how this remit established.

unelected judge who might later be responsible for enforcing any new laws which were passed.

Indeed, this separation is described as '[o]ne of the basic features of the British political system' whereby 'once legislation is passed by Parliament (and signed into law by the Sovereign) it cannot be invalidated by judges' (Wilson, 1994: 192). This is partly necessitated by Britain's lack of 'a formalized constitution' (ibid). In this particular judicial exercise, however, I would argue that a certain incoherent asymmetry was created by the need to operate within such parameters, dampening the reformative potential of Leveson's recommendations.

As established, meaningful press reform necessitates a recalibration of the relationship between the state and the press. We might question whether this fine tuning was best overseen by a senior representative of the judiciary, which is itself embroiled in a finely balanced relationship with the state. In my opinion this complexity, and the overtly political nature of any attempt to reform press regulation, lay behind Leveson's later reflection that this undertaking 'was at the very edge of what it was appropriate for judges to be involved in' (HC Select Committee, 10 October 2013).[86]

Leveson's post-Inquiry silence might have been a pre-emptive attempt to avoid vitriol and recriminations for his wider profession. Any perceived overreach by the judge would surely inspire recriminations and newspaper headlines from those sections of the press actively campaigning against regulatory morphogenesis. His decision may reflect both the expectations of a judge's role within an inquiry and, one would suspect, a desire to avoid unnecessary controversy.[87]

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[86] Although not a focus of this thesis, it may be illustrative to touch on more recent events and the palpable sense of tension that has emerged between the Government and the judiciary at various stages of the drawn-out negotiations of Britain's exit from the European Union. The mere supposition of judicial interference with this nominally democratic and contentious process was met with fierce criticism from both within and outside parliament. One, now infamous headline from a Brexit-backing newspaper identified and branded three High Court judges 'Enemies of the People' (Slack, 2016), for a ruling against the Government on the legality of the method they pursued to facilitate the divorce. Incidentally, the headline was for an article penned by a journalist subsequently employed as the Prime Minister's official spokesperson. More recently, the 24 September 2019 Supreme Court ruling on the Government's attempt to prorogue parliament, to prevent parliamentary intervention before the deadline for establishing the terms of a withdrawal agreement, resulted in direct criticism from the Government and raised further questions over the democratic role of the judiciary. Some fear these sentiments will translate into political attempts to gain power over the appointment of Supreme Court judges, compromising the institution's political independence (Merrik, 2020; Roberts, 2020).

[87] It is interesting that this approach differed from the process undertaken by the barrister David Calcutt QC in the1990s (see footnote 58). As with Leveson's report (see 'Leveson's Plan B' below), Calcutt included a

At the Select Committee almost a year on from his report's publication, Leveson pointedly refused to engage in any lines of questioning regarding the political situation. He claimed such questions constituted a 'red-line' (HC Select Committee, 10 October 2013) for someone in his position. To re-engage with or add comment to his recommendations to account for intervening events would have, in the judge's eyes, compromised the 'absolute independence' it was incumbent on him to maintain.

Any additional comment would be a political act. Leveson reaffirmed his priorities of maintaining 'independence from Government' and avoiding to be seen 'entering into a political argument' or publicly 'comment[ing] on what is now a politically contentious issue' (HC Select Committee, 10 October 2013). He again explained this in the language of the judiciary, claiming if he added further comment at this point some might rightly ask: '"Where is your evidence? Where is your argument? Where are the submissions? What chance did you give me to put the contrary point"' (ibid)?

The impact of Leveson's disengagement

Despite this clear rationale, Leveson's reflexive recognition of these professional constraints, which he felt compelled him to disengage from the process, unarguably contributed to a perceptible lack of coordination between his report and its implementation. As we shall see, there was a tendency to impute meaning and sentiment onto Leveson's report within parliamentary debates held upon its publication. Politicians reflexively accentuated what they considered desirable aspects of his recommendations, whilst downplaying others.

Under different circumstances, and in relation to a different set of issues, the public might expect the media to fulfil the traditional function of a dispassionate 'fourth estate', holding the Government to account over decisions taken when implementing judicial recommendations concerning matters of considerable public interest. As established, in this case, the media were not only heavily implicated by the outcome of this process but sections

recommendation for statutory intervention should 'the PCC not set up in time, or were there to be a low rate of compliance or large-scale flouting of its adjudications' (O'Malley and Soley, 2000: 89). At the request of the Government however, Calcutt undertook a review of the regulator eighteen months on from its inception. He expressed 'disappoint[ment] that the government and the press had not followed the committee's recommendations more closely' and produced 'a devastating indictment of the PCC' (Bingham, 2007: 85–86). Arguably the outcome remained the same as the Government failed to implement Calcutt's recommendation for a 'statutory Press Tribunal' (ibid: 86) partly due to a lack of political capital and a looming general election (O'Malley and Soley, 2000: 93). Perhaps it is significant that Calcutt intervened at the Government's request, rather than voluntarily interfering in ongoing political negotiations.

of the press were actively campaigning against the main tenets of Leveson's recommendations (Ogbebor, 2020; Ramsay, 2013a, 2014).

Despite Leveson's expressed hope that his recommendations would 'secure the support of the whole industry' (Leveson, 2012a: 1783), the press could certainly not be relied on to fill the void of an impartial and authoritative voice left by the self-imposed exile of the judge from the political arena. Evidence of the effect this void had on political debates can be sensed in the utterances of some politicians.

During a period of intransigence between the press and the Government (see chapter eight), Conservative MP Sir Tony Baldry used his contribution to a Commons debate to raise an open question on the possibility of Brian Leveson's input, asking if the judge might provide 'a steer on what he thinks should happen now' (HC Deb 31 October 2013, Col 1055). Perhaps some instruction or comment from Leveson on how to apply his recommendations to the events which had transpired might have provided some impetus for progress.

This question may have been raised rhetorically as a veiled attack on the recommendations themselves, made in full awareness that the judge had committed to making no such response. This seems likely considering Leveson's explicit refusal to comment in the Select Committee earlier that month. The criticism implicit in such statements is that the inability of Leveson's regulatory framework to command the support of the national press rendered them inoperable.

This overlooked the fact that the full spate of incentives Leveson recommended for gaining full participation were not in place. The topic of the judge's disengagement was expressed more directly by those MPs questioning Leveson during the Select Committee session. The then chair of the DCMS committee, John Whittingdale – a key figure in the later post-Leveson process when Secretary of State for Culture, Media and Sport (see chapter eight) – was particularly vocal on the impact of Leveson's stance during this gridlock between the press and the Government.

The MP proceeded to express what he called 'a degree of frustration' at Leveson's apparent refusal to intervene in a process which he said had now become 'stuck' (HC Select Committee, 10 October 2013). Other members of the committee expressed similar frustrations at the rigidity of Leveson's adherence to stifling legal conventions. Connor Burns told Leveson press non-participation was 'a problem created by your report at the invitation of the Prime Minister' (ibid).

Frustration was expressed by fellow Conservative committee member Tracey Crouch, who implored Leveson to approach the issue 'as a person' and 'a human being' rather than a member of the judiciary. Leveson, she argued, had a responsibility to modify his approach to the outcome of his Inquiry compared to other 'judicial decisions' of 'case of X versus Y' (HC Select Committee, 10 October 2013). In the MP's view, the Inquiry recommendations had far wider societal ramifications for 'the future of our press' (ibid) and, one might add, those wronged by the press.

Liberal Democrat MP, John Leech, similarly questioned whether the public might benefit from Leveson's 'independent' comment on the situation, as opposed to solely relying on the input of 'politicians […] or the press who have [both] come to a view' (HC Select Committee, 10 October 2013) for information and opinion on the progress of regulatory reform. This reemphasises the previous point that the vested interests of those participating in the political process created a lack of publicly available independent comment.

One potential benefit of Leveson using his platform to air his assessment of the situation one year on from the Inquiry was that the public could hear from a disinterested party who had become 'pretty much an expert in th[e] area' (Whittingdale, HC Select Committee, 10 October 2013) of press regulation. If Leveson were to suggest a workable means of achieving progress, the public might be reassured that these solutions were offered by someone without a direct personal or professional stake in a specific outcome – barring perhaps a desire to see his recommendations implemented correctly.

In summary, there is an argument that without Leveson's input both the political negotiations and the quality of publicly available information about these negotiations suffered. This further emphasised a perpetual issue in the struggle for media reform: the lack of structural independence of those carrying out the process. Those political and journalistic actors with most to lose from any change to their mutually beneficial relationship were precisely those driving these negotiations and informing the public about their progress.

In Leveson's eyes, offering public commentary on this live political issue would have compromised the very independence which his recommended methods for instituting regulatory reform were predicated on. Instead, throughout his Select Committee evidence Leveson repeatedly pointed to the fact that all his views on the issue were publicly available, and outlined in some detail, within the pages of the report he had published almost a year earlier.

Indeed, those who did examine the report would know it contained explicit direction for the very eventuality confronting policymakers of a resistant press refusing to meaningfully engage in the new regulatory system.

Leveson's 'plan-B' and the stance of Shami Chakrabarti

Within his report, Leveson concluded 'with some measure of regret' that if the press's refusal to co-operate threatened to derail the introduction of meaningful oversight for self-organised regulation, the Government must 'consider' directly instituting 'a statutory backstop regulator' (Leveson, 2012a: 1758). Although keen to emphasize this was not his preferred scenario, and something unlikely to be required, Leveson maintained that a credible threat of statutory regulation was one of the few factors which could motivate the press to concede control over monitoring their own regulatory system (ibid: 1669).

Whilst firmly a secondary preference, statutory regulation was seen as preferable to the prospect of the press holding progress on regulatory reform hostage whilst public attention and political will dissipated. For reasons which at this point in this thesis should be clear, even the prospect of holding statutory regulation in reserve as an unimplemented secondary option was contentious and considered unconscionable by some. Amongst those to publicly voice such concerns was Shami Chakrabarti.

The barrister and then director of the human rights group Liberty had been one of the assessors to the Inquiry advising Leveson on his report. Chakrabarti's established commitment to 'the protection of freedom of expression' (Cathcart, 2012a: 97) and protecting civil liberties from questionable state intrusions may provide some context to her resistance to offering a blanket endorsement of all Leveson's suggestions. This stance was highlighted within Leveson's report through a footnote within the above section on the need for a backstop statutory regulator.

According to this footnote, Chakrabarti had 'advised against the contemplation of any element of compulsory backstop standards regulation of the press' in favour of a 'strengthening of the financial assistance available to those who feel their rights have been abused by the press' enabling them to mount a legal challenge (Leveson, 2012a: 1758). In

essence, the major point of difference between Chakrabarti and Leveson was the role the court could play in regulatory oversight.[88]

In the days following the publication of Leveson's report Chakrabarti publicly reasserted her opinions on these matters, initially through an opinion piece in the *Independent.* Although she expressed praise for the main tenor of Leveson's report, which, she claimed, 'makes good sense for the public, the press and politicians alike', she expressed disagreement with what she labelled the 'last-ditch alternative of compulsory statutory regulation, should the press be unwilling to implement his proposed scheme' (Chakrabarti, 2012).

Chakrabarti affirmed 'Liberty would be unable to support' any such use of statutory regulation on the basis that '[f]reedom of press is fundamental to our democracy and must be protected' (Chakrabarti, 2012). Even if this criticism was reserved solely for Leveson's alternative plan for enforcing press standards onto an uncooperative media, such sentiments clearly mirrored elements of the neo-Miltonian arguments adopted by those campaigning against all forms of state involvement or underpinning in press regulation.

As such Chakrabarti's comments were seized upon by sections of the press. The apparent disharmony between Leveson and one of his advisors was represented as seriously undermining the legitimacy of the entire project before political negotiations had begun in earnest. Appearing on the BBC over the same weekend that her comments were published, Chakrabarti appeared keen to counter the developing narrative that placed her at odds with Leveson's plan and her intervention as a decisive blow against its implementation.

She attempted to emphasise the similarities between her own and Leveson's positions, and disputed one newspaper's framing of a comment she had made in a separate interview as a 'bombshell' to the inquiry which 'threatens the viability of key parts of the report' (Rose, 2012). Whilst attempting to clarify her position on regulatory reform, which she claimed was 'getting misunderstood [and] unnecessarily polarised', she voiced strong support for 'the Leveson plan for independent self-regulation of the press' (The Andrew Marr Show, 2012a).

Chakrabarti effusively heaped praise on Leveson's 'ingenious' identification of what she considered to be effective 'carrots and sticks' for inducing voluntary compliance from

[88] Chakrabarti similarly advised that the court would be a better forum for the recognition of self-organised regulators to take place, rather than within a public body or quango with a structural relationship with the state, such as Ofcom. Leveson disagreed on the basis that courts required an active legal challenge to be made in order to adjudicate (Leveson, 2012a: 1775).

newspaper publishers. Nonetheless, she maintained that where she differed from the views outlined in the report, or as she put it, where she felt compelled to 'get off the bus', was in the use of statutory regulation as the default alternative if these incentives failed to achieve anything less than total compliance (The Andrew Marr Show, 2012a).

It is difficult to assess the damage this attempted nuanced response to the myriad recommendations contained in Leveson's report did to the overall project of reform. A 'statutory backstop regulator' was never amongst Leveson's core recommendations. It was, rather, an alternative means of achieving the criterion of full coverage of 'all significant news publishers' (Leveson, 2012a: 1754) if other incentives failed. Thus, Chakrabarti was correct when arguing Liberty's refusal to back the creation of a statutory regulator did not amount to a general rejection of Leveson's reforms.

It seems equally clear, however, that this highly public intervention from one of the Inquiry's own advisors, no sooner had the report been published, provided an indication of the difficulty of implementing these recommendations in a manner which satisfied the competing priorities and legitimate concerns of different sections of society. This intervention arguably put those advocating for the report to be implemented in its entirety on the back foot.

Whether an attempt to damage the credibility of Leveson's report through wilful distortion, or an earnest reflection of the felt significance of such divergence between Leveson and his advisor, the reaction to Chakrabarti's comments indicated the difficulty of assessing the degree of harmony between interpretations of Leveson's recommendations and the recommendations themselves. In the absence of Leveson's ability to comment, Chakrabarti's intervention appeared to set the tone for the adaptive reflexive modification of Leveson's recommendations by various parties.

Chakrabarti was far from the only influential individual to consider statutory regulation a red line, not to be crossed under any circumstances. A strong opposition was voiced within parliament against the prospect of crafting legislation which dictated press standards, and major differences over the legitimacy of using legislation to underpin the new system were voiced. Such growing calls to avoid statutory regulation at all costs may, however, have had unintended consequences.

Ruling out statutory regulation as a contingency inevitably left questions over how to compel the press to actively pursue more robust and onerous regulatory commitments. Freed of concern for the ultimate sanction of professional obligations and standards being written into

law, how could the press be galvanised to impose such standards on themselves? This difficulty was, again, anticipated by Leveson and expressed within the pages of his report.

The judge had explicitly alluded to the likely short-term effects of his Inquiry on the position adopted by the press. Their stated willingness to meaningfully engage with reform and to acknowledge the failings of the PCC (see chapter four) was undoubtedly influenced by such additional scrutiny. Although Leveson ruled the 'industry proposal' inadequate, on the basis that it failed to ensure a regulator's independence from the industry, the judge recognised that it 'represent[ed] a significant improvement on the PCC' (Leveson, 2012a: 1648).

He was particularly welcoming of the steps identified in this proposal to improve 'internal governance and accountability' (Leveson, 2012a: 1764) within individual publishers, including a collective commitment to bolster and standardise internal procedures for dealing with readers' complaints. Publishers also agreed to submit themselves to a greater level of scrutiny through an annual review process including an obligation to submit compliance reports to the new regulator detailing how complaints were dealt with and how ethical standards were enforced.

The press was unlikely to put forward such suggestions or volunteer for such commitments, without the intense scrutiny and potential regulatory consequences which accompanied the Inquiry. As such, Leveson stated that the primary motivating factor behind these actions was 'the threat that the Inquiry will recommend some form of regulation that is less to their taste' (Leveson, 2012a: 1671). Equally self-evident was the temporary nature of this motivation which would only be in play whilst Leveson's recommendations remained unpublished.

As argued previously, the 'industry proposal' can be read as an attempt to persuade Leveson to adopt a similar system within his own recommendations. Once published, the focus of all interested parties would converge on the subsequent political negotiations. In this context the potential loss of Leveson's contingency plan of statutory regulation further curtailed the ability of the Government to influence press action going forward.

With the Inquiry no longer an obstacle, and Leveson extricating himself of responsibility, as the judge wrote in his report, it was for the Government of the day to continue to motivate industry co-operation by moving to 'credibly represent a real intention to legislate quickly should an acceptable industry solution not be forthcoming' (Leveson, 2012a: 1670–1671). If, as transpired, the threat of statutory regulation became unconvincing, partial or patently

rhetorical, there would appear to be very little compelling the industry to aid the political process to implement a system which met Leveson's criteria.

In fact, in these circumstances it was arguably in the press's best interest to hinder progress in the hope that a loss of momentum and interest from the public would entrench the status quo. Conversely public expectation for the Government to act on the Inquiry could pressure parliament into abandoning the elements most unpalatable to the press to have the matter settled. Removing the option of statutory regulation meant there were no consequences for the press if they chose to obstruct parliamentary efforts.

The industry could drive and dictate the pace of progress and hand-pick its preferred set of reforms. In other words, those arguing against the use of statutory regulation as the default back-up position, perhaps unwittingly, decreased the likelihood of ever successfully implementing the preferred plan of 'self-organised independent regulation' (Leveson, 2012a: 1788) secured through a recognition body with statutory backing. At the very least, it meant it was less likely that any new regulatory system would strictly adhere to Leveson's criteria for independence.

The chance to present a firm and unitary stance on the consequences facing the industry if they failed to comply was ceded within parliament from the outset as early negotiations were characterised by a failure to agree a position on the issue. Although initially the Conservative section of the Government did indicate a willingness to resort to statutory regulation if the press failed to deliver a workable alternative, the messaging appeared purposefully veiled and obscure.

In early debates on Leveson's proposals the Prime Minister repeated the claim that press inaction on reform would require his government 'to take further action' (HC Deb 29 November 2011, Col 459; HC Deb 05 December 2012, Col 868). Similarly, his Culture Secretary, Maria Miller, claimed that 'change can come either with the support of the press or […] without it. Be in no doubt that if the industry does not respond, the Government will' (HC Deb 03 December 2012, Col 594).

It appears that the Government's policy at this point was to remain unspecific and non-committal about the action it might take. During the above debate, however, Miller appeared pushed by a line of questioning from Labour's Jack Straw to concede that the Government's actions would draw on Leveson's plan and 'include legislation' (HC Deb 03 December 2012, Col 596). In retrospect, it is difficult to conclude that this was anything other than lip service.

Any implicit threat was outweighed by the far more explicit desire voiced within the Tory Party to avoid any legislation whatsoever touching on press regulation. The fact that, to this day, the press remains uncompelled to comply with the recognition system established by parliament suggests that any attempts the Government have made to convey a willingness to legislate has had little effect. This inability to maintain a credible stance on statutory backstop regulation may owe something to the wider realisation that above all else the Government wished to avoid the political consequences of an adversarial relationship with the press.

The result of this failure to maintain an intention to legislate also indicates how finely balanced and interdependent the different elements of Leveson's framework for press reform were. A demonstrable lack of enthusiasm for the one part of Leveson's plan, which he regarded as largely undesirable and unlikely to be required, could curtail the entire project. This was just part of the intricate arrangements of incentives and deterrents which Leveson regarded as necessary for instituting voluntary regulation in an effective manner (see chapter eight).

As negotiations progressed and different elements of these recommendations were subverted, redefined, and ultimately dropped, the fragility of this framework became ever more apparent, as did the unlikelihood of achieving a voluntary system which truly prioritised the needs of the public. In retrospect it seems each recommendation offered by Leveson formed a piece of the puzzle for regulatory reform. In the final section of this chapter, which provides an analysis of the content of initial parliamentary debates, I will outline how several pieces of this puzzle were bent out of shape and discarded during the initial push for parliamentary consensus.

The transition to a royal charter: 29 November 2012 - 18 March 2013

(i) Opening salvos

As established, the authorial vacuum left by Leveson's silence enabled the reinterpretation and repurposing of his report by politicians. Whether an active attempt to reshape the meaning of these recommendations in alignment with their own priorities and vested interests, or a genuine effort to understand and apply the recommendations through the means available in Westminster, parliamentarians' interpretation of the report was a truly reflexive process. This resulted in several iterative modifications to Leveson's original plan being circulated at various points throughout these political negotiations.

This recontextualising of Leveson's work was evident within the very first debates following the report's publication. This was particularly apparent in discussions on one topic which became symbolic of a division between opposing positions on the report: the role of legislation in underpinning the regulatory system. When addressing the topic within a Commons debate held '[w]ithin hours of the publication of the Leveson Report' (Ramsay and Moore, 2019: 90), the Prime Minister immediately presented Leveson's recommendations as a set of pliable guidelines and 'principles', rather than an intricate and comprehensive framework.

Opening the debate Cameron stated that he was 'not convinced at this stage that statute is necessary to achieve Lord Justice Leveson's objectives' (HC Deb 29 November 2011, Col 449), despite the report's categorical recommendation that legislation was required to 'provide a mechanism to recognise and certify' any new self-regulatory body and to underpin the viability and effectiveness of the system (Leveson, 2012a: 1772). Cameron appeared to believe that it was the prerogative, or perhaps even the duty, of his government to reflexively adapt Leveson's recommendations.

Responding to a question from a Liberal Democrat MP on the need to fulfil the wishes of the victims of press abuse by implementing Leveson's recommendations in full, Cameron warned against a tendency to 'completely obsess' about using statute to fulfil this aim (HC Deb 29 November 2011, Col 460). In the same breath the Prime Minster indicated that he regarded statutory underpinning as one amongst 'many other issues about what makes for good, strong, robust and independent regulation' (ibid).

Such issues included the provision of 'a really tough, independent regulatory system' with the ability to 'really hold the press to account', lodge 'fine[s]' on malfeasant editors, and demand what he called 'proper apologies' (HC Deb 29 November 2011, Col 467). Cameron appeared to consider himself able to improve on, rather than just implement Leveson's plan. He seemed determined to accrue the benefits Leveson identified in underpinning regulation with statute without lodging any such legislation.

What was drafted by Leveson as a compromise to alleviate the press's concerns by using the lightest, or most far-removed, form of legislation available (see chapter four) was moved further towards a position it was hoped would please the industry. The need to formalise the role of a recognition body in law to guard against self-regulation regressing into non-independence and self-gratification was duly ignored in this opening gambit by Cameron.

This position created an early bone of contention with the Opposition, as well as the Conservative's coalition partners. Then Labour Party leader, Ed Miliband, appeared to echo Leveson's perspective within his contribution to this debate. Miliband countered Cameron's partial endorsement by stating that legislation would be needed to enable the press to retain responsibility for establishing a regulatory system whilst ensuring 'criteria of independence and effectiveness' were met (HC Deb 29 November 2011, Col 451).

Shadow Culture Secretary, Harriet Harman, starkly illustrated Labour's differentiation from the Government's stance, encapsulated in Cameron's infamous refusal to 'cross[] the Rubicon of writing elements of press regulation into the law of the land' (HC Deb 29 November 2011, Col 449). According to Harman, her party were united in the view that instituting a regulatory system which was 'independent both of politicians and of the press' could 'be achieved only by legislation on the basis Leveson proposes' (ibid, Col 472).

Labour's initial position was that Leveson's recommendations ought to be implemented virtually in full. This included Miliband voicing support for Ofcom being given the statutory responsibilities of a recognition body (HC Deb 29 November 2011, Col 451). This latter proposition was something both the Prime Minster and Deputy Prime Minster under the coalition, the Liberal Democrat's Nick Clegg, appeared less enthused about. Cameron claimed to be resistant to, although not yet fully decided on, increasing what he asserted was Ofcom's already sizable power over the media by adding the written press to the regulator's portfolio (ibid, Col 452).

Clegg was more explicit in his disapproval of this recommendation, stating he was 'yet to be convinced that' the current regulator of broadcast media was 'best placed to take on this new, light-touch function with the print media' (HC Deb 29 November 2011, Col 470). Perhaps this position reflected the direct role Ofcom played in maintaining ideas of impartiality and balance within television and radio programming, which would not be countenanced within the press.

Despite these misgivings on Ofcom, Clegg appreciated the need for a recognition body to be enshrined in legislation. This put the Liberal Democrats at odds with their coalition partners in government over their response to Leveson's report to the extent that Cameron (2019: 259) claims in his autobiography that 'on press regulation there was no Conservative–Lib Dem coalition and Labour opposition; there was, effectively, a Labour–Lib Dem coalition and a Conservative opposition'.

Clegg's party indeed mirrored Labour's alignment with Leveson's major recommendation for a 'self-regulatory body, established with a change to the law' in a manner both 'proportionate and workable' (HC Deb 29 November 2011, Col 475). In Cameron's (2019: 263) view, again stated in his autobiography, this meant his most difficult task during these negotiations was to dissuade these opposition parties of their desire 'to stay as close to the Leveson blueprint as possible, and to legislate accordingly'.

The position publicly adopted by Cameron in these initial debates has been said to have set a lasting tone for the political negotiations which followed (Ramsay and Moore, 2019: 90). It encouraged any legislative measure suggested in relation to the press to be treated with suspicion (Fenton, 2018a: 121), no matter how necessary and despite the fact that underpinning a recognition body in statute could have eliminated the need for a more direct form of statutory regulation.

It is telling that Cameron's position was largely in line with that adopted by the likes of Lords Hunt and Black and those backing the 'industry proposal' during the Inquiry (see chapter four) and beyond. One example of this is the idea, 'assert[ed] relentlessly, and in defiance of the facts' by sections of the mainstream press, that any form of legislation which touches on press standards was 'if not outright censorship, then a slippery slope leading to that inevitable fate' (Fenton, 2021: 177). This was the 'Rubicon' Cameron evoked.

On this basis, Cameron claimed legislation could act as 'a vehicle for politicians, whether today or sometime in the future, to impose regulation and obligations on the press' (HC Deb 29 November 2011, Col 449). Perhaps the Prime Minister's position against statutory underpinning was not only significant in itself, but for lending legitimacy to those arguments from press representatives which utilised a distinctly libertarian definition of the public interest on the dangers posed to press freedom, and therefore public knowledge, by any and all political intervention.

The Prime Minster had thus aligned himself with the position predominantly advocated by the various trade bodies and representatives of the existing regulatory system, whilst opposing Leveson's recommendations, his coalition partners, the Opposition and judging by the tenor of these initial debates on 29 November, a majority of sitting MPs. Despite their impact, it would be wrong to suggest these early exchanges entirely determined what was to come.

The protracted and fluid nature of the subsequent political wrangles, involving several volte-faces and compromises from government and opposition members, created the partial and incoherent regulatory system we have today. This end result, which includes the creation of a recognition body that the mainstream press has refused to engage with, points to a less orderly process than one where each party leader stuck rigidly to their opening position.

In my view, what had a more lasting effect than the specific details of Cameron's vision for press reform was the sense of segregation and hierarchical prioritisation which characterised his above interpretation of Leveson's report. This appeared to rest on sorting the many recommendations made into two distinct categories. We could call these categories 'means' and 'ends'. Some recommendations, such as the call for a statute-backed recognition body, were treated as one of many potential means of meeting more fixed and universally agreed ends.

These ends included the achievement of regulation which was uninfluenced by both government and industry interests, and had the powers to meaningfully punish any press misconduct. Under this interpretation Cameron felt entitled to attempt to modify the 'means' if able to achieve those same 'ends'. Such a distinction, however, is not to be found within the report itself which, as I have argued, outlined a holistic framework for regulation; this was a reflexive response to the report's content most likely designed to discount those aspects least appealing to the Prime Minister by representing them as 'means'.

Another reading of the report might interpret statutory underpinning as an end in itself, representing the public good of introducing a body mandated by our elected officials to represent the interests and needs of the public above the commercial needs of newspaper proprietors – albeit at a remove from publishers themselves. Editors and proprietors might be forced to give due consideration to their relationship with, and obligations to, the public rather than solely focusing on narrow market-driven consumer interests.

As such Cameron separated 'Leveson's objectives' from his recommendation for statutory intervention (HC Deb 29 November 2011, Col 449). A related phenomenon in Cameron's opening response, which Ramsay and Moore (2019: 90) similarly describe as 'a curious truncation of the Leveson recommendations' was the Prime Minister's use of the term 'Leveson Principles', which the authors claim acted as a 'subsequent justification for rejecting the report's core recommendation of statutory underpinning'.

As such, the Prime Minister attempted to point to a broad confluence between himself and Leveson, claiming that they shared the same 'principles' and advocated the same 'approach' (HC Deb 29 November 2011, Col 466), whilst simultaneously contradicting the content of the report. According to the Prime Minister the only difference between his plan and that of Leveson was that Cameron intended 'to look very carefully at one or two of the recommendations that he makes about how that should be done' (HC Deb 29 November 2011, Col 466).

Here we see the Prime Minister's attempt to 'dovetail' (Archer, 2003: 163) two competing priorities. One was a desire to publicly align himself with Leveson's recommendations to satisfy both past victims of press abuse and the voting public at large. The other was a determination to avoid any statutory involvement in press regulation in what might have been partly an attempt to placate the press and avoid antagonising his friends and associates in the papers (see footnote 13) who he knew, in his words, would 'bear a grudge, and […] fight dirty' (Cameron, 2019: 263).

The oxymoronic nature of this stance was commented on by the Opposition's Harriet Harman, who stated that it was 'a complete contradiction in terms for people to say, "I want to implement Leveson, but without statute"', when the report clearly positioned statute as 'essential' (HC Deb 03 December 2012, Col 605). The Conservatives' argument may have also been an attempt to pacify internal party disagreements, attempting to appeal to members on both sides of the issue on press reform.

MPs such as George Eustice and Zac Goldsmith vociferously advocated statutory intervention, whilst the likes of Jacob Rees-Mogg, Connor Burns and Richard Drax railed against any use of statute whatsoever, no matter how light touch, on the basis that it represented an assault on longstanding British traditions of journalistic independence and freedom of expression. Offering a partial and incoherent defence of Leveson's report, however, had broader ramifications.

The Prime Minster had essentially expanded what was categorised as 'Leveson compliant' contributing to, if not creating, a political environment which encouraged the disorder that followed. Attempting to maintain an argument that stripping out a core structural element of the regulatory system outlined by Leveson amounted to compliance with his recommendations surely signalled to other interested parties, including within the press, that there was space for all sorts of reflexive adaptations of the report.

(ii) Negotiated chaos

Soon political and external negotiation became focused on how best to adapt and subvert Leveson's recommendations, whilst still claiming compliance, rather than whether to accept the recommendations at face value. Several alternative proposals and plans were put forward by different political parties and interest groups, all of whom claimed that their proposal fulfilled recommendations. This period saw, for example, both the Labour Party and the campaign group Hacked Off produced draft bills to indicate how Leveson's plan could be incorporated into statute (Media Standards Trust, 2013d).

The Conservatives bizarrely signalled an intention to publish a bill to demonstrate the unfeasibility of legislation in this area (*BBC News*, 2012). From this point onwards cross-party negotiations appeared to centre more on how best to reflexively adapt Leveson's recommendations to broker a political compromise. Cameron and the Conservatives continued to pursue an alternative means to statute with the Culture Secretary hinting at the 'potential alternatives' (HC Deb 03 December 2012, Col 596) which her party were exploring during a later debate.

The solution settled on to formalise this adaptation was to establish a recognition body through Royal Charter. This was an idea developed by Conservative Minister for Government Policy Oliver Letwin and subsequently endorsed by the Prime Minister (Media Standards Trust, 2013d; Sabbagh, 2012). Although no mention of this parliamentary mechanism was included in Leveson's report, it was evidently viewed by the Government as having the capability of achieving Leveson's primary ends sans legislation.

Letwin first shared a draft unpublished version of such a Royal Charter with 'a small group of stakeholders' (Media Standards Trust, 2013d) barely a month after the publication of Leveson's report. These stakeholders evidently included key industry figures such as the Editor Emeritus of the *Daily Mail*'s publisher Associated Newspapers, Peter Wright (2013: 1), who took the liberty of responding directly to Letwin in a letter, as mentioned above, sent on behalf of 'a number of senior figures in the industry (representing all national newspaper groups and the Newspaper Society)'.

The letter contained a list of concerns which meant it was 'going to be very difficult to sell the package as it appears to stand at the moment to the industry at large' (Wright, 2013: 1). A revised version of Letwin's charter, arguably adjusted to accommodate these industry

demands (Ramsay and Moore, 2019: 91), was formally published by the Conservative party on 12 February 2013.

In a sign of the continual realignment of allegiances and stances throughout the post-Leveson negotiations (Cathcart, 2019), despite the apparent amenability of the Government to Wright's requests at this early stage, the former editor would later occupy a role within IPSO's Complaints Committee, the self-regulator which has refused to engage in the Government's recognition process (Frost, 2016: 345). Maria Miller told the Commons the day following the publication of the Conservatives' draft Charter that it would enable 'Leveson's recommendations without the need for statutory underpinning' (HC Deb 13 February 2013, Col 859).

At this stage the proposal to underpin a recognition body through charter appeared to have gained traction, or at least begrudging and unenthusiastic acceptance within the Conservatives' coalition partners and the Opposition. For the Liberal Democrats, John Leech stated that although his party 'have always been clear that we would prefer independent press regulation backed by statute rather than a royal charter' they were willing to 'accept that a royal charter could work' (HC Deb 13 February 2013, Col 861).

Harriet Harman expressed similar reservations on behalf of the Labour Party, labelling statute '[t]he most straightforward way of implementing Leveson' whilst warning against the Charter being used for 'watering […] down' Leveson's recommendations (HC Deb 13 February 2013, Col 860). Despite such apparent distaste for this compromise, all parties now recognised a charter as the most realistic way of ensuring state backed independent regulatory oversight. No such consensus existed, however, on the content of the Charter.

This was made explicit by Harman in a letter to Letwin addressing the Conservatives' draft charter. Harman raised the 'concerns' of her party 'that the Royal Charter as drafted fails to comply with the recommendations that the Leveson Report makes' (Harman, 2013). These failures included compromising the recognition body's independence in two directions. Firstly, interference by the press was facilitated by allowing press representation within the appointment process of the recognition body, directly contravening Leveson's recommendations.

Secondly, independence from the whims of politicians was compromised by allowing ministers on the Privy Council to interfere with the Charter and amend its terms without wider parliamentary consensus. This ability of politicians to encroach on the terms

established for press regulation was precisely the criticism aimed at statutory underpinning. It is perhaps ironic, therefore, that legislation was used to resolve this issue of the political independence of a charter.

On the other hand, Letwin's revision appeared to be largely welcomed by the press. Those features which Harman reserved criticism for were precisely the concessions which had been made to the press in the interim. Trinity Mirror's Paul Vickers – chairman of the Industry Implementation Group who were busy establishing the contract-based system proposed by PressBoF (Heawood, 2015: 113) despite the criticism it received from Leveson – tellingly described the new Charter as 'the fruit of two months of intensive talks involving the newspaper and magazine industry and all three main political parties' (Ponsford, 2013a).[89]

Differences between the "Lib/Lab" position and that of the Conservatives formed the basis of cross-party talks going forwards. Presumably, these behind-closed-doors talks were oriented around attempts to persuade the Tories to move further towards Leveson's original recommendations and away from the apparent demands of the press. A cross-party position could not be established before David Cameron unilaterally walked away from the negotiations a month on from the Conservative draft charter's publication (*BBC News*, 2013).

Instead, the Conservatives published a second draft charter, presumably in the hope that it would gain wider parliamentary assent. In response the Liberal Democrats and the Labour Party jointly published their own charter which, according to analysis by the Media Standards Trust, was unsurprisingly more aligned to Leveson's original recommendations than either of the two efforts published hitherto by the Conservatives (Media Standards Trust, 2013a).

With no outright majority in Parliament, previous debates clearly indicating a desire for meaningful action on press reform,[90] and the Opposition preparing legislation in the Lords which would effectively amount to the statutory underpinning of press regulation which the Government was so keen to avoid, Cameron returned to renegotiate the terms of a cross-party charter. In what seems a rapid turnaround this Charter was agreed over one weekend and

[89] Vickers went on to chair the Regulatory Funding Company (RFC), which supplanted PressBoF (see footnote 58) as the body procuring funds for the industry-backed regulatory system run by IPSO before leaving the post in 2015 'following the revelations in court of "industrial scale" phone hacking' (Frost, 2016: 344) that had occurred at Trinity Mirror whilst he was their legal director.

[90] Lord Blunkett, then a senior MP who professes not to have been as 'enthusiastic about putting the Leveson proposals into legislation as a whole' as some of his Labour colleagues, nonetheless affirmed to me 'the general mood right across political parties was that "action was necessary", even if there were differences of opinion as to exactly what the solution should be' (email correspondence with the author, 22 February 2021).

finalised in a late-night meeting (see chapter six) attended by the likes of Letwin, Miliband, Clegg, Harman and representatives of Hacked Off (Grice, 2013).

(iii) Agree to disagree

The cross-party Charter was published on 18 March 2013, just four days after these talks appeared to have broken down. In typical Westminster fashion, a large part of the parliamentary debate on this announcement appeared to involve each party attempting to claim that they had ceded the least ground during these negotiations and successfully delivered their original objectives. Such effort can be seen in Oliver Letwin's retrospective description of the rationale for David Cameron's about-turn to the DCMS Select Committee.

Letwin claims that Cameron ended the talks precisely to provoke 'the other parties [to] come forward with their version of the Charter' (HC Select Committee, 16 April 2013) allowing progress to be made. This explanation echoes the credit the Prime Minister gave to himself at the time for having 'unblocked the logjam', claiming when the cross-party agreement was announced to the Commons that his decision to end the talks 'is why we are here today' (HC Deb 18 March 2013, Col 635).

According to Letwin, once the Lib/Lab Charter was published this enabled all three parties to settle on a position primarily aligned to the Conservatives' vision. He described this position as 'midway between our version of our Charter and their version of our Charter' (HC Select Committee, 16 April 2013). This attempt to claim ownership of the content within the Opposition's Charter as well as their own rather brazenly reveals the intentions behind this statement.[91]

[91] The account of these events in Cameron's (2019) autobiography is equally brazen and arguably incoherent. After repeating his claim that his actions brought the other parties back to the table, despite the fact that it was he who had ended the talks, Cameron makes the outlandish assertion that his approval of the Lib/Lab Charter came on two conditions: 'editors and serving journalists must be in the majority on the code-of-conduct writing committee, and the recognition body itself would not be a regulator' (264). In relation to the first demand the cross-party Charter's requirement for the Code Committee to be 'comprised of equal proportions of independent members, serving journalists […] and serving editors' (Draft Royal Charter on Self-Regulation of the Press [Cross-Party], 2013: 17) almost entirely replicates the language of the Lib/Lab draft Charter published three days earlier (see: Media Standards Trust, 2013a, 2013b). If little suggests Cameron's supposed demands had any impact here, his second condition is simply incomprehensible. The idea that a recognition body would simultaneously regulate the press was never broached, certainly not by Leveson or those major political parties supporting his report. A recognition body could not be tasked with certifying itself. It is genuinely difficult to understand what precisely the former PM is attempting to claim credit for when triumphantly stating his party 'lost the battle by giving in to some of their demands. But we had won the war - we got them off the dangerous idea of state regulation' (Cameron, 2019: 265).

As previously mentioned, by the time the details of this joint charter were being finalised it was accepted that some level of legislative intervention would be necessary to ensure the political independence of the recognition body, preventing future Privy Councillors from tampering with the content of the Charter and establishing de facto state regulation. Much as Leveson had argued, in this instance statute could and would be used to prevent state regulation being introduced through the backdoor, rather than making it more likely.

The main argument against statutory underpinning was demonstrably abolished at the exact moment it was being supplanted by a royal charter. An amendment to the Enterprise and Regulatory Reform Bill (Section 96) gave effect to the requirement written into the Charter that a two-thirds majority within both houses of Parliament and the Scottish Parliament, along with full agreement of the board members of the recognition body, was required for any future changes to the Charter's terms (Fenton, 2018a: 121; Heawood, 2015: 134).

It was this statute underpinning the Charter, rather than some quality of the Charter itself, which ensured the political independence vociferously demanded by the critics of statutory intervention. Legislation was also needed, as anticipated by Leveson, to give proper effect to the incentives for participation related to court costs (see chapter four). Through amendments to the Crime and Courts Bill judges adjudicating on disputes involving 'relevant news publishers' would have a means of discriminating between members of a recognised regulator and those operating outside of this system.

Despite this use of legislation, the Conservative Party attempted to maintain the sanctity of their original anti-statute message. Andrew Lansley, the then Leader of the House, for example, characterised these statutory interventions as 'the minimal legislative changes supporting a royal charter' (HC Deb 14 March 2013, Col 496). On this basis Cameron continue to claim his party had not crossed the self-defined 'Rubicon' he referred to prior to these negotiations (HC Deb 18 March 2013, Col 632).

When announcing the cross-party Charter Cameron claimed to 'have shown today' that 'statutory regulation' including any underpinning used 'to create a recognition body, is not necessary to achieve the Leveson principles. We can do it—indeed we will do it—via a royal charter' (HC Deb 18 March 2013, Col 633). In what might be interpreted as literally playing to the press gallery, the Prime Minister emphasized this point with a quote from Winston Churchill on the societal value of a free press.

Cameron added in a self-congratulatory tone that 'today, by rejecting statutory regulation but being in favour of a royal charter, the House has defended that principle' (HC Deb 18 March 2013, Col 633). When faced with unavoidable questions of the apparent conflict between such statements and the fact that the Prime Minister was, at that moment, asking parliament to vote for legislation on the Charter, the Prime Minister claimed the difference was statute being used here 'to protect' rather than 'recognise the royal charter' (ibid).

For their part Labour claimed victory for securing this combination of statute and charter to ensure a robust, independent, and public oriented regulatory regime. Immediately following Cameron's speech referring to the simultaneous process being undertaken by the House of Lords, Miliband asserted this counter narrative, claiming 'the statutory underpinning being considered in another place today' would not only cement the longevity of the new regulatory system but would preclude it being 'tampered with by Ministers or watered down' (HC Deb 18 March 2013, Col 637).

In a sense, it may have been politically and ideologically expedient for both party leaders that these apparently contradictory statements were effectively both true. Much of this politicking, with parties giving vastly different accounts of the same group of parliamentary interventions, seemed to revolve around now familiar arguments on the public interest. It might be argued that differing traditions in each party's understandings of the public interest explains how 'statutory underpinning' became such a sticking point.

Under the conditions created by these competing ideological and philosophical perspectives, the necessary and pragmatic use of statute to support the Charter may have had the added effect of lending the process a semblance of democratic and wider parliamentary legitimacy. This was lacking in the Charter itself, which was negotiated behind closed doors without parliament's involvement. Using a royal charter was 'controversial of itself as an emanation of prerogative power' (Wragg, 2020: 60).

Neither house could amend nor vote on the contents of a charter as they would ordinary legislation. Despite some politicians' eagerness that the voice of parliament be heard, the process was entirely conducted by a select few senior figures. From the very outset of these events the pro-Leveson Conservative MP George Eustice (see chapter six), for example, called for a free vote on any Leveson related legislation, claiming that it would be incoherent to subject him and his colleagues to a party whip on an issue 'fundamentally […] about freedom of speech' (HC Deb 03 December 2012, Col 640).

He added, referencing the adverse reaction of the press, '[t]o use some of the terminology that I have read so often over the past few weeks, I think that it would be wrong for Parliament to be muzzled or gagged' (HC Deb 03 December 2012, Col 640). In the same debate Eustice's Conservative colleague, Penny Mordaunt, urged the Government to consider a free vote on press regulation considering the 'tremendous constitutional importance' (ibid, 598) of the issue.

By the time the cross-party Charter was announced this lack of democratic legitimacy remained an issue. Members of both sides of the house, and on opposing sides of this debate, such as Chris Bryant and Richard Drax, were united in their criticism of the lack of transparency. Despite later endorsing the Charter, Bryant initially complained about the fact that he and his fellow MPs had had no opportunity to scrutinise its details in advance of the debate, and about not having a copy available to him by the time the debate started (HC Deb 18 March 2013, Col 630, 654).

The MP humorously characterised the cross-party talks as occurring within a 'papal conclave' (HC Deb 18 March 2013, Col 650). Later in the same debate, having expressed praise for Bryant's metaphor, Drax, one of few MPs to vote against the legislation supporting the Charter, criticised the fact that 'something so serious, which is fundamental to the freedom and democracy of our country' was due to be 'swept through by a small minority of highly placed people' (ibid, Col 675).

Had there been no pragmatic need for legislation, the Government may have sought to simply ask the Privy Council to approve their version no matter the assumed view of the House.[92] It has been stated that it was only the fact that 'a parliamentary loss' appeared 'likely' (Ramsay and Moore, 2019: 91) that compelled Cameron to return to the negotiating table and find common ground. Had it not been for legislation the cross-party Charter itself may not have existed.

Under these circumstances the vote on Leveson-specific amendments to the Crime and Criminal Courts Bill described above effectively acted as a proxy vote for the content of the Charter itself. The amendments were voted through parliament by a majority of 530 Ayes to 13 Noes (HC Deb 18 March 2013, Col 728-731) which it might have been assumed signalled a decisive change of course for British press regulation.

[92] Of course, the Privy Council may not have obliged in these controversial circumstances.

Despite this resounding parliamentary victory, any dramatic reform of press regulation has yet to take shape. In a portent of the effective role the press would continue to play in disrupting this process, those few politicians who voted against the Royal Charter, including the Tellers of the Noes, Jacob Rees-Mogg and Richard Drax, were labelled the 'glorious 15' (HC Deb 04 December 2013, Col 314WH) by the *Spectator* magazine, owned by David – before his death in 2021 – and Frederick Barclay, who also own the *Daily Telegraph.*

The MPs were jointly awarded the prize of Parliamentarians of the Year by the publication for their efforts 'to prove that our ancient tradition of press freedom is not abolished without a fight' (Payne, 2013). In the following chapter we will explore how a mixture of pressure from the press and a lack of political will saw the political appetite for press reform dissipate into regulatory morphostasis producing a less robust system of self-regulation in the process.

CHAPTER SIX

The Long Dissolution of Leveson's Recommendations

With the benefit of hindsight, we now know the cross-party agreement on the *Royal Charter of the Self-Regulation of the Press* struck in March 2013 (see chapter five) did not herald the beginning of press regulation reform. Political agreement alone was not enough to cement the type of independent and effective regulatory regime hitherto unseen on British shores. In fact, within this chapter I argue that cross-party consensus became a further *barrier* to realising this end.

The reception of the cross-party consensus

More precisely, the perceptions of the cross-party agreement amongst those we might call the political class or the establishment, appeared to deliver a critical blow to the possibility of meaningful progress. This contemporaneous view may seem counterintuitive and certainly flies in the face of much sentiment expressed at the conclusion of the 'long and tangled' (Fenton, 2021: 178) cross-party negotiations. There is no doubt that the compromises agreed between party leaders signalled the overcoming of a significant barrier by achieving, at least temporarily, an unlikely consensus.

The joint Charter announced on 18 March 2013 should surely have eased rather than hindered progress on reform. Elfyn Llwyd of Plaid Cymru voiced this when commenting on the protracted nature of the talks. The MP 'welcome[d] the fact that the House has been able to reach a compromise, albeit at the eleventh hour, to get at least some reference to the royal charter in statute' (HC Deb 18 March 2013, Col 665).

Thus, the package of the Royal Charter supplemented and bolstered by minimal legislative intervention, offered just the right balance of legislation and freedom to resolve the previous factional disagreement between politicians. Broad acceptance of the Charter within the Commons and a belief that it provided a suitable means for improving press regulation, was indicated by the large majority of MP's, across all parties, voting for the accompanying legislation. With the cross-party agreement in place, a sense of optimism seemed to reverberate around the House, signalling that a major barrier to progress had been lifted.

One politician who expressed the significance of this parliamentary pact was Conservative MP George Eustice. Eustice serves as an interesting example of the optimistic spirit which

appeared to take hold of many politicians. Due to this MP's dual commitments and competing priorities the Charter appeared to represent a chance to 'dovetail' his 'plurality of concerns' (Archer, 2003: 163). Eustice's enthusiasm for this agreement might have reflected the opportunity it offered him to pursue a personal commitment to press reform, whilst reconciling relational commitments with his party.

In the immediate aftermath of the Inquiry, Eustice had found himself at odds with his party's leadership due to his forthright support for the implementation of Leveson's core recommendations in full. In the Commons, he had called for the Government to underpin the new regulatory system using statutory powers (HC Deb 03 December 2012, Col 638) at a time when the Prime Minister – who employed Eustice as his press secretary during his leadership campaign – appeared determined not to do so.

Now that this deal had been brokered, Eustice proceeded to enthusiastically 'thank and congratulate' those he previously opposed on this issue (HC Deb 18 March 2013, Col 666). He duly presented his party's leadership as the driving force behind the Royal Charter and namechecked the likes of Cameron, Miller, and Oliver Letwin for credit. Eustice tellingly spoke of his relief at 'be[ing] re-united with my own party on this issue' (ibid).

Of course, this victory for parliamentary diplomacy was designed to achieve more than ending inter-party, and cross-party, acrimony over this issue. It was envisaged that having secured this agreement, the Royal Charter's path through the parliamentary system would be eased. The prospect of a 'Leveson compliant' regulatory system became decidedly more tangible, as did the possibility of satisfying perennial calls for improvements to press regulation. The Charter represented a mechanism through which an internalised belief in press-reform could be transformed into what Archer calls a 'project'[93] and pursued through 'concrete action' (Archer, 2012: 108).

Without cross-party support the possibility of affecting reform through political action within a hung parliament was remote. In this sense the cross-party agreement very much represented an 'enablement' to many in the political sphere, secured through the reflexive action of those who negotiated this pact. Conservative MP Robert Buckland, a supporter of Leveson's reforms, claimed that the Royal Charter could now 'genuinely proceed to approval by the

[93] A 'project' is 'any end, however inchoate, that can be intentionally entertained by human beings' (Archer, 2012: 56).

Privy Council as a result of a cross-party consensus' without which 'use of this prerogative power would have been very difficult indeed' (HC Deb 18 March 2013, Col 670).

Such statements give the impression of impending movement and forward momentum for a process which had stalled in the months since Leveson reported his findings; regulatory reform could begin in earnest. This sudden easing of political tension also however bred confidence, or perhaps complacency. The idea that this political settlement would have the desired effect outside of Westminster was taken for granted, as if all the necessary pieces needed to amend the regulatory landscape and culture of the press would now fall into place.

Although parliamentarians did reportedly engage in extended consultation with external parties and interest groups, the Charter remained a device used primarily to resolve a political dispute. With the benefit of hindsight, the idea that an industry who, at least rhetorically, pride themselves in their separation, and at times opposition, to the state would simply allow the Charter to exert its influence because politicians had ceased arguing between themselves, seems entirely misguided.

Nonetheless, adopting the Prime Minister's phraseology, Buckland triumphantly claimed that parliament had collectively broken 'the logjam of generations of politicians who have gone before us and who have said much about the need for reform, but have done precious little' (HC Deb 18 March 2013, Col 671). Not only, in the MP's view, did the agreement in place represent the successful navigation of issues frustrating progress in the near four months since Leveson's report was published, but a more fundamental shift, or ending of a 'morphogenetic cycle' (see chapter two), had been achieved.

According to this view, the Charter would reconfigure the uneasy symbiosis which existed between the establishment press and major political institutions in Britain. Tom Watson, a Labour political actor largely conspicuous by his absence from much of the post-Leveson debate following this agreement,[94] emotively built on this theme. Discussing his own campaign to secure accountability from the press, Watson claimed 'the establishment' or 'the quiet cabal that runs the country, all within five miles of where we sit tonight' had 'learnt some pretty dark things about ourselves' (HC Deb 18 March 2013, Col 644).

[94] This is surprising considering the integral part Watson played in pursuing the illegality at News International during his time in the DCMS (then Culture Media and Sport) Committee prior to the Leveson Inquiry (Davies, 2014: 71, 118). Watson was one of the first MPs to call 'on the prime minister to set up an inquiry into the relationship between the police and the *News of the World'* (ibid: 254).

Watson affirmed, however, his colleagues could now 'take heart from having finally fought back. Parliament showed its strength where [past] Governments failed', although admittedly adding a measure of caution claiming the cross-party agreement 'almost feels like a kind of closure—but I do mean almost' (HC Deb 18 March 2013, Col 644). Emphasis was clearly placed on the decisive change thought to have been secured.

Similar sentiments were expressed by Ed Miliband who exclaimed '[t]oday we break the pattern of decades and decades of politicians promising to act on wrongdoing by the press but failing to do so' (HC Deb 18 March 2013, Col 637). A palpable sense of achievement at what appears to be a job well done, and relief at an averted crisis of trust in Government on delivering on their Leveson promises was evident.

Similarly self-congratulatory statements were heard from Nick Clegg who appeared so confident of the significance of the agreement he helped negotiate that he claimed it represented a 'victory [not] for any one individual or any one team; it is a victory for working together' (HC Deb 18 March 2013, Col 640). Although these claims now seem premature or overly optimistic, they surely reflected the sheer effort poured into cross-party talks. The agreement was an achievement, but not one that would ultimately benefit any past or future victims of press intrusion and abuse.

Resolution and relief

At points in the negotiation, the probability of achieving a compromise appeared slim to non-existent, particularly when the Prime Minister unilaterally suspended talks (see chapter five). Leveson had previously emphasised the desirability of consensus amongst politicians on these matters:

> I hope that my recommendations will be treated in exactly the same cross party spirit which led to the setting up of the Inquiry in the first place and will lead to a cross party response. (Leveson, 2012b)

With the collective approach to Leveson's reforms now resuscitated, some self-congratulation and the sense of relief was well earned. Nick Clegg's description of the negotiations gives an impression of the reflexive efforts involved. He described the three competing objectives driving his approach to the negotiations, including the familiar need to balance competing elements which I have argued underscore different approaches to the public interest.

Clegg claimed to have entered the negotiations to find a solution which complied with 'the model of independent self-regulation' (HC Deb 18 March 2013, Col 638) specified in Leveson's report, and balanced the level of protection offered to victims of press abuse with safeguards for press freedom. Tellingly, Clegg's third objective was purportedly that this solution 'must command the widest possible cross-party support, which Lord Justice Leveson also said was critical' (ibid).

Clegg clearly felt this final objective had been achieved, and rightly so. The members of political parties, civil organisations and industry bodies engaged in these negotiations, would have their own priorities or 'ultimate concerns' (see charter 3) driving their contributions to these talks. These might revolve around a personal threshold used to assess a plan's compliance with Leveson's, or the value placed at either end of the scale when balancing protecting victims against insulating the press.

Resolving these differences, or at least finding a tolerable compromise, was a necessarily reflexive endeavour. When establishing the Charter's contents, each negotiating party was called to engage with the 'ultimate concerns' of their interlocutors, whilst balancing the potential consequences of abandoning negotiations. This concluded in an earnest attempt to weigh up the differences in these priorities and reflexively alight on a method to align them.

The precious commodities of political bandwidth, time and energy had been poured into these negotiations. In this context a conviction that the Charter would return this investment by delivering regulatory reform is, again, entirely understandable. A slightly more cynical reading of the congratulatory tone adopted by many politicians might see this as a tactic to garner support for the Charter and convince parliamentary colleagues of its ability to institute change.

George Eustice (HC Deb 18 March 2013, Col 668) went further than Clegg, when emphasising the struggle to establish compromise between divergent principles and priorities during the 'week after week [of] very difficult negotiations trying to reach a conclusion'. The MP recounted his negotiations with Hacked Off describing 'one particularly dispiriting moment', whereby he had:

> thought that after three and a half hours we had identified the six key things we needed to put right and one of the campaign directors said, "Shall we now move on to the next set of 20 problems that I have?"

This description might partly explain Eustice's fulsome praise for the Charter and its authors once this hard-fought compromise had been struck. The MP was clearly attempting to convey

the painstaking nature of such negotiations to his parliamentary colleagues,[95] showing the scale of the task of accommodating multiple perspectives and agendas. This gives a sense of the reflexive process in action, at least as reportedly experienced by Eustice.

We can imagine such instances of dissonance, whereby the proposals put forward by one side of the negotiating table were scrutinised and rejected or modified by the other side, occurring throughout the negotiations. In Eustice's specific example the two parties might have been expected to share some common ground over the implementation of Leveson's report. The position adopted by Eustice, and a small contingent of Tory ministers who put themselves at odds with their leader on this issue,[96] broadly aligned with Hacked Off's.

Both had openly called on the Government to implement Leveson's recommendations in a faithful manner. Eustice's depiction of haggling with Hacked Off over some unnamed details of the post-Leveson political settlement reemphasises the fragile nature of the agreement eventually struck. If two parties sharing broadly the same priorities and 'ultimate concerns' had to work so methodically to identify their common ground, the process of resolving those

[95] This could be partly due to the fastidious, and by some accounts, unyielding approach of Hacked Off in this period. According to Lord Blunkett – who was admittedly not directly involved in negotiating with the campaign group, but briefly acted as an 'honest broker' relaying messages from David Cameron to Labour's leadership at points in the talks – one of the complications in attempting to broker a deal that both the Government and the press could agree to was the presence of 'an entirely third-party [Hacked Off] vetoing any kind of move they don't like' (email correspondence with the author, 24 February 2021). Hacked Off would undoubtedly counter this idea, as representatives of the group did repeatedly whilst giving evidence to a select committee, by claiming any such judgments made on behalf of victims of press abuse were entirely based on Leveson's report. As Brian Cathcart stated, 'the recommendations […] were not ours; they were the judge's' (HC Select Committee, 16 April 2013).

[96] This included, amongst others: Malcom Rifkind, who had put the case to the Prime Minister that 'an Act of Parliament would […] enhance' the 'credibility' of a new regulatory regime (HC Deb 29 November 2012, Col 454) and argued in his constituency newspaper that a 'regulatory authority with statutory underpinning is not tantamount to Government or political control over the press' (Rifkind, 2012); Gerald Howarth, who claimed that 'a statutory verification process' would not constitute 'a shackling of the press' (HC Deb 03 December 2012, Col 596); Edward Garnier, who accused those equating Leveson's recommendations with 'state control of the press' of 'traduce[ing]' his findings (ibid, Col 616); Zac Goldsmith who, when speaking on creating truly independent regulation, asked 'can we achieve that without legislation? I do not think that we can' (ibid, Col 626) whilst calling the counterpoint an 'illogical argument' (ibid, Col 627); and, as previously cited, Robert Buckland, who claimed to have been 'persuaded […] that some form of underpinning is necessary' (ibid, Col 669), and later advocated for a draft Parliamentary Bill published by Hacked Off (Buckland, 2013a) vowing in a comment piece for the *Guardian* to only 'support […] a plan that fully delivers on the moderate proposals of Lord Justice Leveson' (Buckland, 2013b). Barring Garnier, these MPs put their names to an open letter co-singed by a total of 42 Conservative MPs published in the *Guardian* calling for 'sensible changes to the law' (Fowler et al., 2012). Eustice appeared the most vocal and visible presence amongst this group and was praised by Howarth for 'the fantastic job that he has done in articulating the concerns that many of us had, particularly on this side of the House' and his 'extraordinary dignity and great tenacity' (HC Deb 03 December 2012, Col 672). In what was reported as a direct response to the above letter, several senior MPs and politicians printed another open letter in the *Daily Telegraph*, including David Blunkett and Connor Burns, who were said to have 'organised' this response (Mason, 2012). This letter expressed opposition 'to the imposition of any form of statutory control even if it is dressed up as underpinning' (Blunkett et al., 2012).

major differences between the Conservative and Lib/Lab positions must have been complicated, fraught, and possibly tortuous.

Although admittedly speculative and based on one partial anecdote, we might assume the difference between Hacked Off and Eustice could speak to the types of secondary concerns and competing priorities discussed above. Whereas Eustice had obligations to his party and a situated understanding of the structural workings of parliament to consider, Hacked Off had an overriding responsibility to the victims of press abuse. The reflexive process within these negotiations was as much about resolving those competing relational and structural differences as any personal values or commitments.

The above comments from the day the agreement was announced in parliament reflect the energy expended in finding a resolution which balanced both the concerns of the press and the interests of the victims, and myriad other political factors. I argue it was both excusable and completely natural to express relief and optimism at the fact that a solution had been established.

Deintensification and emergence of new constraints

The issue demanding analysis, however, is not whether this reaction was justified, but the effect it had on the prospects for reforming press regulation. Subsequent events suggest this agreement between political parties became less of an ‘enablement’ and more of a ‘constraint’ on ever realising these objectives over time. Negotiating the constraint of parliamentary disharmony – at least on a temporary basis – merely exacerbated the effects of several less immediately apparent obstacles to progress.

Further obstacles included a gradual loss of political momentum and the deintensification of external public pressure. When coupled with sustained hostility from large sections of the corporate press against this political agreement, the structural-political environment which had necessitated the Leveson Inquiry (see introduction) and created an onus for politicians to broker this deal (see chapter five) had again transmogrified and was quickly being starved of the catalytic ingredients needed to energise institutional and structural change within the British Press.

As much as any particular provision written into the Charter itself, the perceptions surrounding the cross-party agreement, including this initial reaction outlined above, profoundly affected progress. Politicians’ claims of victory were reinforced by the largely

positive impression of the agreement signalled by the likes of Hacked Off, who claimed it showed that '[a]ll parties are now clearly behind Leveson's recommendations for an independent self-regulator' (Hacked Off, 2013) and a means of redress for the victims of press abuse.

Although the campaign group maintained a charter represented the 'second best' option, their statement nonetheless claimed, 'we believe that this charter can effectively deliver [Leveson's] proposals on self-regulation' (Hacked Off, 2013). Perhaps as much as any politician whose support for the Charter was partly based on their input into its negotiation, Hacked Off's involvement in this process meant they felt a similar authorial investment in seeing it succeed.

The National Union of Journalists (2013) gave 'a guarded welcome to cross-party agreement'. Despite expressing the same reluctance as Hacked Off towards implementing Leveson's recommendations through charter, a statement by the union's General Secretary Michelle Stanistreet claimed there were 'elements in the new framework which can be welcomed' (ibid).[97] Such external support amplified those responses within parliament giving the impression of a resolution.

In the eyes of some, the issue of Leveson had now all but officially been put to bed. It was not the resolution itself which proved problematic, but this accompanying sense of finality. The deal was partly represented as a triumph for parliamentary democracy and diplomatic negotiation, with the likes of former Home Secretary, David Blunkett, praising the

[97] This statement emphasised the need for Leveson's recommendation for publishers to write a *conscience clause* into journalists' contracts to be implemented. This was a longstanding campaign by the union and the fact that a conscience clause featured among Leveson's recommendations owed largely to the NUJ's contribution to the Inquiry. Although the related recommendation for a whistleblowing hotline to be setup by publishers for any journalist who suspects they are being asked to break the editor's code was explicitly included in the terms of the cross-party Charter, as Harriet Harman explained, a conscience clause which formally prevents journalists from being fired or reprimanded for refusing such actions, was only included as 'what the Foreign Office calls a brush past' (HC Deb 18 March 2013, Col 711). This meant the conscience clause was an option a new recognition body 'may but need not, take into account' when assessing a future press regulator's application for accreditation (Draft Royal Charter on Self-Regulation of the Press [Cross-Party], 2013). This remained the case in the version of the Charter which ultimately supplanted the initial cross-party Charter in October 2013 (see chapter eight). This might owe to the slightly ambivalent wording Leveson employed in his report when writing 'that the industry generally, and a regulatory body in particular, should consider' making the conscience clause a requirement of membership to the new regulatory body (Leveson, 2012a: 1799, 1809). This recommendation was, therefore, couched in less explicit and straightforward language than others. When reacting to Leveson's report, however, the NUJ focused almost entirely on the inclusion of the conscience clause, despite taking issue with other aspects (National Union of Journalists, 2012). Throughout the cross-party talks and beyond the NUJ attempted to conduct their own negotiations with publishers on this issue, whilst the then Labour backbencher John McDonnell continually raised the issue in the Commons during debates on Leveson (see: HC Deb 29 November 2012, Col 459; 03 December 2012, Col 685-686; 13 Feb 2013, Col 864; 08 October 2013, Col 54).

‘professionalism, sophistication and maturity’ of ‘Parliament and politicians of all parties’ (HC Deb 18 March 2013, Col 641).

Blunkett also appeared to insinuate that thanks to the successful conclusion to negotiations a wider process had ended, stating ‘[t]he circle has been squared; Parliament has lived up to its historic reputation; the leaderships [sic] all political parties have stood up and been counted’ (HC Deb 18 March 2013, Col 641). The metaphor used clearly conveys a belief that something permanent had been achieved that day; with the circle now irreversibly squared a line could be drawn under the issue.

This might betray a belief in the relationship between ontology and epistemology. Now that the intellectual puzzle of resolving contrasting political perspectives had been solved, the messy and complicated pieces needed for the agreement to take effect outside of parliament would duly settle into place. Or rather, with a method for implementing independent press regulation through parliament whilst balancing various political priorities settled on, those outstanding external constraints on the process of press reform which had successfully stalled previous attempts, would somehow melt away.

Perhaps coming from a figure like David Blunkett such belief was more impactful. I am not solely referring to Blunkett’s prominence and seniority as a politician, but also the fact he was one of the many public figures revealed to be the victim of a sustained phone hacking campaign by *News of the World* journalists during his time in the cabinet under New Labour. He later claimed this campaign had driven him close to a mental ‘breakdown’ causing ‘terrible hurt’ through its effects on his career and personal relationships (Easton, 2014).

Indeed, Blunkett elaborates on the toll coverage of his private life took on his career and wellbeing, in a section of his political diary dealing with events leading to his resignation as Home Secretary in late 2004 (Blunkett, 2006: 680–772). At one point Blunkett expresses his dissatisfaction and frustrations with the PCC having sought redress through this body which had ‘no investigatory power or arm’ (ibid: 754).

This experience led Blunkett to conclude that to protect the subjects of uninvited press attention and their families ‘the system should be changed and protection should be given to them from the gross intrusion into their privacy’ (Blunkett, 2006: 754). This context might have lent more weight to the sentiments expressed in Blunkett’s speech which he prefaced by citing his ‘registered interest […] with my family, as a victim of hacking’ (HC Deb 18 March 2013, Col 640).

This negative experience did not, however mean the MP was willing to support Leveson's recommendations outright (see footnote 96). According to later correspondence Blunkett resisted such support because he felt parliament should 'be seen to be strongly in favour of avoiding, stifling, or strangling the freedom of an open and unfettered media', partly to avoid initiating negotiation with the press on adversarial terms (email correspondence with the author, 22 February 2021).

Considering this nuanced combination of direct experience of the failings of the PCC and the damage caused by uninhibited press intrusion, with an apparent preference for appeasing or at least identifying common ground with the press, Blunkett's strong advocacy for the Charter's ability to effect change perhaps provides an indication of the broad acceptance of this view within the Commons. Such concrete predictions of success add to those optimistic allusions to having broken decades-long logjams of political inactivity, already cited from the likes of Robert Buckland and Tom Watson above.

Labour MP Angela Eagle declared a similar article of faith when stating the cross-party agreement would 'put in place an enduring solution, protected against pressure from the press, or indeed from Ministers in the Privy Council' (HC Deb 18 March 2013, Col 684-685). I do not intend to ridicule such optimism from those attempting to find a solution to the issues identified in the Leveson Inquiry. Only hindsight enables me to identify a disjunction between such sentiments and what came to pass.

Nonetheless, some appeared to sense at the time certain dangers in this agreement. Paul Farrelly, who played an active role alongside Labour colleague Tom Watson on the pre-Leveson Culture Select Committee (Davies, 2014: 118), signalled such caution when reminding his colleagues of their reliance on external events. The model of independent self-organised regulation facilitated by the Charter meant 'the press itself sets up the regulatory arrangements' by, for example, establishing the independent board for a new regulator (HC Deb 18 March 2013, Col 656).

As such, Farrelly suggested this process was susceptible to 'regulatory capture from day one' and urged his colleagues to remain 'vigilant' (HC Deb 18 March 2013, Col 656). Elfyn Llwyd who, as above, praised parliamentarians' ability to compromise, also stated that 'we must be extremely vigilant as we go along. This is the beginning of the story, not the conclusion' (HC Deb 18 March 2013, Col 666).

Robert Buckland tempered his view on the historic precedent set by the agreement by claiming that '[t]oday is not a day for euphoria' or 'self-congratulation', although he immediately added it could represent 'a welcome new chapter in the life and role of the press in our society' (HC Deb 18 March 2013, Col 670). Harriet Harmen signalled that the agreement was 'not at the end of the process, but at the beginning' (HC Deb 18 March 2013, Col 771).

Such warnings have unfortunately proven to be more prophetic than the more optimistic predictions made that day. Despite the recognised need for vigilance, the agreement clearly facilitated a detachment of parliamentary involvement and easing of political scrutiny being applied to press regulation. Following intense contestation and focus on regulation, with the agreement in place this issue appeared to be almost immediately removed from the political agenda.

A lack of much-needed animosity

Again, this was not entirely unanticipated. Conservative MP Charles Walker appeared to hint at the danger posed by this consensus claiming that the Commons 'is at its best when there is an element of tension in the debate, and I am concerned that there is not that tension today' (HC Deb 18 March 2013, Col 649). As one of the few politicians who voted against the legislation underpinning the Charter, it is likely that Walker had other reasons for preferring a contested debate.

Fellow Leveson-sceptic Peter Lilley urged 'the House […] to remember that when Members on both Front Benches agree, we invariably make our worst blunders because the normal adversarial process of criticising measures is put aside' (HC Deb 18 March 2013, Col 654). Despite these reservations, however, Lilley did admit the Charter represented 'the best possible measure that could command a majority in the House' and proceeded to vote for it.

Despite these views being aired by MPs with reservations about the Charter's content, the depiction of Westminster as a place fuelled by tension rather than collaboration rings true. Within the British mode of parliamentary democracy this consensus over press regulation could provide an impetus for less scrutiny and attention being paid to the issue going forward. As established by political scientists, the default mode of debate in British politics is antagonistic, oppositional and 'adversarial' (Johnson, 1997: 488).

Indeed, Lijphart (2012: 2) notes that 'by concentrating power in the hands of the majority, the Westminster model of democracy sets up a government-versus-opposition pattern that is competitive and adversarial'. This overdependence on combative political debate causes an 'exaggeration of the adversarial relationship' (Johnson, 1997: 490). This becomes particularly acute within 'the heated rhetoric' heard during election campaigns (Powell, 2000: 6), suggesting the winner-takes-all basis of the electoral system (Wilson, 1994: 198) is partially to blame.

The first past the post model, and how governments and oppositions are organised following national elections means the 'Westminster Model' (Lijphart, 2012: 9) facilitates one of the few 'pure majoritarian democracies' (ibid: 7) in operation today. Majoritarian democratic systems are geared towards establishing 'strong' and 'cohesive' political parties (Lijphart, 2012: 12; Wilson, 1994: 194) which adopt single party cabinets (Lijphart, 2012: 62). Under this system, power is consolidated by the governing party.

The executive is ordinarily populated by the party in power, which simultaneously holds most seats within the legislature. This numerical advantage means a single-party government has relatively unencumbered control over the drafting and implementation of legislation (Lijphart, 2012: 12; Powell, 2000: 21, 25; Wilson, 1994: 193). Both Westminster's political system and the two predominant parties who sustain it therefore operate with an 'executive outlook' (Johnson, 1997: 495).

The entire infrastructure of parliament is geared towards transitioning power between coherent single-party governments. The ruling party is expected to carry out its mandate without excessive interference from those who fail to achieve as large a vote share and is under no obligation to negotiate. Advocates for this version of democracy point to its ability to ensure decisive election results based on a government's accountability to the electorate.

Under an idealised description, majoritarian democratic systems render governments' achievements and failures fully transparent, due to their clear responsibility for all meaningful political decision-making (Powell, 2000: 5; Wilson, 1994: 194; Yong, 2012: 10). The electorate can make informed decisions between the incumbent party and the opposition based on this record (Johnson, 1997: 496; Lijphart, 2012: 61; Powell, 2000: 11; Wilson, 1994: 193). Much of the antagonism germane to British politics therefore is not a passively inherited trait, but an active and reflexive response to this environment.

Antagonism within the parliamentary structure, therefore, is an example of a practice being upheld through the 'continuous actions' of individuals operating within 'structured human relations', as described by Archer (2020: 138).[98] Opposing parties are discouraged from agreeing with one another when aiming for an electoral advantage, something they must aim for if aspiring to have any political or social influence. It is in both the Government's and the Opposition's interest to adopt and maintain this adversarial stance.

This contrasts with what has been labelled 'proportional democracy' (Powell, 2000) or the 'consensus model' (Lijphart, 2012) whose electoral systems aim to achieve more inclusive representation within governments and 'sustain proportionality in the transition of votes into seats in the legislature' (Powell, 2000: 26). These electoral systems purposefully decrease the possibility of any one party being given an outright majority and have structures which force the executive to engage meaningfully with this more proportional legislature.

Policy is therefore routinely developed through inter-party negotiation, bargaining and compromise (Powell, 2000: 5). This seeks to produce governance more representative of an entire population, accommodating the political concerns of minority social groups. A majoritarian system, on the other hand, entirely caters for the preferences of the majority, no matter how slim that majority might be.[99] The phenomenon of the Conservatives' coalition with the Liberal Democrats during the initial part of this case study was a rare adjunct to sustained single-party rule in Westminster (Lijphart, 2012: 11–12; Yong, 2012: 10).

The pragmatic requirements to compromise and negotiate in this context did not negate or counterbalance the wider historical and institutional conventions which shape the relationship between the Government and 'Her Majesty's "loyal Opposition"' (Crick, 1965: 116; Johnson, 1997: 487) through long established 'pattern[s] of expectation' (Crick, 1965: 117). This includes the expectation that the Opposition will behave as an 'alternative government in waiting' (Johnson, 1997: 503; see also Crick, 1965: 120; Lijphart, 2012: 6) by contesting

[98] See chapter two.

[99] The entrenchment of two-party dominance within British politics (Johnson, 1997: 488; Powell, 2000: 23), means it has rarely been necessary for the winning party to have an overall majority of votes to secure a working majority in Parliament (Powell, 2000: 40). Labour's win in 2005 was achieved with only 35.2 percent of all votes cast and since 1947 no party has needed more than 44 percent of the popular vote to secure power (Lijphart, 2012: 14). It is plainly inaccurate to claim that Britain's majoritarian systems caters for a majority of the population. For this reason, Wilson (1994: 197–198) states majoritarian democracies are ill equipped to serve the needs of any society aiming to foster or allow 'cultural pluralism' as it will leave the interests of ethnic and religious minorities, for example, perpetually underrepresented within the political sphere.

Government policy and engaging in ‘constant public confrontation with the government of the day’ (Johnson, 1997: 490).

Johnson argues that shifting to a proportional representational electoral system could ‘[g]radually’ enable more reliance on ‘a politics of bargaining and of coalition-building’ (Johnson, 1997: 507). This could not be achieved by one hung parliament and a brief period of coalition rule. In fact, this break from normalcy created another layer of tension. The power sharing arrangements in place in this period have been described as an ‘anathema to many’ (Seldon, 2015: 4) within the parliamentary Conservative Party, especially those backbench MPs ideologically to the right of the party’s leadership.

According to Seldon many right-wing Eurosceptic MPs held ‘suspicion[s] that Cameron was happier in a de jure coalition with the Lib Dems than he would have been in a de facto coalition’ with them (Seldon, 2015: 4). This animosity was keenly felt by Cameron and his government during ‘a series of defeats’ in the Commons inflicted by these backbenchers, during his first term as Prime Minster (ibid: 6). This included ‘59 rebellions in the first 110 parliamentary votes’ after the formation of the coalition government (Preston, 2015: 556).

One defeat saw ‘the largest ever rebellion of 81 Conservative MPs’ for a vote on an in/out referendum on EU membership (Walker, 2012: 92). At this point in time hostility and antagonism was not only rife between opposing parties, but within them. It could be argued that Cameron’s 2013 commitment to an EU referendum should the Conservatives win the upcoming election outright (Seldon, 2015: 6) reflected both his desperation to appease Eurosceptic backbenchers and the party’s desperation to win a working majority.

Such events suggest the two-party system was still very much alive during this period despite the inconvenience of coalition rule. This desire to re-establish single-party rule might have facilitated press regulation’s removal from the political agenda. The cross-party agreement and wider parliamentary consensus thus acted as a constraint to progress. As political parties were no longer engaged in active contestation over the issue, they naturally reoriented their political activities onto issues where difference, and potential electoral advantages, existed.

With nothing left to fight over and the heat of public scrutiny slowly cooling, issues related to the press quickly receded to their customary level of receiving sporadic and passing parliamentary attention, as other more central issues were prioritised. For all the warnings of the need for vigilance, the agreement in place meant, at this point, the potential failure of the

Charter posed no significant electoral risk to any of those who negotiated its terms, as the responsibility was shared between all.

This might explain the drowning out of concerns raised in the Commons on 18 March 2013 by the 'commendations' and 'tributes' generously bestowed. Tributes were paid to the Prime Minister, Deputy Prime Minister and Leader of the Opposition for negotiating a compromise; the victims of press abuse; the *Guardian* (see introduction); to the likes of Chris Bryant and Tom Watson for originally pursuing the scandal; to Oliver Letwin and Maria Miller for their role in securing the Charter; and, of course to Lord Justice Leveson himself.

The general tone of bonhomie and humour in the house that day is perhaps best encapsulated in small exchanges between MPs from opposite sides of the House. Chris Bryant for example, exclaimed '[s]pot on! I completely and utterly agree with the hon. Gentleman' (HC Deb 18 March 2013, Col 652), following an intervention from Damian Collins, and Ben Bradshaw self-deprecatingly joked he 'risk[ed] doing dreadful damage to' George Eustice's 'career' by offering to 'congratulate him on his courage and attention to detail on this issue' (HC Deb 18 March 2013, Col 666).

In what might seem a contradiction in terms, the weight of a united and unusually civil parliament being thrown behind the issue of press reform, created the space for regulatory morphostasis. Having established this analysis, and considering his own seemingly optimistic stance elaborated above, I asked Lord Blunkett if he agreed that the sense of achievement which greeted the cross-party agreement in Parliament lent a sense of finality to the Leveson process.

Blunkett concurred with the proposition claiming:

> there was a general presumption (including within the public) that the matter had been dealt with! The coming together of political parties in finding what, they believed to be, a solution, led to the belief that there had been a solution. […] the air went out of the balloon, and it flopped back down to earth. […] To all but those who were keen watches [sic] of events, the matter had been put to bed, the press had been put in their place, and politics moved on (email correspondence, 01 March 2021).[100]

[100] Admittedly Blunkett also drew attention back to a prominent theme in his correspondence that the 'power of the print media […] has been substantially diminished' by online platforms which provoked issues requiring an entirely different set of solutions to those provided by Leveson.

An agreement reassessed

This loss of political momentum and focus was compounded by a convention which prevents the Privy Council from considering two Charter proposals concurrently. This was utilised by Lord Black (see chapter four), who submitted a rival charter to the Privy Council in April 2013 on behalf of PressBoF (Ponsford, 2013b). Approval of the Cross-Party Charter was therefore delayed as it was decided that a 'sub-committee' of the Privy Council would first 'consider the newspaper industry-backed charter' (PA Mediapoint and *Press Gazette*, 2013).

Although the PressBoF Charter was eventually rejected by the Privy Council after consultation[101] – according to Maria Miller due to its unsurprising inability to 'comply with some important Leveson principles' (HC Deb 08 October 2013, Col 46) – this meant delay until '[f]inally, on 30 October 2013, the Privy Council […] granted a Royal Charter on press regulation (based on cross-party agreement)' (Rowbottom and Young, 2013: 167). This slightly amended version of the March Charter was passed seven months after the much-lauded agreement had been struck.

It is unclear why the Government and/or Privy Council decided to prioritise a consultation on the PressBoF Charter. Perhaps this was to avoid reprisals within the press, but the decision again highlights a lack of urgency once parliamentary agreement was secured. Whatever the reasoning, the delay between the cross-party agreement and the Charter's royal assent allowed for further reappraisal and speculation of how the deal was negotiated.

Whilst it might have initially been welcomed as a triumph for democracy within the Commons, arguments subsequently made against the Charter focused less on its content, and more on these circumstances. Particular criticism was reserved for the role unelected third parties played in the process. As detailed previously (see chapter five), a lack of transparency in the Government's dealing with the press prior to the cross-party agreement led Chris Bryant MP to voice concerns of a 'pretty shabby deal' (HC Deb 13 February 2013, Col 865) being made.

A few weeks prior to the Charter's Privy Council approval, this subject was raised again as the Government begun to finally publish these details. Labour's Katy Clark raised the fact

[101] A decision which the four industry bodies 'whose representatives' sit on PressBof's Board (Ramsay, 2013b) attempted to challenge in court by applying for a judicial review. Lord Black claimed the group was forced into this action by 'the issues at stake' being 'so extraordinarily high' (O'Carroll, 2013a). This request for review failed after being rejected at the Court of Appeal (O'Carroll, 2014).

that in the three months following the March cross-party agreement, Culture Secretary Maria Miller had met with 'newspaper editors on nine occasions […] but did not meet the victims or the representatives of their campaigns on a single occasion' (HC Deb 08 October 2013, Col 55).

According to Clark, this showed that 'those who own the media' were 'being listened to, rather than the public, the victims' or other newsworkers (HC Deb 08 October 2013, Col 55).[102] The suspicion voiced here was that once parliament had agreed the terms of the Charter, the Government sought once again to appease the press. It might be argued that such suspicions ultimately came to fruition once the Conservative Party elected not to commence Section 40 of the Crime and Courts Act once it had established its much-coveted majority following the 2015 General Election (see chapter eight).

The involvement of Hacked Off in these negotiations was also criticised, with the then Tory MP Mark Reckless attempting to puncture the cordial mood in the Commons on the day of the agreement by calling the Labour party 'the political wing of Hacked Off' (HC Deb 18 March, Col 762). In the longer term the likes of Oliver Letwin did little to dispel what he probably considered a politically advantageous association between the Opposition and this campaign group when discussing his role in negotiations.

A particular point of contention was a meeting in the early hours of 18 March 2013 where the terms of the Charter were finalised with members of Hacked Off in attendance. Letwin told the DCMS Select Committee that although he was not given prior notice that representatives of the campaign group would attend this meeting held in Ed Miliband's office, he was not particularly surprised that their presence had been requested by the Labour party.

He ascribed his lack of surprise to the 'very strong […] sense' he had acquired throughout the near four months of cross-party talks 'that the Labour Party was acting very much in concert with Hacked Off and that they were unwilling to move in most directions without consulting Hacked Off' (HC Select Committee, 16 April 2013). Letwin, however, attempted to

[102] This was a theme throughout the post-Leveson political landscape. In a later debate on Rupert Murdoch's 21st Century Fox's bid to take over the broadcaster Sky, Tom Watson pointedly raised a meeting the then Prime Minister, Theresa May had with the mogul less than three months earlier. Watson asked the incumbent Culture Secretary to restate previous claims 'that the Prime Minister had not discussed the bid' (HC Deb 20 December 2016, Col 1317) in this meeting, whilst referencing John Major's evidence to the Leveson Inquiry on Murdoch's attempts to influence him whilst Prime Minister.

simultaneously emphasise the insignificance of this meeting, claiming that an agreement had been formulated between political parties hours prior to Hacked Off's involvement.

Hacked Off's input was restricted to what Letwin called 'technical details' (HC Select Committee, 16 April 2013). This account tallies with descriptions given by Hacked Off's attending members. Brian Cathcart similarly claimed to the Select Committee that he and his colleagues – former Liberal Democrat MP Evan Davis, Hugh Tomlinson QC and the Media Standards Trust's Martin Moore[103] – had been called to the meeting to discuss 'some detailed drafting points' (HC Select Committee, 19 March 2013).

Hugh Tomlinson echoed this, claiming that discussions did not include anybody asking Hacked Off members '[d]o you approve this document?' (HC Select Committee, 19 March 2013). On this basis Cathcart stated that the only function of Hacked Off's involvement in the negotiations was to 'advocat[e for] the implementation of the Leveson recommendations' (ibid). During a radio appearance soon after, Nick Clegg similarly claimed this late-night meeting 'dealt with a tiny, tiny piece of the jigsaw' concentrating solely on 'highly technical and legalistic argument of the wording on exemplary damages' (Wintour, 2013).

Clegg's account, in turn, affirms Tomlinson's claim that members of Hacked Off had been invited for their considerable experience of dealing with questions of press ethics and regulation in their retrospective legal, academic, and political careers. This group 'ha[d] quite a lot of expertise to contribute' (HC Select Committee, 19 March 2013). In the same radio interview Clegg attempted to dispel the idea that Hacked Off's attendance in this one meeting tainted the entire agreement struck over the Royal Charter:

> If this was the great papal conclave where everything was resolved from top to bottom then of course everyone should be there or frankly no one should be there – neither the press nor Hacked Off (Wintour, 2013).

All those in attendance, whether sympathetic or otherwise to the concerns of national newspaper proprietors, appeared to be unified in claiming the lack of significance of this particular meeting in relation to the events of the entire weekend when cross-party negotiations were resumed. Despite such attempts to publicly minimise the meeting's

[103] At this point Moore was no longer officially working with Hacked Off despite being, along with Brian Cathcart, a founder of the group's initial campaign for a public inquiry into phone hacking (see introduction). For a time Hacked Off operated out of the MST's offices (Curtis, 2011) but separated themselves from the charity and Moore in the summer of 2012 when becoming a non-profit company (Media Standards Trust, n.d.; See also: Fenton, 2016). I would suspect they continued to work closely with each other considering Moore's presence in this meeting.

importance, and by association the role played by Hacked Off, the fact that the campaign group were afforded a place on the table hours before the Charter was announced came to represent a bête noire for certain critics.

Once parliament had approved the Charter in the resounding 18 March vote (see chapter five), questions about how the agreement was reached, and the motives of those negotiating it, became a recurring motif. Connor Burns, for example, told the house that the presence of Hacked Off at this meeting was responsible for creating a 'deep suspicion among many elements of the press' (HC Deb 08 October 2013, Col 51).

Burns blamed such suspicion on the imagery of a 'meeting in the Leader of the Opposition's office in the middle of the night over pizzas with messages to-ing and fro-ing to No. 10', with Hacked Off involved in negotiating the Charter whilst the press were seemingly 'deliberately excluded' (HC Deb 08 October 2013, Col 51). Maria Miller responded by conceding 'the optics around 18 March did not help a difficult situation' (ibid) rather than defending the meeting itself, or Hacked Off's involvement as victims' representatives.

Richard Drax used similar terms to describe the Charter's genesis, making sure to draw attention to the campaign group's affiliation with high-profile critics of the press: '[t]he deal [was] stitched up at 2 am over a pizza by a group of politicians and the celebrity lobby group Hacked Off' (HC Deb 04 December 2013, Col 315WH). Although seemingly frivolous, repeated references to pizza appeared to be employed euphemistically, encapsulating many of the criticisms of the circumstances around the agreement.

This symbolic image of a group of well-acquainted politicians and activists casually, perhaps even conspiratorially, taking it upon themselves to arbitrarily decide which rules they would like to impose on an unsuspecting press was often evoked by certain newspapers and those supporting their stance. The contrasting accounts of those participating in this meeting, who stressed its technical and inconsequential nature, became overshadowed. This 'pizza' cliché provides an indication of the press's ability to influence political debates.

Media influence

In a content analysis of the output of six national daily newspapers across this period, Ogbebor (2020: 152) found that barring the *Guardian*, these papers operated '[a]s if in collaboration [with] one with another' to 'point out that the meeting was over a pizza meal'.

In contrast to its praise, as noted above, from many in parliament, sections of the press awarded the cross-party agreement the moniker of 'the Pizza Charter' (ibid: 161).

According to Ogbebor (2020: 153) this was part of a larger campaign to 'de-legitimise the Royal Charter on press self-regulation by representing the negotiations that led to its final drafting as unserious and unfair'.[104] For what it is worth, the members of Hacked Off have repeatedly gone on record denying eating pizza, including in front of the DCMS Select Committee a little over twenty-four hours after the meeting was held.

More importantly, Hacked Off have dismissed the underlying characterisation of the meeting as one in which a 'deal' on the Royal Charter was 'thrown together […] late at night in Ed Miliband's office with Hacked Off in the room and the press totally excluded' (Cathcart, 2013). If one takes the accounts provided by the likes of Letwin, Cathcart, Clegg and Tomlinson, it is difficult to sustain the argument that the industry's lack of presence in this one meeting biased the entire process which established the Charter.

This seems particularly convincing when we consider the bulk of the provisions in the Charter originated from the pages of Leveson's report published months before any meetings took place; a provenance which by this point appeared to be all but forgotten by some due to continued attempts to adapt and reinvent what it meant to be 'Leveson compliant' (see chapter five). When accounting for the entire period of post-Leveson negotiation, it can be argued that representatives of the press meaningfully impacted the process on at least two fronts.

Firstly, as above, through meetings and consultation with senior politicians, and secondly, by exerting influence on the political climate, and even the specific contents of political debates. The backdrop provided by newspaper and media coverage meant these debates took place

[104] A content analysis by the MST's Gordon Ramsay (2014) of 19 main UK national daily and Sunday newspapers (ibid: 12) included references to a '"deal over pizzas"' when coding for the theme 'Criticism of the process of agreeing the Royal Charter' (ibid: 124). Such criticisms were found in 9.9% of the articles sampled – or more specifically 9.9% of the articles carrying an opinion on Leveson. Although not the most prominent theme identified within this study, when we allow for the fact that roughly one quarter of the sample period occurred prior to the cross-party agreement taking place, and that the sample included articles discussing many aspects of the Leveson Inquiry and press regulation rather than specifically focusing on this meeting, such criticism over how the cross-party agreement was secured appears significant. A research endeavour more pertinent to my point might be to isolate those articles specifically discussing the 18 March meeting although space and time prevent me from doing so here. Criticism of the Charter negotiations contributed to Ramsay's main finding that 58.6% of the articles sampled contained an entirely negative tone 'critical of either Leveson or the Cross-Party Charter, or both' compared with just 15.2% which were entirely positive in tone (ibid: 22).

within a political context whereby anti-charter and anti-Leveson messaging was being widely circulated.[105]

This is not to mention the formal representation of the press within parliamentary debates through the likes of Conservative Life Peer Lord Black. The executive director of the Telegraph Media Group and PressBoF chairman continued to pursue a post-Leveson settlement aligned to the plan he and Lord Hunt had outlined during the Leveson Inquiry (see chapter four). This involved using his platform to rail against the cross-party agreement as the accompanying legislation which had been voted through the Commons reached the Lords.

Black recycled the line that these amendments were 'agreed not with the industry that is going to be affected by them but with a lobby group' in what he called a 'late-night legislative fix' (HL Deb 25 March 2013, Col 859). There was a clear desire to represent the press as having been excluded from the process and unable to exert any legitimate influence on what was agreed on their behalf.

The fact that this idea received such a thorough public airing, however, may conversely highlight the extent of the press's influence on both the negotiations themselves and the available information about the negotiations. The continuing traction this version of events held, despite repeated rebuttals from all those directly involved in this much maligned meeting, demonstrates this influence. The emotive image of a cloistered secretive meeting involving pizza and backhanded deals appeared to stick.

The indelible mark this image left is shown by the fact it was rehashed a little under four years later with the Leveson fallout yet to be resolved. Crossbench Life Peer, Lord Brown of Eaton-under-Heywood, employed this argument when arguing against what he called a 'state-approved regulator' (HL Deb 20 December 2016, Col 1640). Remarking on events years

[105] A third arm of newspapers' involvement in these debates might be interpreted as an attempt to replicate the campaigning module utilised by Hacked Off via the Free Speech Network. According to Julian Petley this campaign group was 'formed by publishers and editors in the latter days of the Leveson Inquiry' (2013a: 46). It has been referred to as a 'front' for the publishing industry (Greenslade, 2013b; Petley, 2018: 488), and ran dubiously worded polls enthusiastically reported by the press as proof of public opposition to the Royal Charter and Leveson's recommendations. The Free Speech Network's members have published reports such as *Leveson's Illiberal Legacy* (2015) which according to a Lord Black blogpost was 'sponsored by […] DMG Media, News UK and the Telegraph Media Group' (Black, 2015). Amongst its many criticisms of the Inquiry and its political ramifications, the report repeated the claim that 'Hacked Off exerted a significant influence both over the inquiry and subsequently over the legislation rushed through Parliament', activities insinuated to exert 'undue influences' on these processes (Anthony et al., 2015: 28). A pamphlet written by a member of this group, BBC journalist turned media academic Professor Tim Luckhurst (2012), was circulated in anticipation of Leveson's report, and questioned the MST's proposal to the Inquiry (see chapter four), disputing its identification of a middle ground between statutory-regulation and self-regulation (Luckhurst, 2012: 10).

earlier, Brown claimed that 'Hacked Off was involved in the agreement. I do not know whether the press was that closely involved' (ibid). Although less emphatic than similar aspersions nearer the time, this does suggest the narrative popularised by sections of the press had endured.

A final example illustrating the press's influence on the representation of the post-Leveson political process and on the political debates themselves was described to me in a discussion with Brian Cathcart (27 March 2020). Cathcart spoke about a live television appearance he made on the BBC where he happened to appear alongside one arch critic of Leveson's inquiry and any attempt to implement his recommendations, Jacob Rees-Mogg.

The first question put to Cathcart by the journalist Jo Coburn was whether the planned second stage of the Leveson Inquiry should go ahead considering 'the initial Leveson Inquiry took nearly eighteen months and cost around fifty-million pounds' (*Daily Politics*, 2016). Cathcart described being taken aback by this question, and initially caught in two minds on how to respond – although in truth this is not something I would have ascertained from the footage alone.

This hesitancy came because the question contained a falsehood Cathcart knew had been widely circulated by the press since the Inquiry's conclusion. The figure of fifty-million pounds was a combined cost of all criminal investigations and prosecutions related to the hacking scandal as well as the Inquiry, which in reality cost closer to five million pounds (Hacked Off, 2017). To his mind this highlighted how the press had successfully distorted many of the debates and discussions being held on Leveson by this point.[106]

In the moment Cathcart was, therefore, caught between disputing this figure or engaging with the main point of the question by making a case for the second part of the Inquiry. He opted for the latter argument, reasoning that engaging with this broader point was more important in the limited time allowed by the format of a live television interview. This provides a further illustration of how interpretations of the Inquiry and its processes populated by the press had detrimental effects on the prospects for press-reform.

This appeared to facilitate regulatory morphostasis at least as much as any arguments made over the substance of Leveson's recommendations and the Royal Charter. The circumstances

[106] A similar figure was later repeated in the Commons by then Culture Secretary Matt Hancock (HC Deb 01 March 2018, Col 974) when formally abandoning the prospect of enacting remaining aspects of Levesons recommendations (see chapter eight and coda).

in which the Charter was agreed, and the basis for many of the decisions made in relation to the Inquiry's set-up and conclusion, were revisited and recontextualised long after many politicians had assumed a workable solution had been established.

CHAPTER SEVEN
Recommendations Revisited

Before detailing the political events which formalised the abandonment of regulatory reforms and signal the end of this case study, this chapter provides a good juncture to reappraise certain elements of Leveson's recommendations. This includes an analysis of Leveson's calls for an arbitration service, as well as an exploration of some academic commentary on his report.

The chapter provides some indication of the relationship between issues identified within the Leveson Inquiry (see chapter three), the solution to these issues advanced by Leveson (see chapter four), and the political compromises made when attempting to implement these solutions (see chapters five and six). This includes an extended engagement with arguments presented in *A Free and Regulated Press* (2020) by media law academic Paul Wragg, who at time of writing, recently became a Hacked Off board member.

Wragg's manuscript provides a detailed, nuanced, and fascinating rebuttal to the arguments, heard at various points in this thesis, which present statutory regulation as a form of state censorship and a danger to press freedom. In the process, he illuminates some of the philosophical shortfalls of Leveson's report. The overall aim of the current chapter is to assess whether potential 'constraints' (Archer, 2012) on press reform were provoked by Leveson's recommendations themselves.

The cultural shift of arbitration

As previously outlined (see chapter five) the Royal Charter was partly elected as a method for securing change to press regulation because it went some way to resolving a gridlock between the need for political intervention and resistance to applying legislation to the press. In general, however, the need for some change was acknowledged by many. A common refrain amongst politicians was the need to facilitate a 'cultural' change within sections of the press.

Amongst Conservative MPs, Bob Blackman described the need for 'a culture of compliance' to be 'brought into our press' (HC Deb 29 March 2013, Col 462); James Morris cited the need to 'enshrine a new culture of responsibility in the British media' (ibid, Col 468); Sir Gerald Howarth described 'a persistent culture of abusing private individuals' as enabling

press criminality,[107] adding this was something 'the press must deal with' (HC Deb 03 December 2012, Col 617); and, Alun Cairns stressed the 'need for a change of culture' (ibid, Col 638).

Labour's John McDonnell directly related this imperative for changing the culture of the press to the NUJ's proposals for a 'conscience clause' (see footnote 97) that would amend what he called 'the culture of bullying' within certain newsrooms, which had developed since the practice of including such clauses in journalists' employment terms was abandoned in the mid-1960s (HC Deb 03 December 2012, Col 685).

Politicians' determination to improve journalists' working environments was encapsulated by George Eustice who called on the Commons 'as a House' to 'recognise that there was a failure in the culture [of the press] that we must tackle' (HC Deb 03 December 2012, Col 640).[108] Several politicians used the specific phrase 'culture of impunity'[109] to describe the press. This appeared to allude to a direct correlation between the light touch regulation administered by the PCC (see introduction), and the nature of journalistic working environments.

Perhaps the aspect of Leveson's proposals most likely to remedy this cultural deficit and overly permissive working environment was the recommendation for an arbitration scheme within press regulation. Not only could arbitration encourage a cultural shift but it would simultaneously provide victims of press abuse an accessible recourse to justice. Leveson stressed arbitration needed to be both readily available and inexpensive to the public and publishers alike.

If a claim was successful, the arbitrator would have had the power to offer meaningful redress in terms of apologies and some level of financial compensation to the victim. The potential impact of such a resource, however, remains entirely hypothetical having never been fully

[107] Several MPs echoed a belief in this causal relationship. Liberal Democrat Jason Leech claimed that 'culture […] resulted in that criminality' (HC Deb 03 December 2012, Col 634) and George Eustice maintained that 'culture […] led to this criminality' (ibid, Col 638).
[108] See similar statements from Damian Green (HC Deb 03 December 2012, Col 691), Maria Miller (HC Deb 13 February 2013, Col 864), and Peter Bone (ibid, Col 868).
[109] See, for example, comments by Robert Buckland, (HC Deb 03 December 2012, Col 670), Mark Durkan (ibid, Col 679); Harriet Harman (HC Select Committee, 16 April 2013; HC Deb 03 July 2014, Col 1067), Baroness Hollins (HL Deb 20 December 2016, Col 1631).

implemented. IPSO, the uncertified self-regulator much of the national press subscribe to, continues to allow publishers discretion over their engagement in arbitration.[110]

This runs counter to Leveson's recommendations on arbitration which were intended to create equity between claimants and publishers with differing resources, providing an antidote to 'aggressive litigation' (Leveson, 2012a: 1502). Such litigation prevents both legitimate public interest investigation into wealthy, powerful or litigious individuals and organisations, and press victims' access to justice (ibid: 1505-1506). Under Leveson's scheme publishers would benefit by being able to pursue legitimate stories without committing vast resources to legal challenges and claimants could pursue redress without contending with the financial muscle of publishers (ibid: 1770-1771).

If rolled out as intended, this affordable arbitration scheme, supplemented by a court-costs shifting mechanism when a defendant or claimant is denied access to arbitration (see chapter eight), may have compelled news organisations and editorial teams to grapple with considerations of what constitutes the public interest on a more consistent basis than was made evident in the Inquiry (see chapter three). I use the term 'consistent' in two senses.

Firstly, the public interest would need to be considered more regularly within newsrooms and could not be deprioritised when a particularly 'major' or controversial news event comes to light. Increased access to arbitration would self-evidently increase the probability of publishers being challenged over erroneous publications or questionable practices. Newspapers could no longer assess the benefits of publication against the likelihood or capability of the subject of a story mounting a legal challenge. This would place an onus on journalists and editors to prioritise a demonstrable public interest defence in any story susceptible to arbitration.

[110] The limits of IPSO's arbitration scheme have been shown by two successive reviews by the Media Standards Trust. The first report (Media Standards Trust, 2013c) was published prior to IPSO establishing a service, meaning conclusions were based on the prospective plans which were awaiting approval from the publishers' funding body, the RFC (see footnote 89). Incidentally, such control exerted by a funding body on press regulation was a concern Leveson expressed about the previous arrangement between the PCC and PressBoF, which made regulation overly dependent on publishers themselves (Leveson, 2012a: 1761–1762). IPSO's intention was to allow publishers to enter arbitration on a voluntary basis, meaning 'from the perspective of the public this effectively removes the option of arbitration except when it suits the publisher' (Media Standards Trust, 2013c: 14). The situation had improved in the follow-up report (Media Standards Trust, 2019), with 'the RFC now' having 'reduced powers over [the] arbitration' (ibid: 6) scheme in place since August 2018 (ibid: 24). The scheme's procedures, however, remained weighted against claimants. When signing up to IPSO via the *Scheme Membership Agreement*, there is no obligation for publishers to join its arbitral arm and those who retain a de facto 'veto' against oral hearings, due to a stipulation that both parties needed to agree to them taking place (ibid). This again, leaves claimants dependent on the permission of the publisher to seek proper redress.

Secondly, this routinised consideration of public interest justifications may, over time, lead to a more consistent or internally coherent definition of the concept developing within journalistic circles. The ambiguity of the public interest which, at times, appears to be wilfully promoted by sections of the press and utilised as a catch-all justification for their practices, may become naturally attenuated as versions of the concept which have practical utility within arbitration become commonplace.

In short, arbitration may provide the conditions for a reflexive reorientation within journalism towards the concept of the public interest. Under this perhaps slightly utopian scenario we can see, at least in principle, how a change to regulation might facilitate a cultural shift on the ground as all journalists and editors of all publications would be required to give due credence to the public interest in their professional decision-making processes and reflexive deliberations.

This scenario fits Archer's description of the relationship between structural and cultural/ideational elaboration. When outlining the possible causes of Europe's transition to modernity, Archer (2012: 23–24) describes one scenario whereby a shift in the structural conditions gave rise to a concurrent shift in 'the cultural differentiation' of 'novel ideas'. In this version of events the structural establishment of 'a new promotive interest group, seeking to challenge the existing hegemonic elite' facilitated a change in cultural values and ideas prominent at the time.

Admittedly Archer notes that the direction of causation remains unknown, and an equally plausible scenario sees these ideas and values as antecedent and having promoted the formation of these interest groups. The general point stands, however, that disjunction between structural conditions, and the cultural ideas which become prominent within those structures, necessitate some form of modification or morphogenesis to achieve alignment between the two.

If we apply this logic to the potential impact of an arbitration service within the press, it was evidently the hope that this structural change to the regulatory environment would provoke a commensurate cultural change within the press. This includes the hope that existing ideational definitions of the public interest within the press – or perhaps more precisely the lack thereof – would give way to more considered and exacting reflexive deliberations of the concept encompassing obligations to both a readership and the wider public.

Thus, not only would regulatory 'structure [be] transformed, but so [would] agency, as part and parcel of the same process' in what Archer terms the '*double morphogenesis'* (2020: 144, [emphasis in original]). The balance Leveson sought, and which was further negotiated into the Royal Charter, was to encourage this change within the newsroom without direct legislative oversight.

This was achieved by the twice-removed process of having an independent body scrutinise the performance of press regulation, rather than the press themselves. We may never know for certain if these measures could induce this trickledown effect, partially amending the culture within the newsroom. The question remains, why did a parliament so unconflicted in their diagnosis of cultural problems within the press appear to lack the conviction to deliver the remedy concocted with considerable reflexive effort?

The pitfalls of Leveson's recommendations

One line of argument might position this lack of progress as an inevitable consequence of the regulatory structure Leveson proposed. The failure to either effectively persuade or compel the national press to sign up to the new regulatory regime once the infrastructure had been laid by the Government[111] could be seen as a natural consequence of Leveson's recommendations, meaning ultimately the report provided the fuel for its own abandonment.

Some versions of this argument claimed the recommendations, and indeed the Inquiry itself, were so deeply flawed that any attempt by the state to facilitate a new independent regulatory regime in line with the Leveson Report should be abandoned in its entirety. The former *Scotsman* editor and then Professor of Journalism at the University of Kent, Tim Luckhurst, was one such opponent of the Leveson reforms. Within the foreword to a 2015 report commissioned by the Free Speech Network, Luckhurst provided a comprehensive rebuttal of many of the arguments for reform covered within this case study.

In *Leveson's Illiberal Legacy* Luckhurst argues that the circumstances which initiated the Inquiry (see introduction) embedded these flaws in the process from the outset leading to 'rushed legislation' which could enable press suppression (in Anthony et al., 2015: 10). According to Luckhurst, a kneejerk reaction to the Millie Dowler revelation made by a political establishment still reeling from the MPs' expenses scandal some two years earlier, mean the Inquiry was launched 'without proper consultation' (ibid: 8). This 'moral panic'

[111] See chapter eight for establishment of the Press Recognition Panel.

caused parliamentarians to 'lose sight of the crucial role a free press plays in challenging power, making government accountable and reinforcing our democratic processes' (ibid).

Although both Leveson and the politicians seeking to respond to his report had continually expressed intentions to preserve the press's capability to fulfil this vital function whilst providing protection and redress for those whose privacy is unduly invaded, Luckhurst clearly felt this balance had not been found. Indeed, expressing similar sentiments to those provided by the likes of Lord Black and English PEN during the Inquiry (see chapter 4), Luckhurst maintained that any involvement by parliament whatsoever in establishing a press regulatory regime, no matter how independent that regime was intended to be, constituted a breach of hard-won press freedoms (in Anthony et al., 2015: 7) and was incompatible with modern representative democracy (ibid: 12).

It is this opinion which colours the entirety of Luckhurst's analysis, meaning efforts by the likes of Hacked Off to see Leveson's recommendations implemented as faithfully as possible are met with suspicion and insinuation of some deeper ideological animosity toward the corporate media (in Anthony et al., 2015: 13). I would argue it is simply the case that whereas Luckhurst viewed any intervention from the state as untenable and likely to have dire consequences, the likes of Hacked Off viewed it as necessary for ensuring the independence of regulation both from newspaper owners and politicians alike.

It cannot be assumed that either of these viewpoints is argued in bad faith, nor are they illegitimate. They are however entirely opposed in a manner which appears unresolvable. If Luckhurst is unable to countenance any compromise on the state playing a role in establishing a regulatory structure it is difficult to know what meaningful and substantive reforms could be put in place that would meet his approval.

As such, despite being cloaked in an argument for modernisation and meeting the needs of contemporary liberal society – for example one of the subtitles given to a section of this foreword was 'facing the future' (in Anthony et al., 2015: 10) – Luckhurst's argument is entirely regressive in perspective and designed to further entrench the status quo. Perhaps unsurprisingly, the only changes Luckhurst backed were those that were both unprovable and had already been advocated by the press themselves.

This included the idea that '[e]ditors and proprietors [had] redoubled their efforts to ensure that their journalists were familiar with the law' and 'emphasised the need for ethical journalism' within their organisations (in Anthony et al., 2015: 9). The opacity of the inner

working of many newspaper organisations makes this claim difficult to verify and, even if true, does not appear to be the type of robust, structural, longstanding change that could be relied upon to avert further crisis in the future.

Luckhurst also cited the presence of IPSO, whose structural issues have been noted elsewhere in this thesis. The implicit unwillingness to compromise and lack of room for manoeuvre means we cannot follow the threads of this argument much further for our purposes. There is little nuance to explore in what is essentially an ultimatum to abandon all action on reform or suffer the ghastly consequences of a censored and enfeebled press. Perhaps a more fruitful exercise is to explore the types of criticisms of Leveson's report voiced by those broadly in support of some form of reform to press regulation.

(i) The undue entanglement of 'the free press' with press regulation: Paul Wragg's coercive independent press regulation

As noted above, Paul Wragg appears to identify some failings in Leveson's report when constructing his own argument in favour of coercing the press into a new independent regulatory structure. Wragg states that Leveson should have put forward a model of 'mandatory press regulation' (Wragg, 2020: 5) rather than what Shami Chakrabarti called Leveson's ingenious system of carrots and sticks (see chapter five). He views Leveson's incentives-based model as tantamount to a continuation of self-regulation which has proven ineffective in Britain and many other European countries for decades (ibid: 52-80).

Wragg provides a salient interpretation of how Leveson's proposals created the conditions for their own abandonment due to being 'dependent upon the good faith and willingness of the industry to humour' stricter regulation once 'rebuked' (Wragg, 2020: 1). Throughout his book the author makes the case that 'coercive, independent press regulation' would have secured a better outcome for those victimised by the press.

As much of the post-Inquiry reaction attests, Wragg acknowledges that such coercion of the press would need to be legitimised through a strong and robust defence. On this basis he engages philosophically with the well-worn argument that non-voluntary regulation constitutes an infringement on the freedom of the press. In Wragg's view providing that regulation 'does no more than hold the press to account for unduly breaching the rights of others' (Wragg, 2020: 136), this argument based on press freedom is negated.

Regulation must therefore solely focus on instances of press malfeasance where a named victim and measurable harms can be identified. Any attempt by a regulator to oversee the fulfilment of normative obligations, such as those associated with the public interest in aiding democracy by holding the powerful accountable, which in Wragg's view is an ill-defined and overly idealised notion, would be outside of the purview of compulsory regulation.

Wragg (2020: 103) labels such wider socially beneficial aims, which we might assume the press should fulfil, 'imperfect obligations' which 'lack rights-holders' or an identifiable injured party. Any attempt by a regulator, or a court for that matter, to compel a newspaper to publish material which meets imperfect obligations, or some subjective notion of the public interest, would be impracticable. The ambiguity of these concepts renders any such attempt problematic.

As evident within this thesis, the fact that the media has a responsibility to furnish citizens with the material needed for democratic engagement is often heard in academic (see chapter one) and journalistic (see chapter three) parlance. According to Wragg (2020: 62), this understanding of what it means to serve the public interest is shared by 'libertarians' and proponents of 'Social Responsibility Theory' alike, who are only divided by their views on whether the market or state should be relied on to meet these ends.

Both groups' preoccupation with arguments about which form of regulation will encourage the press to serve democracy prevents them questioning whether regulation is the correct forum for this encouragement. It remains largely impossible to categorically assess whether a given publication can be considered an aid to democracy. Even were this possible to discern, forcing publications to produce certain types of material to fulfil this end would be, according to Wragg, 'Orwellian in the extreme' (Wragg, 2020: 96).

Indeed, this attempt to force publications to produce certain material or cover certain topics coincides more with 'despotism' than the principled aims of a fourth estate which holds power to account and fosters meaningful democratic participation (Wragg, 2020: 151). In reality, the only occasions when regulators and courts legitimately apply the public interest to judgments of journalists' or publications' actions is when these parties find themselves employing the concept as a line of defence against claims of intrusion or defamation (ibid: 90).

The press therefore only ever experience the public interest as a potential enablement for what would otherwise be considered unsanctionable actions (2020: 84).[112] Journalists are under no formal obligation to fulfil the public interest, and are not constrained by whatever some view their societal role to be.[113] Wragg insists such regulatory judgments do not touch on issues of press freedom, which should be defined as the sphere within which journalists are free to operate without causing harm or infringing the rights of others (ibid: 164).

These cases are, rather, centred around the issue of press malfeasance understood directly in relation to the harm caused to a known complainant. Press freedom and press malfeasance should be considered 'two distinct realms' (Wragg, 2020: 18) rather than forces grappling over the same space. There is no method through which a publication can be forced to contribute to wider social obligations through the material it produces (ibid: 103, 118). The often evoked 'public's right to know' (see chapter three) does not refer to any right the public has to demand access to information, but is an asset used by publishers to argue against the censorship of material they freely choose to publish (ibid: 128).

Accordingly, the 'watchdog' role the press is said to fulfil through its ability to hold power to account cannot and should not be written into regulators' ethical codes, not least because the state is the only institution which has the authority to mandate compliance with regulation. Clearly, the state is not best placed to assess how successfully journalists fulfil the 'watchdog' role when reporting on the activities of politicians and state actors.

As Wragg (2020: 62) says, the state 'cannot be both patient and surgeon at the same time'. To proceed from the apparent stalemate seen in much of this thesis, whereby any attempt to regulate the press is seen as inevitably involving a trade-off between press freedoms and this watchdog function on the one hand, and the ability to protect members of the public from unwarranted intrusion on the other, the urge to conflate the two must be resisted.

Wragg's separation of 'press freedom' and 'press malfeasance' means it is entirely legitimate to forcibly regulate the former through statute, without interfering in the latter whatsoever. It is this philosophical differentiation which Wragg believes Leveson should have outlined robustly within his report. This could have discouraged the excitable cries of 'freedom of the

[112] This perhaps provides further context of newsgatherers' evocation of the public interest when justifying various actions during the Leveson Inquiry. The concept was used as what I called an 'eternal enablement' (see chapter three).
[113] Notwithstanding the many journalists and publications who freely elect to prioritise some notion of the public interest.

press!' heard whenever the slightest hint of meaningful regulatory oversight is proposed. Instead, the judge proceeded to reinforce this conflation when attempting to plot an intricate middle path between the two via statutory underpinning.

(ii) The need for pragmatism and desire for public interest regulation: a counter argument

In this respect Wragg accuses Leveson of having 'succumbed to the libertarian neurosis, and the SRT [Social Responsibility Theory] malaise, that mandatory regulation might jeopardise the teleological ends of press freedom' (Wragg, 2020: 52). On the other hand, as I have argued previously (see chapter four), Leveson did attempt to pre-empt this line of argument within the pages of the report, although admittedly not in the manner endorsed by Wragg.

Leveson framed his recommendation for a recognition body as a balance between two definitions of the public interest which could appease both those arguments on the dangers regulation posed to press freedom, as well as those demanding meaningful independent accountability within a new regulatory system. In my view this was the more prudent option compared to the attempt Wragg makes to dismiss those arguing the former.

Wragg contributes a well-founded and valuable perspective on how to engage with arguments of press freedom when debating regulation – or perhaps more precisely how to disentangle notions of press freedom from this debate. I believe however, no matter how sound the arguments might be, at the time when Leveson published his report neither the political class, nor the industry bodies manoeuvring on the press's behalf, would have accepted any proposals to coerce publishers into independent regulation.

Whether they ought to have been or not, the two perspectives on the public interest which Leveson attempted to navigate represented material 'constraints' (Archer, 2003, 2012) on the options open to the judge. They were a structural and political reality which could not simply be argued away. David Cameron appeared to suggest as much prior to Leveson publishing his report when publicly confirming an account given by the actor Hugh Grant of a conversation between the two.

Cameron repeated assurances that he would implement Leveson's recommendations on the provision that they were not 'bonkers' and did not include 'heavy-handed state intervention' which would jeopardise the 'free press' (*The Andrew Marr Show*, 2012b). Wragg himself admits that his intention is to explore these vital and interesting philosophical questions on

how press freedom is conceptualised, rather than concerning himself with the practicalities of designing a regulatory scheme that is fit for purpose (Wragg, 2020: 15–16).

Although his argument for a change in the terms of debates on press regulation is convincing, the dial had not yet moved on this issue at the time of Leveson's report and is still to do so. The author appears to acknowledge as much, as the crux of his argument relies on the idea that the notion of the threat posed by regulation to press freedom is so commonplace that it has come to be viewed as 'axiomatic' (Wragg, 2020: 18).

The instincts of politicians and members of the press to rely on these convenient binary arguments of regulation vs press freedom were too normatively ingrained to be easily altered. Expecting Leveson to accomplish this philosophical repositioning whilst simultaneously outlining plans for a new regulatory framework seems to me an ambitious and perhaps unrealistic demand. It fails to account for the institutionalised vested interests which exist between the press and parliament, which would make politicians unlikely to impose non-voluntary restrictions on the press, even if convinced of the philosophical justification for doing so.

To his credit Wragg, once again, acknowledges this in his discussion of the Government's past unwillingness to impose statutory regulation because 'all political parties fear, rightly or wrongly, that their prospects of re-election depend upon amicable press relations' (Wragg, 2020: 67). Whilst yielding some ground to the proponents of the existing regulatory system so soon after it had been found to permit unsavoury and illegal press practices was perhaps an unedifying prospect, there was a practical need for Leveson to take the industry's perspective into account.

This attempt was made to secure both the approval of key figures within the press and, perhaps more importantly, to motivate parliamentarians who had the power to put new regulatory apparatus in place. It can convincingly be argued that Levenson's nuanced approach to incentivising participation in regulatory oversight was as much as could be done to propose a structure that was both effective and had a realistic prospect of being implemented.

It is difficult to imagine that the solution to the regulatory morphostasis we have seen since Leveson's recommendations were published was to recommend something more binding and involuntary for the press and, therefore, less 'politically palatable' (Fenton, 2016: 55) for the Government. I would also argue, from an admittedly different ideological perspective, that

too much is ceded in Wragg's argument in the attempt to legitimise coercing press participation.

Sacrificing all capacity for a regulator to concern itself with what Wragg calls the 'teleological ends' of journalism, which essentially amount to any features of journalistic work which can be said to fulfil a public interest defined more broadly than the avoidance of direct harm to individuals, would attenuate the remit of regulation too severely in my view. Precluding a future regulator from attempting to positively influence press culture or promoting the needs of the wider citizenship above commercial interests would, to my mind, be regrettable.

Regulators would be forced to adopt a self-imposed myopia as if unaware of the broader significance of the unique position held by the mainstream press in democratic society. In some respects, this new regulator would inherit the permissiveness of the PCC despite its statutory backing. If only able to intervene in cases where a known harm is positively and categorically identified, the regulator would be as ill equipped to proactively launch investigations into matters of press malpractice as its predecessor.

The 'failure by the PCC to initiate its own investigations – other than in circumstances where an investigation was needed to head off criticism of the press or self-regulation –' including a lack of due consideration given to third-party complaints on, for example, the discrimination of minority groups, is something Leveson described as a 'weakness in the self-regulatory system' (Leveson, 2012a: 1577). Such issues would almost certainly carry over to the system described by Wragg.

Indeed, Wragg (2020: 160–161) illustrates this point using the example of an incendiary opinion piece which appeared in the *Sun* on the issue of immigration by 'controversial columnist Katie Hopkins'. Although Wragg does little to disguise his distaste for the article, written in his words by a 'despicable human being', he defends the *Sun*'s right to publish based on a lack of specific details in the column. No one group of immigrants is identified, nor are specific locations where a supposed immigration problem exists.

Therefore, it is difficult to attribute any specific consequences or harms being directly caused by this column's publication. As Wragg notes, there is a lack of a 'discernible "angry mob"' (Wragg, 2020: 161). It seems the only issue worth considering is the effect this article had on readers sympathetic to Hopkins' 'xenophobia' (ibid: 162). Its effect on members of the group

being depicted and traduced, or the broader implications of hate speech being endorsed by a major national newspaper, is not for regulators to involve themselves with.

Such issues should be settled, according to Wragg (2020: 162), through the type of open public 'discussion' advocated by John Stuart Mill (see chapter one). On this basis we can safely assume Wragg's coercive regulator would remain entirely unmoved, or indeed unpermitted, to act on any third-party complaint it received on such issues. Perhaps this is a price worth paying to justify the guaranteed full participation in independent press regulation which has proved so elusive.

It is certainly preferable to the partial and incoherent system of self-regulation in place today. However, it could be argued that too much is lost in pursuit of this bargain. Wragg's proposal would have appeared a jarring retrograde step considering the wide remit Leveson was handed for his Inquiry (see introduction), although it is undoubtedly the case that the teleological ends of the press, bound up in concepts such as the public interest, are difficult to codify and enforce as amply demonstrated throughout this thesis.

This does not lead me to conclude, however, that regulators should simply dispense with the aim of grappling with the values which underpin public interest journalism. Just because a term is qualitatively difficult to define does not mean it has no value and can simply be wished out of public consciousness. Surely regulation can carry the *ambition* to encourage the press to cater for a wide range of public, social and democratic needs even where the measurements for doing so are inexact.

The public interest is bound to remain a largely idealistic concept representing figurative ambitions and hopes for how the media ought to operate, rather than being comprised of a set of enforceable rules used to dictate how it does. There is, nonetheless, power in enabling a truly independent body to evoke this concept and ideals of the broader purpose of journalism on those rare occasions when journalists are found to have fallen short of the base requirements of what can be considered ethical or even legal.

It is instructive to highlight how far such individuals have fallen from the idealised role journalists purport to hold in democracy. Although many aspects of Wragg's argument are compelling, I also think the criticism he aims at Leveson's proposal as the basis for their own abandonment is too strong and untested. Before entirely dispensing with the structure devised by Leveson and dismissing his rationale for statutory underpinning, it would first be pertinent to test this system.

In truth the incentives recommended by Leveson and agreed by parliament have never been properly instituted (see chapter eight). If they had and had demonstrably failed, the case for replacing them with Wragg's coercive system would be more compelling.[114] As it stands, it is unknown whether these incentives could either persuade publishers to sign up to the new system or provide an accessible form of redress for those wronged by the press regardless.

If, on the other hand, these pragmatic objectives were achieved in a way that truly benefited those unfairly victimised by the press, I see little need to re-evaluate the philosophical basis of this arrangement. Which is not to say that this valuable philosophical argument should not be debated in academic, political and public arenas to truly demystify and evolve understandings of a how the concept of a free press is related to methods of press regulation.

Lastly, Wragg's account appears to undervalue the potential impact of Leveson's alternative proposal (see chapter five), which would be more in line with the author's coercive and statutory based approach. As discussed, this was something the Government ultimately failed to pursue. Wragg again lays much of the blame for this on Leveson's report. He argues the report's tone was too circumspect and apologetic on prospects of statutory backstop regulation, meaning that Leveson's 'position was weak' and amounted to 'a fairly empty, distant threat of state intervention' (Wragg, 2020: 67).

I would argue, however, that the emptiness of the threat was not in Leveson's gift to determine. Although Wragg is correct that this was viewed as a secondary and less desirable option by Leveson, the report was nonetheless clear that the credibility of this 'plan-B' was vital for the prospects of regulatory change. In my estimation the failure to sustain the credibility of this alternative should lie squarely at the Government's feet.

Those features of Leveson's report which Wragg frames as critical philosophical failings may have been exacerbated by the Government's failure to act. As it was the only institution with the power to enact change of the regulatory infrastructure, it would be my inclination to focus primarily on the actions which were taken and eschewed within the Palace of Westminster. The analysis of political debates undertaken for the current research project suggests those

[114] Wragg (2020: 8) acknowledges that had the government acted on Leveson's proposals his own argument might have been 'rendered nugatory' although he adds, 'the Leveson report is riddled with such problematic reasoning and notable omissions that faithful rendition of its recommendations would be philosophically unsound'.

attempting such philosophically nuanced and abstract debates within this forum might encounter some limitations.

These debates were factional in nature and revolved around longstanding ideological positions and vested interests. The need to secure willing support from the press was never seriously questioned. Formal limitations are imposed on the contribution of each speaker during debates, meaning the open exchange of complex ideas is often avoided in favour of clarity and concision, possibly with the knowledge that what is said in parliament may be further reduced to soundbites in the media.

Arguably Leveson attempted to strike the right balance between a clear set of substantive and meaningful recommendations and justifications for these measures in his report in order to navigate the passage through parliament. Had he produced a report in line with Wragg's more academically robust prescription I can imagine its content being reduced and simplified to the point of losing all meaning and nuance. Indeed, this was evident in certain journalists and politicians characterising what Leveson did propose as statutory regulation.

I do not believe that the failure of the Government to enact Leveson's recommendations, despite the judge's effort to pre-empt criticisms within his report, should be seen as a failing of that report, but rather of political will. Wragg, however, is far from the only academic supportive of meaningful change being introduced to press regulation, whilst critical of the content of Leveson's recommendations.

(iii) Overlooked corporate-state relationships

Julian Petley also reserved criticism for the content of Leveson's report which, however, appears to be directed in the completely opposite direction to Wragg's. Rather than claiming that Leveson attempted to exceed the functionable remit of press regulation by straying into areas of media reform and social responsibility, Petley claims the report ought to have moved further in this direction. He feels Leveson was too reticent to criticise the unhealthy relationship between the British Press and the political classes.

The media academic and campaigner also finds fault with the report's tone and argues it endorses the view that the general relationship between the media and politicians is a healthy one. Despite acknowledging that Leveson did specifically criticise a 'lack of transparency' in how 'press owners and executives have lobbied ministers' over press regulation, Petley

argues that the report did not go far enough in criticising the 'the currency and mechanics of everyday political journalism' (Petley, 2018: 496).

According to Petley, the report's depiction of exchanges between politicians as something which aids journalists' meaningful democratic engagement and by extension the public's, does not reflect the reality of the situation. From this perspective Leveson fails to fully account for the ruinous impact of vested interests and tacit understandings shared by the political and media class which underscore their relationship to one another (see chapter five).

This omission occurred despite Leveson having been shown, in what Fenton evocatively calls 'lurid technicolour' within evidence submitted to his Inquiry, 'a system based on the corruption of power – both of governing elites and of mediating elites and the relations between them' (Fenton, 2016: 52). The symbiotic nature of interactions between senior political journalists and the politicians who act as both their primary sources and the subjects of their reporting negatively affects the press's ability and willingness to scrutinise those in power and vice versa.

Petley (2018: 497) characterises Leveson's report as 'Panglossian, if not Pollyanna-ish' in its treatment of these issues. To exemplify this perspective, perhaps suggesting Leveson failed to utilise all evidence at his disposal, Petley points to the contribution of the *Sun*'s then associate editor Trevor Kavanagh to the Inquiry, during the lecture series held prior to the hearings. Within his speech Kavanagh discussed the public interest and, according to Petley, 'arrogantly and ignorantly dismissed the difference between' this concept and 'the interest of the public' (ibid).[115]

Petley reserves ire for a section of Kavanagh's (2011) speech which described 'news' as 'saleable a commodity as any other' and maintained that '[n]ewspapers are commercial, competitive businesses' rather than 'a public service' (in Petley, 2018: 497). According to the author this tendency to detach the work of news organisations from what many would claim is its inherent social or public purpose highlights 'something profoundly sick, indeed downright corrupt, at the heart of the UK's intimately intertwined political and journalistic cultures' (ibid).

[115] See chapter three for a similar argument made by Paul McMullan during the Inquiry.

If news is entirely commodified, news organisations are free to choose what information becomes available to the public and, perhaps more importantly, what is withheld from this market. There is no need to ponder the morality of such choices, although newspapers clearly run the risk of not being afforded the same legal protection when publishing harmful material patently not in the public interest (see chapter three). Under this description politicians, journalists and other elite actors with access to media corporations can happily fill the news cycle with stories which are convenient and beneficial for all parties but do little more than satisfy audiences' curiosity.

Natalie Fenton (2016: 53–54) provides a similar commentary on Kavanagh's speech. She writes that the views expressed encompass widescale 'political shift[s] in focus from citizenship to consumerism and from states to markets'. Fenton sees the application of these neoliberal principals, which have come to dominate much of the political thinking in Western democracies since the 1970s, as being erroneously applied to news which 'is no ordinary commodity' due to its ability to orchestrate 'the public conversation' on political issues.

In contrast to such criticisms, Wragg (2020: 125–126) appears to side with Kavanagh's sentiments asserting that within an 'avowedly capitalistic' society, such as that which operates in the UK, there is no legitimate basis to require the private commercial bodies which run newspapers to prioritise a public serving function over their ability to maximise profit. Such organisations should be entitled to run their business however they see fit.

Wragg claims that it is unjustified to compel a journalist or news organisation to use their 'capacity' to 'speak', 'investigate' or 'act' in some preordained socially desirable manner 'just as the grocer, butcher, and baker have no obligation to feed the starving even when it is in their capacity to do so' (Wragg, 2020: 128–129). As well as mirroring Kavanagh's depiction of news as a simple commodity, this argument also concords with views expressed by the figure who ultimately employs the journalist, and countless other newsworkers worldwide, News Corp's Rupert Murdoch.

Murdoch expressed similar sentiments in a 2009 speech given to the US Federal Trade Commission when he compared failing newspaper organisations to 'a restaurant that offers meals no one wants to eat or a car-maker who makes cars no one wants to buy' (Murdoch,

2009).[116] Within the speech Murdoch used this rationale to argue against government funding being used to enable newspapers to operate on a not-for-profit basis.

Comparing this with a purportedly problematic government bailout given to the American auto-industry during the 2008 financial crisis, Murdoch claims this move 'subsidizes the failures and penalizes the successes' which ultimately does a disservice to 'customers'. Both Murdoch and Wragg equate the production of news and information with manufacturing and selling ostensibly apolitical products, meaning news organisations should be no more beholden to civic obligations than any other business.

Under such descriptions the public interest is at best a secondary concern, and at worst entirely optional. Perhaps this view of the media's exemption from responsibility for the public interest is the key point of distinction between Wragg and the likes of Petley. Both appear to agree, to some extent, that Leveson employed tenants of Social Responsibility Theory in a partial and unconvincing manner. The judge appeared content to express belief in the vital role the press plays in fostering democratic engagement, without taking specific steps to ensure this role is fulfilled.

For Wragg, the issue is that the presence of this rhetoric is philosophically dubious and opens the report up to the attack that its content represents a threat to press freedoms. For Petley, on the other hand, the issue is the lack of substantive recommendations for ensuring journalism performs its much-lauded role as society's watchdog or fourth estate. Although both scholars are undoubtably dissatisfied with the lack of improvement made to press regulation since the Leveson Inquiry, the basis of their criticism could not be more different.

[116] This equivalence is clearly more than a rhetorical device. News's treatment as a commodity is shown in Murdoch's business practices, including his instigation of what came to be called the price war. In 1993 the proprietor significantly dropped the *Sun's* and *The Times'* cover prices (Greenslade, 2003: 559). It was alleged that *The Times* operated at a loss in an attempt to price out competitors in the broadsheet market who, unlike Murdoch, were unable to rely on a global media empire to absorb such costs (Davies, 2014: 171–172; Greenslade, 2002: 43–45; Jukes, 2012: 148). The title which appeared most vulnerable was the relative newcomer the *Independent*. This paper had poached several *Times* journalists and was partly launched as a reaction to dissatisfaction with the marginalisation of trade unions and the perceived commercially driven corrosive influence of the likes of Murdoch and Conrad Black on broadsheet journalism (Greenslade, 2003: 482–3). Pursuing the price war saw Murdoch sacrifice a fledgling national title from his own stable, *Today*, described by Greenslade as the 'first major casualty' (ibid: 563). Here, concentrated media ownership within an unregulated market directly inhibited diversity and plurality in an artificial manner. Rather than the neoliberal ideal of the 'marketplace of ideas', Murdoch's rivals were forced to compete on their ability to absorb losses. As Greenslade states, due to his business empire Murdoch 'was entering the poker game with more chips than anyone else' (ibid: 561). News International was ultimately found guilty of anticompetitive practices by the Office of Fair Trading (Harrison, 1999), albeit without facing any negative consequences.

Wragg appears to argue Leveson should have extricated himself and his proposed regulator from considerations of the public interest, whereas Petley argues these needed to be pursued in a more robust manner. In terms of the latter position, it might be argued that without first addressing the tacit understandings, vested interests and deference to power which underscore the relationship between Westminster and – what used to be – Fleet Street, it is unlikely parliament will ever feel capable or willing to implement regulation without the press's prior approval.

Petley may accept Wragg's argument that press regulation is not the appropriate mechanism through which these broader aims can be achieved, at least not in isolation, but require intervention at the economic level[117] which Leveson failed to advocate. Securing the compliance of the press to independent regulation, either through diktat or persuasion, will continue to fail without wider structural and economic reform of the media ecology. Petley was similarly partial in his endorsement of Leveson's recommendations in conversation with me.

Although approving of the methods for incentivising compliance through shifting court costs, a provision he described as 'good', when explaining how more deep-seated problems with the press were addressed, Petley called the conclusions of the report relating to the relationships between politicians and the press 'weak' and 'feeble'. In Petley's view Leveson didn't comprehend the scope of the structural features which condition the professional activities of many journalists within the national press:

[117] Petley expressed this in conversation with me (31 March 2020) where he alighted on the concept of 'positive freedoms' as popularised by Onora O'Neill, herself drawing on Isaiah Berlin's *Two Concepts of Liberty*. Whilst negative freedoms are defined as constraints placed on the actions to protect the freedom of others – such as preventing the press from unduly impeding others' privacy – positive freedoms are more in line with Archer's notion of 'enablements'. They are 'freedoms to', rather than 'freedoms from'. According to Petley, in relation to the press such freedoms include a reader's right to access and assess a diverse range of 'reliable information' produced by responsible and trustworthy sources in transparent conditions (see also Maras, 2020: 92). Petley admitted such positive freedoms are 'difficult to legislate into being' and are 'not possible through IPSO codes, or NUJ codes or IMPRESS codes but they require action at the economic level, and structural level and that also means there has to be a will to do it'. Perhaps government-led economic intervention is needed to diversify the press and equip journalists with an ability to serve societal rather than commercial objectives. Such intervention was missing from Leveson's report. This argument further contrasts with Wragg who disputes O'Neill's assertion that the press has societal obligations to facilitate 'positive freedoms' beyond those imposed on any individual engaged in communication. According to O'Neill, the press's considerable resource and influence means that freedom of expression has no equivalence with press freedoms. An inherent imbalance exists between the speaker and receiver in the relationship between the press and its audience. Wragg disputes this differentiation, which he argues dehumanises newspaper publication which is, after all, the 'product of human thought and comes from beings that can express themselves' (Wragg, 2020: 166). In his view freedom of expression extends to journalists no matter how many people choose to read their work.

> Leveson didn't seem to me to really grasp the enormity of the task that is making the British Press act like the fourth estate that it pretends to be, making it act in a responsible fashion (interview with author, 31 March 2020).

This echoes Fenton's (2016: 56) conclusion that Leveson's recommendations focused on 'a narrower set of issues than previous academic analysis has assessed as vital for substantive change to take place', not least issues of concentrated media ownership. As with Wragg's critique, there are many merits to these arguments. They certainly sit more easily with my own views than calls to abandon the public interest.

There may have been pragmatic advantages to Leveson reserving some criticisms for the unhealthily close relationships between media and political figures. There was a rare opportunity to force the Government to address their role in this relationship and the inhibitions this places on the press's ability to effectively act as a fourth estate. Perhaps this might have further pressured politicians of all stripes to be seen to be playing a positive and proactive role in the Inquiry's aftermath.

This might have engendered the political will needed to see the recommendations through, including those intended to curb or cap media concentration, despite inevitable protest from corporate bodies representing the press. On the other hand, Petley is slightly vague about what substantive recommendations he would like to have seen in the report, beyond this more explicit and wide-ranging criticism. This leaves us to wonder what economic or structural intervention Leveson could have recommended that would have stood any chance of being implemented by the Government.

Just as I have argued it was unrealistic to expect Leveson to successfully advocate involuntary statutory regulation, no matter how well founded the rationale, I believe the same applies here. Any recommendations amounting to wide-scale, or even modest structural and economic reforms of the press would probably have received short shrift by the Conservative portion of the coalition Government. One suspects such proposals would not receive wide parliamentary assent in an institution which had/has been dominated by neoliberal thought for decades.

We need only recall the ridicule and mockery heaped on the Corbyn-led Labour Party, both within the media and wider political establishment, to see a preview of the treatment any recommendations would receive if felt to have 'presented a challenge' (Younge, 2021: 48) to the existing order of unrestricted commercialism. Both the media and Westminster share what Ivor Gaber calls – in relation to the BBC's coverage of the Corbyn project – 'a bias

towards the status quo' and an understanding of the political '"centre" as seen by elite opinion rather than the public at large' (Curran et al., 2019: 230).

Indeed, Gaber argues Corbyn's stance on press reform, which included the then Labour leader announcing, 'change is coming' when discussing media ownership, 'acted like the proverbial red rag to a bull' and brought accusations of him wanting to 'control the British media' (Curran et al., 2019: 236). This is not to assume Leveson had any inclination to make such recommendations on newspaper ownership, but his decision to concentrate solely on regulation should not be considered a 'constraint' on the prospect of his recommendations being enacted. If anything, this decision probably increased their likelihood of being pursued by politicians.

In short, although Wragg and Petley provide valid critiques of Leveson's recommendations, and well-reasoned alternatives, I believe framing these as factors in the eventual abandonment of Leveson's reforms would be misguided – not that this is the purpose of either Wragg's of Petley's analysis. In the next chapter focus will therefore remain on the evolving position of the Government, and manoeuvring of press representatives, from the Privy Council's approval of the cross-party Royal Charter to the decision to repeal Section 40 of the Crime and Courts Act 2013 and to discontinue the planned second stage of the Leveson Inquiry.

CHAPTER EIGHT

The Pretence of Progress

With the Cross-Party Royal Charter approved in October 2013 it seemed the process of implementing Leveson's reforms could begin in earnest. Several anticipated and unanticipated eventualities meant, however, that progress was slow. This chapter outlines these factors including the political intervention which ultimately curtailed the entire project.

Appointing the Press Recognition Panel (PRP)

Compounding the lack of political urgency to act on the cross-party agreement (see chapter six), certain structural quirks and formalities of the process for enacting the Royal Charter appeared to cause further delay. There were several valid reasons to avoid undue haste. Not least to ensure the system of regulatory oversight had the capacity to endure future parliaments and press resistance. There is, however, no denying that further lag between the publication and implementation of Leveson's report contributed to the general malaise characterising post-Inquiry events.

The steps reserved for erecting the apparatus for regulatory oversight purposefully removed government control over the pace of these developments. If determined to identify factors from within Leveson's report which contributed to its own downfall (see chapter seven) the convoluted roadmap for establishing a recognition body might be one. Although necessary to ensure the body's independence from parliamentary interference, it meant neither the strong parliamentary majority in favour of delivering these reforms, nor the determination of any single Government figure, could have accelerated the post-Charter process had they so wished.[118]

The initial process for establishing a recognition body, capable of determining a regulator's compliance with the criteria Leveson outlined, was dependent on contributions from those external or auxiliary to the Government. The body's credibility rested on appointing a chairman and board in an entirely transparent and independent manner. Thus, the board would have a majority of members without direct connection or existing commitments to either the press or Westminster politics.

[118] Latter sections of this chapter suggest the Conservative Government's enthusiasm for what was agreed in March 2013 quickly waned.

Responsibility for initiating this process was given to the Commissioner for Public Appointments, whose role since the mid-1990s has been to tackle the 'virtually unbridled power' previously held by minsters over appointments to public bodies (McTavish and Pyper, 2007: 147). The Commissioner aims 'to ensure' such 'appointments […] are made on merit after a fair, open and transparent process' (GOV.UK, n.d.). Due to the premium placed on the independence of the PRP, however, the appointment process was further segmented, with the Commissioner's role restricted under the terms of the Charter.

Although largely supposed to operate independently of the Government whose appointments it scrutinises and regulates, the Office of the Commissioner is 'funded through the Cabinet Office' and is dependent on the executive for agreeing to its staffing requests (McTavish and Pyper, 2007: 148). On this basis McTavish and Pyper question this office's 'success in maintaining "untaintedness" in public appointments' (ibid: 152) – reminiscent of those questions provoked by the arrangement between the PCC and PressBoF or, now IPSO and the RFC (see footnote 110).

Perhaps to avoid allegations that the recruitment process was anything other than independent of government, the then Commissioner for Public Appointments, Sir David Normington, was given what he described to a Public Administration Select Committee as 'a quite limited role' (HC Select Committee, 12 February 2014). Normington explained his role was solely 'to appoint the appointments committee, which then has the job of appointing the body that is going to oversee press regulation' (ibid).

In an exchange which underscores the hypersensitive treatment of any government involvement in press regulation, the Commissioner was asked by the Select Committee's chairman, Conservative MP Bernard Jenkin, to comment on accusations that this somehow compromised his independence[119]. Normington stressed the importance of the all-party support for the Charter, claiming he would have refused 'if this had been just something that the Government asked me to do' (HC Select Committee, 12 February 2014).

Coming from a senior civil servant, these allusions to the Charter's non-partisan status may have reflected its political legitimacy at this stage. The Commissioner's only direct involvement in establishing the PRP was to put together an independent Appointments

[119] This presumably alluded to claims from the then director of the Newspaper Society and the Newspaper Publishers Association, David Newell, that the Commissioner would 'compromise his independence by using the executive power of the state to begin the process of imposing a government-created recognition panel on an industry which has universally rejected it' (Greenslade, 2013a).

Committee – although this committee could seek to consult with the Commissioner if desired. In turn the Appointments Committee would be responsible for firstly appointing the chairman of the new recognition body, before collaborating with them to appoint the remaining board members.

Thus, just as the recognition body was designed to operate at a remove from publishers by concentrating solely on press regulators, its purposeful distancing from government influence was inscribed into this compartmentalised appointments process designed by Leveson. Although his report was not 'prescriptive' on who should establish the Appointments Committee, Leveson did suggest 'distinguished public servants with experience of senior independent appointments such as the Commissioner for Public Appointments' (Leveson, 2012a: 1760).

The report outlined this plan for an appointments panel whose 'selection […] must itself be conducted in an appropriately independent way' (Leveson, 2012a: 1760). No doubt the likes of Hacked Off were keen to ensure this provision survived the transition from Leveson's report to Royal Charter. The campaign group's legal expert, Hugh Tomlinson, affirmed the importance of this process, explaining that although these 'mechanisms' appeared 'very elaborate', this was 'precisely because everybody recognises it is necessary to have independence in the ultimate decision-making body' (HC Select Committee, 19 March 2013).

As necessary as this 'cumbersome process' (Fenton, 2021: 178) might have been, there is no doubt it further prolonged the delivery of a regulatory system which had already been subject to unforeseen delay. Prior to the Charter's approval Maria Miller claimed that she hoped the appointments process would be initiated 'as we move into the summer' of 2013 (HC Select Committee, 16 April 2013). As outlined (see chapter six), PressBoF's alternative Charter delayed this considerably.

It was not until mid-December that the Commissioner received a formal request from Miller (2013), as the relevant Secretary of State, to begin the appointments process. Whilst the reasons for delay were mostly justified and agreed by all, this created space for further developments to impact the progress of reform. In July 2014, over a year after Miller's optimistic prognosis on the timescale for this process, and over nineteen months on from the publication of Leveson's report, the Shadow Culture Secretary, Harriett Harman, updated parliament on the partial progress made.

Harman appeared buoyed by the recent appointment of David Wolfe QC as 'chair of the recognition board for the new press complaints system' (HC Deb 03 July 2014, Col 1067), an appointment that was made on 13 June (Brennan, 2014). Wolfe was a former member of the Legal Services Board which performs a similar function in relation to the self-organised regulation of the legal service as it was hoped the PRP would perform for press regulation.

Despite this promising development, Harmen acknowledged the remainder of the PRP's board needed to be appointed, and perhaps more worryingly, the corporate bodies representing the national press were yet to signal any intent to bring forward 'a Leveson-compliant, independent regulator' for ratification (HC Deb 03 July 2014, Col 1067). To these concerns, Sajid Javid, who briefly succeeded Miller as the Culture Secretary, remained decidedly non-committal.

He cited the Government's determination to remain 'independent' from the appointments process and claimed it was the prerogative of the press's self-regulatory 'body to decide whether the incentives that we have put in place are enough to encourage it to join' (HC Deb 03 July 2014, Col 1068). This apparent determination to remain uninvolved and utilise Leveson's incentives ring entirely hollow considering subsequent Government action.

Nonetheless, the full board of the PRP was appointed by 22 October 2014 (See: Commissioner for Public Appointments, n.d.) with the body formally established in November (Ramsay and Moore, 2019) and being in a position from September 2015 to adjudicate 'applications from regulators that are seeking recognition' (Cathcart, 2019: 102).[120] By this point, however, change in the political context became a decisive factor.

A recognition body, a new political context, two regulators … and more of the same

This political change occurred despite outward signs of what Archer (2012) calls 'contextual continuity', with David Cameron remaining Prime Minister for a second term in a Conservative-only government following the 2015 General Election – a premiership cut short by Cameron's subsequent resignation following the results of the 2016 EU Referendum. The end of the coalition, however, amounted to a new political regime with an emboldened executive less constrained by the lack of a majority and no longer needing to pander to a coalition partner (see chapter six).

[120] See also Karen Bradley (HC Deb 01 November 2016, Col 797).

These events coinciding with the finalisation of the above appointments process was an unfortunate and critical blow for regulatory reform. At this point some minimal action was required from the Government to deliver the final elements of the cross-party agreement and cement the function of the PRP. There was, however, a detectable change in the Government's stance on the reforms from this point onwards. Without public acknowledgment, the Government now appeared intent on weakening the framework it had spent so long negotiating and implementing.

Thus, the very part of this process which was designed to be independent from Government or Party interference was dragged back into the political domain for further revision. The most explicit example of such damaging political interference was the Government's refusal to commence Section 40 of the Crime and Criminal Courts Act, preventing Leveson's mechanism for supplementing the otherwise prohibitively expensive costs associated with court cases involving the press from coming into force. This at once destroyed the only effective measure of persuading publishers to join or organise an independent regulator, whilst preventing access to justice for many involved in press disputes.

As previously explained (see chapter seven), this access would either be provided by affordable arbitration run by a regulator, or through the courts with costs supplemented by any publisher not signed up to that regulator or any claimant electing to bypass arbitration. The apparent apathy or sluggishness on the part of the Government to implement Section 40 was matched in equal measure by the sustained emphatic refusal of any national publishers to engage with the recognition process.

This was a particularly potent cocktail at this juncture, as it appeared to be expected that once a recognition body was established the press and parliament would work in tandem to enable it to function as intended. Due to its legislative terms, Section 40 would not take effect until a press regulator had applied for and received recognition from the PRP (Cathcart, 2019: 102). Therefore, what was designed as an incentive initially acted as a disincentive.

As such, with former judge Sir Alan Moses appointed as its first Chair in April 2014, IPSO continued to voice resistance briefing that it had 'no intention of seeking recognition with the PRP' (Turvill, 2015). Countering this intransigence, a separate group led by former journalist Jonathan Heawood had, since the conclusion of the Leveson Inquiry, been developing the alternative independent regulator IMPRESS. Heawood proves an interesting case in relation to my overarching theme of individualised reflexivity.

In *The Myth of Press Freedom* (2019), Heawood describes how his participation in the Leveson Inquiry as the director of free speech charity English PEN (see footnote 63) impacted his later decision to establish IMPRESS. He claims he was partly influenced by testimony from the Inquiry highlighting the historic failure of the PCC to meaningfully regulate the press and the ruinous impact this lack of accountability had on members of the public caught in news stories (see chapters one and four).

This meant on giving evidence to the Inquiry himself, the then free speech advocate 'struggled to explain why the freedom of the press was more important than other people's freedom to get on with their lives' (Heawood, 2019: 25). As with many actors involved in this case study, Heawood appears to be grappling with the two divergent definitions of the public interest often applied to journalism. Unlike others, however, he transitioned from ascription to one definition to another due to reflexive deliberation of these novel experiential circumstances.

This personal internalised reflexive process is hinted at when Heawood (2019: 26) describes experiencing 'what religious believers would call a crisis of faith' after encountering Millie Dowler's bereaved mother, Sally, during the Inquiry. He also recounts Leveson's convincing response to arguments he put to the judge against statutory intervention during his hearing session. The author's stance centred around the lack of alternatives to binary versions of self-regulation and statutory regulation.

Heawood (2019: 26) gathered Leveson was 'not particularly impressed by this challenge', with the judge already in the process of formulating his plan for a middle path between these positions. Heawood's account of these events appears to demonstrate the reflexive process he undertook in response to this new structural experience, including his exposure to ideas and values he hitherto opposed. The type of disjunction between context and ideas discussed previously (see chapter seven), here occurred on an individual level provoking Heawood to elaborate previous ideational values (Archer, 2003, 2012, 2020).

By the time Leveson had published his recommendations, Heawood (2019: 26) had come to see them as akin to, and no more harmful than, 'an MOT or a company audit' claiming that, 'Leveson had found a way between the rock and the hard place'. The extent of his philosophical about-turn was demonstrated by Heawood now finding himself being opposed by many 'former associates' who 'were not best pleased with IMPRESS' (ibid: 39).

This ideational elaboration resulted in a transformation to what Archer would call Heawood's 'modus vivendi', whereby the erstwhile free speech activist pursued a new 'project' or 'agential enterprise' (Archer, 2012: 56), in this case attempting to establish a press regulator which complied with the recommendation he had come to endorse. According to his own description, Heawood's direct experience within the Inquiry provided the determination and impetus to act.

Thus, not only did this structural experience exert influence on Heawood's agential project, but in turn the former journalist pursued a course of action with the expressed intent of impacting the existing structures of regulation. In other words, when founding IMPRESS Heawood attempted to promote regulatory morphogenesis. Such structural change could of course not be achieved by Heawood's actions alone. The concordant parallel efforts of Hacked Off have been noted throughout this thesis.

IMPRESS garnered support of the respected veteran journalist and former *Times* editor Sir Harold Evans who became a patron of the organisation (O'Carroll, 2013b). Heawood's efforts were also aided by financial contributions and grants from the Joseph Rowntree Reform Trust and the Andrew Wainwright Reform Trust, as well as funding received through crowdsourcing. Another revenue source, which created some inevitable controversy, was Max Mosley who helped fund IMPRESS through a charitable trust which ensured the former racing mogul's independence from the running of the regulator (Heawood, 2019: 38).[121]

Perhaps the most decisive contribution to the regulatory landscape initially made by IMPRESS providing an alternative to IPSO was the fact that the former sought to strengthen the post-Leveson regulatory infrastructure rather than actively attempting to obstruct it. As such, IMPRESS was always intent on seeking ratification through the PRP. When preparing for the recognition process, Heawood wrote that he hoped this would 'activate' the 'framework' outlined in the Royal Charter by giving force to those incentives within the Crime and Courts Act which hitherto 'remain latent' (Heawood, 2015: 142).

At this point it was assumed that the lack of a recognised regulator was the main barrier to activating these incentives. The events following IMPRESS's certification by the PRP on 25 October 2016 show such formalities were not a deciding constraint. Under the terms of the

[121] This charity was the Alexander Mosley Charitable Trust, named after Max's son who committed suicide following details of his father's sexual life being published in the *News of the World* (see chapter three). The intent of this funding mechanism was to ensure Mosley remained entirely removed from IMPRESS's operation (Heawood, 2019: 38).

legislation Section 40 should have now been transformed into the 'enablement' of regulatory reform it was always intended to be. At that point, however, fractional and party-political interest re-emerged as the decisive factor which would shape events going forward.

The re-emergence of political intent

With both the recognition body and a formally ratified regulator in situ, the Government's unwillingness to implement Section 40, part of the legislation which secured resounding cross-party support in 2013, became ever more apparent. The pace of complex processes conducted by external bodies such as the Commissioner for Public Appointments, the PRP and IMPRESS, which as we have explored were by no means expeditious, had now outstripped the simple political procedure remaining after the Privy Council's approval of the Royal Charter.

This lack of progress is further confounding considering the lengthy warning the Government had that the conditions for Section 40 would be met. IMPRESS had publicly announced their intention to apply for recognition as early as May 2015 (Sweney, 2015) before eventually securing this ratification almost a year and a half later. Surely the Government planned for this scenario, where a regulator lacking the endorsement of the national press was the first and only body approved by the PRP.

With lengthy independent appointments and certification processes now complete, any delay from late 2016 onwards can only be attributed to purposeful decision-making within government. Most noticeably the then Culture Secretary John Whittingdale became explicit in his determination to avoid bringing Section 40 into force. The minister was able to exert this influence, due to what is known as a 'commencement clause' within legislation, which involves the relevant government minister signing off legislation through a statutory instrument before it takes effect.

A striking indication that Whittingdale intended to use this ordinarily routine step in a bill's passage to abandon a core provision voted through parliament came in his Society of Editors speech in October 2015. Although the Culture Secretary confirmed his intention to enact incentives related to exemplary damages by the close of the year, he remained evasive on Section 40. He cited concerns of 'small publishers' and the economic challenges facing the industry as reasons for 'not [being] convinced the time is right for the introduction of these costs provisions' (Whittingdale, 2015).

In conversation, Hacked Off's Brian Cathcart told me[122] that throughout his involvement in the 2012/13 post-Leveson political negotiations, the ability of ministers to exploit the commencement process of Section 40 in this manner was not foreseen. Neither Cathcart nor his fellow Hacked Off members, consulted as representatives of the victims of press abuse, discussed this as a likely scenario during these negotiations. Under normal circumstances, the commencement of such legislation is a formality which would generally follow a parliamentary vote.

Cathcart described having a meeting with Whittingdale shortly after he gave his speech to the Society of Editors a little over two years on from what was thought to be a binding parliamentary agreement. According to Cathcart's account, when he confronted the Culture Secretary about the apparent change in stance from the government, Whittingdale indicated that he viewed the incentives which were already due to be put in place, relating to exemplary damages, as sufficiently draconian.

This is consistent with views Whittingdale expressed in the Commons. When asked by the shadow spokesman for Culture, Media and Sport, Michael Dugher, if his speech to the Society of Editors represented a 'backtracking on this issue [which] would significantly weaken the incentive', Whittingdale replied that exemplary damages alone were 'a serious sanction' adding that he would 'consider this matter carefully before reaching a final decision' (HC Deb 22 October 2015, Col 1115).

This selective approach to implementing Leveson's recommended incentives is reminiscent of David Cameron's initial attempt to present the report as a malleable set of ideas which could be changed and abandoned without endangering regulatory reform (see chapter five). Now with Cameron's leadership bolstered by his majority, the Culture Secretary appeared determined to launch a more successful attempt to modify and subvert aspects of the cross-party agreement.

Hindsight has proved that stripped from other incentives recommended by Leveson, the exemption on exemplary damages has not been an effective incentive, as shown by the refusal of all major national newspaper groups to engage with the PRP. The current suite of active incentives have failed the test which Leveson originally set for them: that any 'new

[122] Interview with author, 27 March 2020.

system of regulation should not be considered sufficiently effective if it does not cover all significant news publishers' (Leveson, 2012a: 1754).[123]

Despite intransigence from the press, Whittingdale and the Conservative Government appeared entirely unwilling to enact the incentives. Archer (2020: 143) positions such 'intentional inaction' as one of the many agential actions which may help existing social structures and institutions remain 'relatively enduring'. In this case Whittingdale's apparent refusal to act worked to sustain the pre-Leveson system of self-regulation in the manner advocated by the likes of Lord Black during the Inquiry (see chapter four).

The only thing missing from the regulatory apparatus that had been so long in the making was the engagement of major legacy newspaper titles. The fact that multiple actors including politicians, campaign groups, civil servants and all those participating in the Inquiry itself, had been mobilised to successfully bring the PRP into being made the continued refusal to commence Section 40 appear ever more maddening, illogical and incongruent with the sentiments expressed by parliamentarians at the Inquiry's conclusion.

One indication of the general perplexity caused by Whittingdale's stance, and the perception of his willingness to acquiesce to the press, are suspicions raised by latter revelations that several newspapers, including the *Sunday People*, the *Sun*, the *Mail on Sunday* and latterly the *Independent*, had separately conducted investigations into a relationship between Whittingdale and a professional dominatrix before deciding against publication. Although the direct significance of these slightly convoluted events on the implementation of Leveson's reforms is debatable, the context is worth briefly exploring.

These events also provide a good illustration of complex reflexive deliberations of the public interest in editorial decisions, and their potential interspersion with other priorities and vested interests. Details of these aborted newspaper investigations were eventually published on independent news websites *Byline* and *openDemocracy* in 2016, before appearing in the likes of *Private Eye* and the BBC's *Newsnight* (Petley, 2018: 482–484).

[123] If any further proof of this failure is needed, to this day – at the time of writing a decade on from the Millie Dowler revelations – certain national newspapers refuse to join a recognised regulator whilst simultaneously paying vast compensation to settle historic phone-hacking cases in an attempt to prevent the extent of such practices being revealed in open court, including the *Daily Mirror* (Waterson, 2021a) and the *Sun* (Waterson, 2021b). We have come full circle and now see a recurrence of the methods used by the *News of the World* to weaken the impact of Nick Davies's post-Leveson reporting (see introduction).

One of these articles was written by journalist James Cusick (2016), who had been working on the story for the *Independent* before it was abruptly pulled by the paper's editor Amol Rajan. Ironically, at this point Cusick was investigating the circumstances around the *Independent*'s fellow national newspapers' collective decision to discontinue the story. The very evening before spiking the story Rajan had attended the above speech where Whittingdale announced his stance on Section 40.

According to Cusick there was legitimate public interest in the story, including unanswered questions on whether Whittingdale, whilst chair of the Commons Culture Select Committee, acted correctly when deciding not to disclose details within the Register of Members' Interests of the couple's trip to Amsterdam, paid for by the media company MTV (Cusick, 2016; Petley, 2018: 480–490). Once published the MP's office told *Newsnight* (2016) that the trip's cost did not exceed the threshold for reporting, responses which had not been forthcoming during these initial investigations.

Perhaps more pertinent to this research is Whittingdale's knowledge of these newspaper investigations when accepting his cabinet position and taking on responsibility for press regulation. There was no suggestion of a coordinated conspiracy by these papers (Petley, 2018: 487) and doubts can be raised about the news value of this consensual relationship. Nonetheless, questions about the motives of the multiple papers who chose to bury this story were raised by the likes of Hacked Off (Cathcart, 2016b).

In truth, I have some sympathy with the editorial judgment that the public interest was insufficient for publication, especially for those papers initially investigating the story. The angle of a culture secretary being subject of unpublished newspaper investigations did not exist prior to the *Sunday People*'s decision to drop the story and Whittingdale joining the cabinet in 2015. It is not clear if papers other than the *Independent* were investigating the issue on this basis. At this point, barring the funding of the Amsterdam trip, the story was essentially that an unmarried minister was in a relationship.

Part of its newsworthiness rested on an outdated judgment about the MP's partner's profession. This story on the private life of a DCMS chair soon after the Leveson Inquiry seems a less than opportune moment to test the boundaries of public interest journalism. Arguably the more questionable decision is Whittingdale's acceptance of this cabinet post, at such a crucial juncture for press-reform.

Once in the role, we can well imagine a strong desire amongst the press not to destabilise a Culture Secretary who appeared to be moving in exactly the direction they had hoped. This was perhaps a confluence of interests and ideological alignment rather than anything approaching coercion. Nonetheless, the counter argument is not so outlandish that it can be dismissed out of hand. Nick Davies (2014: 175) explains that many in establishment circles – what he calls the 'power elite' – know of some of the press pack's predilections for weaponizing personal information for 'crude blackmail'.

The likes of Whittingdale had probably heard 'stories about how Murdoch editors have safes containing dossiers of evidence about the private lives' of these individuals which they conceal 'in exchange for […] favours' (Davies, 2014: 175). Whether the refusal to commence Section 40 as expected constitutes one such explicit favour is speculation. It seems likely that multiple newspapers' decision not to publish this story, and the Government's decision to suspend Section 40, are not directly or causally related.

Lingering questions on this, however, show how complementary the dispositions between the Government and the commercial bodies representing the press were. It is likely that no conspiracy existed because no conspiracy was ever needed. Whittingdale and his party proceeded to act in lockstep with newspaper proprietors regardless.

An attempted opposition

The refusal to enact this incentive was compounded by the Government's lack of movement on the concluding section of the Leveson Inquiry, which had the potential to explore aspects of criminality prohibited to the original Inquiry. Had it gone ahead this second phase, 'Leveson 2', could well have seen reinvigorated calls to implement independent regulatory oversight by enacting Section 40. By the latter half of 2016 opposition towards the lack of progress began to stir.

This followed a relative absence of Commons debate on these matters since the cross-party agreement in 2013. In June 2016 the Labour Party attempted to add a clause to the Policing and Crime Bill whilst it was debated at report stage. This clause obliged the government to launch an inquiry, equivalent to Leveson 2. This inquiry would investigate 'the relationships between the press and police and the extent to which that has operated in the public interest' (HC Deb 13 June 2016, Col 1457).

The Labour Party's decision to formally put this clause to a vote highlights the widely shared belief that the Government's ambiguous public stance ultimately betrayed their intention to renege on post-Leveson commitments. Just as Leveson's recommendations had, thus far, been implemented in a partial and wholly ineffective manner, abandoning the planned second stage of the Inquiry would leave the public's knowledge of the extent of press transgression, and the conduct of past police investigations into the press, incomplete.

Under the terms of reference for the first part of the Inquiry, Leveson and his team were explicitly prevented from asking for any evidence which risked prejudicing ongoing legal prosecutions. This meant many finer details pertaining to specific individuals' culpability in the hacking scandal remained obscured and unaired. Leveson described his approach to avoiding questions of 'who did what to whom' as a 'mantra', guiding his conduct of the initial stage of his Inquiry (Leveson, 2012a: 18).

Suspicions that the Government were now intent on curtailing the possibility of such details ever coming to light were explicitly aired by Labour's Andy Burnham, the Shadow Home Secretary, when leading the debate on the above clause. Burnham stated his party's view that since Leveson's report 'the Government have subtly shifted their position in the intervening years' meaning 'it is no longer a question of when the inquiry will go ahead; it is a question of whether it will go ahead' (HC Deb 13 June 2016, Col 1470).

With the Conservative Party's majority – which new Prime Minister Theresa May had inherited after Cameron's resignation – likely to be protecting it from the potentially binding effects of such legislation, Burnham's and Labour's intention was presumably to pressure the Government to publicly re-engage with this debate. Tabling this amendment provided a chance for Labour to demonstrate their continuing commitment to the Leveson reforms in marked contrast to Conservative evasiveness.

As such they called on the Government and Culture Secretary[124] to 'provide an explicit answer' (HC Deb 13 June 2016, Col 1471) regarding their intentions rather than continuing to 'mudd[y] the waters' (ibid, Col 1473). Burnham offered to withdraw the clause without putting it to a vote if the Government 'clarified' or 'reaffirm[ed]' their commitment to Leveson 2 at the Dispatch box (ibid). Any failure to do so 'would be revealing in itself' and meant Labour 'would be right to force a vote in those circumstances' (ibid).

[124] Incidentally, this debate occurred one day prior to a cabinet reshuffle in which John Whittingdale was replaced by Karen Bradley as Culture Secretary.

With no such clarification forthcoming, the clause was put to the House and inevitably voted down by a majority of 113 (HC Deb 13 June 2016, Col 1515 - 1517). As efforts in the Commons appeared ineffective, they were redoubled in what parliamentarians refer to as 'the other place'. Perhaps because the Commons majority hamstrung attempts to resolve the stagnation on Leveson 2 and Section 40 through legislative votes, further attempts were made through the House of Lords.

The Lords' ability to provide a more accommodating forum for such moves, and therefore apply more meaningful pressure on the Government, was not lost on Burnham who made a 'direct appeal to the other place' to 'vote for the honouring of the promise to the victims of press intrusion' (HC Deb 13 June 2016, Col 1598) following his Commons defeat. This mantle was duly taken up when the same Bill reached Report Stage in the Lords in November of that year.[125]

In an apparent cross-party effort, the Crossbench Life Peer Baroness O'Neill – a figure whose contribution to the Leveson Inquiry as well as previous academic work informed much of the ensuing debate on press regulation (see footnote 117)[126] – along with her Liberal Democrat counterpart Lord Paddick and Labour's Lord Falconer, put their names to an amendment. O'Neil confirmed this was essentially the same amendment Burnham previously tabled in the Commons (HL Deb 30 November 2016, Col 229).

Again, the amendment was partially presented as a means to provoke the Government to reveal its agenda. Paddick echoed Burnham's tactics claiming that if assured the Government was ready to 'recommit to Leveson 2, I am sure this House will simply agree to the later

[125] An amendment had been previously tabled and withdrawn from the Bill by Labour Peer Lord Rosser at committee stage. Again, Rosser requested that the Government clarify their stance considering they were now 'only' committing to 'consider[ing] whether to move to the second stage of Leveson' (HL Deb 26 October 2016, Col 232), having previously guaranteed its implementation. The Minister of State at the Home Office, Baroness Williams, appeared to confirm this was the Government's position. She subsequently admitted that she was unaware whether this constituted a change in policy, claiming to be unsure of 'the exact words' used by David Cameron in the Commons when announcing the Inquiry (ibid). This confusion from a government representative perhaps illustrates the dissonance between the Conservatives' initial stance on Leveson and the one adopted latterly. It appeared promises once made were now receding in the collective memory of the party who made them.

[126] Maras analyses O'Neill's likely influence on Leveson's recommendations, noting the judge's expressed gratitude to the philosopher during her Inquiry appearance where he claimed her '2002 Reith Lectures […] led – I don't say inexorably but certainly by a somewhat torturous route [–] to the way in which I've spent the last nine months' (in Maras, 2020: 91). Maras describes O'Neill's published views on accountability, which call for an approach to regulation focused on 'media process' rather than 'media content' through a statute-backed transparent ethical code (ibid: 92), as 'cognate' with Leveson's version of 'statutory underpinning' via a recognition body (ibid: 93).

removal of the amendment'; until such time, however, it served as an 'insurance policy against the Government letting us down again' (HL Deb 30 November 2016, Col 231).

This effort to resurrect Leveson 2 seemingly complemented ongoing debates and efforts within the Lords in relation to the other outstanding issue: the delayed, or more likely abandoned, commencement of Section 40. Amendments which attempted to replicate a version of this costs-shifting mechanism were put forward by the Crossbench Life Peer, Baroness Hollins. This was no doubt partially motivated by Hollins' personal investment in the issue of press intrusion.

The Professor of Psychiatry and former President of the Royal College of Psychiatrists had participated in the Leveson Inquiry as a victim of press abuse. At the Inquiry Hollins recounted the mistreatment and invasion of privacy her family were subjected to when the press continued to pursue details about her daughter who was recovering from a near fatal knife attack. Through the latter half of 2016, having witnessed the post-Leveson process stall, Hollins attempted to compel the government into action.

Hollins put forward an amendment to the Investigatory Powers Bill, which would essentially replicate the provisions already in the statute book under Section 40. Due to the Bill's remit, the cost-shifting mechanisms would only apply to disputes involving alleged phone hacking rather than wider 'media-related claims' such as 'libel; slander; breach of confidence; privacy; malicious falsehood; [and] harassment' (Potter, 2013: 20) as was the case within the original legislation.

To prevent a repeated evasion over commencement, Hollins attempted to insert a 'consequential amendment to Clause 243' of the Bill which 'would have the effect of automatically commencing the provision' once it received Royal Assent (HL Deb 11 July 2016, Col 24). Like the provisos accompanying the proposed amendment to the Policing and Crime Bill, Hollins stated she would withdraw the amendment if Section 40 was commenced 'forthwith' (ibid).

These active steps by a coalition of cross-party and opposition peers in the latter part of 2016 can be viewed in a similar vein to the previous successful attempts to exert political pressure through the Lords in the wake of the Leveson Inquiry. Amendments tabled by the likes of Lords Puttnam and Skidelsky arguably forced David Cameron back to the negotiating table

with his opposition party leaders to broker consensus on the cross-party Royal Charter (Burrell, 2013; Cathcart, 2019: 99). [127]

In Cameron's words such moves in the Lords 'exasperated' him and caused the Government to 'delay urgently needed legislation' (Cameron, 2019: 264). There was of course a different political context some three years later, which meant this legislative route was less effective. Due to the parliamentary arithmetic being against Cameron, the Lords amendments tabled in 2013 represented a viable alternative to the badly received Conservative draft Charter and had a realistic chance of gaining the Commons' assent in a hung parliament. At that point the Government were at serious risk of suffering a damaging Commons defeat.

Equivalent efforts in 2016, attempting to preserve what was agreed in 2013, carried no such threat. Through no fault of their substance, these latter amendments could not be considered a credible alternative to the Government's agenda because they had no realistic chance of being implemented against the Conservatives' wishes. On the other hand, these efforts had decidedly more impact than similar attempts from the Commons opposition benches, if only by dint of the ability to command a majority of votes within the second chamber.

This prevented the amendments being immediately voted down as soon as tabled. Hollins' amendment, for example, was voted through in the Lords with a majority of 102 in the first instance (HL Deb 11 October 2016, Col 1811 – 1815), forty in the second (HL Deb 31 October 2016, Col 439 - 441), and twenty-nine on the third and final time it was put to the House (HL Deb 02 November 2016, Col 657 - 660).

Despite these diminishing returns, each successful Lords vote forced a further debate and vote to be held in the Commons in a parliamentary war of attrition referred to as 'ping-pong'. This meant votes in the Lords delayed the enactment of both the Investigatory Powers Bill and the Policing and Crime Bill until such time that both Houses agreed to the same version of legislation. Perhaps it was hoped that a frustrated government would eventually relent and whip their MPs to support the amendments to allow these bills to become law.

Such frustration was evident. The then Minister for Security, Ben Wallace, labelled these attempts 'blackmail', adding however, it 'does not mean that because someone has tacked an amendment on to the Bill that is not really anything to do with it, we should just give in' (HC Deb 01 November 2016, Col 819). The inappropriateness of including amendments on press

[127] See chapter four.

regulation in bills intended to deal with other policy areas was a common criticism in both Houses, ignoring the offer to withdraw the amendments if legislation originally passed was acted on.

Perhaps reckoning that the support of her Lords colleagues was unlikely to endure further gridlock, Hollins withdrew her amendment once it was returned from the Commons for a fourth time. The peer did not present this as a final defeat for the prospect of Leveson's incentives, claiming that '[t]he size of' the 'majority' her amendment initially received in the Lords, at the stage 'the joint fourth highest majority in the House this Parliament' had at least 'made the Government take note' (HL Deb 16 November 2016, Col 1432).

The Leveson 2 amendments were withdrawn relatively soon after. This was, at least ostensibly, due to what O'Neill called 'one or two deficiencies' (HL Deb 18 January 2017, Col 226) with the amendment's wording which gave Lord Justice Leveson, as the chair of the original Inquiry, the power to overrule any decision parliament made in relation to holding Leveson 2. One suspects the decision to withdraw was primarily due to the inevitability of the amendment ultimately being defeated as the Commons continued to vote it down.

This is not to suggest these combined efforts within the Lords left no imprint on the post-Leveson development of regulatory reform. In fact, at the very point in time when these amendments were being tabled, the Government took what now appears to be definitive action in relation to the two outstanding issues from the Leveson Inquiry. It moved to repeal Section 40 and officially discontinue Leveson 2.

The utilisation of a 'public' consultation

On 1 November 2016 Karen Bradley, the Culture Secretary, announced the Government's intention to hold a public consultation on the possible implementation or abandonment of the second stage of the Leveson Inquiry and Section 40 (HC Deb 01 November 2016, Col 798). This was the first explicit conformation that government policy now entertained the possibility of abandoning core tenets of the 2013 cross-party agreement. Past commitments made to both victims of press abuse and supporters of regulatory reform were now openly questioned. What opposition politicians had suspected the Conservatives of attempting to achieve through stealth and inaction would now be pursued under the guise of this nominally public process.

According to the Government's consultation document, their 'position' until this point had 'been to keep section 40 under review' until a time 'considered appropriate to commence it' (DCMS, 2016: 14). Bradley claimed the circumstances for enacting these provisions were judged hitherto to have not arrived with 'a number of elements of the new self-regulatory regime [yet] to settle in' including 'the exemplary damages provisions of the 2013 Act, the press developing an effective form of voluntary self-regulation, and self-regulators applying for recognition' (HC Deb 01 November 2016, Col 797).

With these arguments now redundant, a more definitive solution to these matters outstanding from the Leveson Inquiry was sought. According to Bradley, these conditions being largely met, along with 'the final criminal case relating to the Leveson inquiry […] entering its final stages', meant the Government were ready to act (HC Deb 01 November 2016, Col 798). Baroness Hollins directly attributed the decision to launch this consultation to the work of herself and colleagues in the Lords (see chapter eight).

Hollins noted that the Government announced this consultation on the very morning that her amendments were due to be debated in the Commons for the first time, suggesting they feared 'a rebellion among their own MPs' (HL Deb 16 November 2016, Col 1432). Although I would argue the chances of such a rebellion were remote, as shown by the repeated Commons defeats Hollins' amendment suffered, it can be imagined the actions of opposition and cross-party peers drew political and some public attention to the partial state of the post-Leveson settlement.

This may have focused government minds on these unresolved matters which were, at least temporarily, obstructing the passage of two acts of parliament. Detractors questioned the merits of the consultation considering the extended transparent independent process already undertaken by Leveson. Legitimacy had, after all, been conferred on the Inquiry's recommendations through the almost unanimous parliamentary support received in 2013. Many predicted the ten-week consultation was proposed as a means of engendering a veneer of respectability and due-diligence on a rash decision already taken by the Government.

The concept of the public interest was once again evoked as a means of legitimisation. In a further attempt to reflexively utilise the concept's inherent ambiguity, the consultation document asked for responses on 'options for commencement of section 40 of the Crime and Courts Act 2013; and whether proceeding with Part 2 of the Inquiry is still appropriate, proportionate and in the public interest' (DCMS, 2016: 3).

This document argued these issues required public intervention to 'help better inform the government's decision' (DCMS, 2016: 5), enabling politicians to determine the correct calibration between those longstanding binary public interest definitions underscoring many of the arguments aired within this entire case study. The consultation was presented as an attempt to balance the 'hard-won liberties and the operation of a free press' (ibid: 4) against the need to protect the public by ensuring 'the inexcusable practices that led to the Leveson Inquiry being established can never happen again' (ibid: 5).

This was of course, precisely the balance Leveson attempted when originally producing his recommendations (see chapter four), which raises further questions of the value added by this consultation. The Government appeared to be asking the same questions and hoping for different answers. They clearly wanted the matter settled regardless. As well as potential motivation from the Lords, the Government would also inevitably soon face a general election to validate Theresa May's premiership which was decided purely on a party basis following David Cameron's resignation.

They would also be required to focus on negotiating a divorce settlement with the European Union. Both these potentially combustible and politically hazardous processes relied on the sustained support of a section of the Conservative voting and/or Brexit supporting British public. The need for the Conservative Party to sustain access to a receptive media during this period was presumably of paramount importance for what was, in many respects, a nascent government.

It has been argued (Cathcart, 2019: 106) that these factors explain the Conservatives' move, following the consultation but before formally responding to it, to include the commitment within their 2017 manifesto to abandon the 'second stage of the Leveson Inquiry' and to 'repeal Section 40 of the Crime and Courts Act 2014' (The Conservative Party, 2017: 80). The manifesto claimed that commencing Section 40 'would force media organisations to become members of a flawed regulatory system' (ibid).

The regulatory system established by the previous Conservative Government and met with cross-house enthusiasm and self-congratulation for its historic significance (see chapter six) was now described as 'flawed' within party literature. In a post-election analysis, these manifesto commitments on press regulation have been described as amounting to 'Tory complaisance with owners and editors' in a manner which clearly positioned the British newspaper industry as 'the [only] beneficiaries of Tory press policy' (Hardy, 2017: 46).

This indicates how far the Government had travelled from the position adopted little over four years earlier. The party now appeared content to openly denigrate and dismantle the regulatory framework they had played a pivotal role in establishing. If, as I have argued, complacency accompanying the 2013 cross-party agreement sounded the death knell for Leveson's reforms, the Conservatives' employment of and response to the public consultation on Leveson 2 and Section 40 represented a substantial final nail in their coffin.

Final nails in the coffin for Leveson's reforms

After failing to win an outright majority in 2017, the Conservative's retention of power was secured by a confidence-and-supply agreement with Northern Ireland's Democratic Unionist Party. Despite this small margin of victory, it meant the above manifesto pledge became mandated government policy. This was cemented through the official response to the public consultation the following year. Matt Hancock, who succeeded Bradley as Culture Secretary, claimed this decision was taken in 'the national interest' (HC Deb 01 March 2018, Col 977).

He attempted to simultaneously frame the decision as a fair assessment of responses to the consultation[128] and a reflection of developments since the Leveson Inquiry, claiming 'the media landscape today is markedly different from that which Sir Brian looked at in 2011' (HC Deb 01 March 2018, Col 965). This line of argument is particularly galling considering his own government's role in compounding the delay between the report's publication and its now-discontinued full implementation.

By this stage the Conservative Government had exhausted time at numerous points in the post-Leveson process. They had attempted to renegotiate the terms of the recommendations when first published, allowed the Privy Council to prioritise the press's alternative Charter before the Government's – in turn delaying the establishment of PRP – and evaded calls to commence Section 40 for many months. This seemingly wilful lack of self-awareness was further highlighted when none other than John Whittingdale commended his successor for not 'looking backwards at the events of 10 years ago' (HC Deb 01 March 2018, Col 970).

[128] Hancock claimed of responses received on the question of Leveson 2, '12% of direct respondents were in favour of reopening the Leveson inquiry, with 66% against. We agree and this is the position we set out in the Conservative party manifesto' (HC Deb 01 March 2018, Col 966). The statistical validity of this claim was disputed. The sample of so called 'direct respondents' included individual readers encouraged by newspapers to respond to the consultation whilst excluding 'a combined total of 200,428 responses all supporting Leveson 2' collected in petitions organised by Avaaz and 38 Degrees (Fenton, 2018b). Tom Watson claimed 'thousands of pro forma newspaper coupons' were counted (HC Deb 05 March 2018, Col 88), a point also raised by Leveson when disputing the conclusions drawn on the consultation (Leveson, 2018).

It appeared ministers like Hancock now felt comfortable aligning themselves with arguments formally used by corporate bodies representing the press to lobby the government. Despite having refused to engage in the PRP's recognition process, Matt Hancock strongly advocated for IPSO, contentiously claiming they 'largely complied with Leveson's recommendations' based on the finding of an internally funded report conducted by former Permanent Secretary at the Northern Ireland Office, Sir Joseph Pilling (HC Deb 01 March 2018, Col 965). Hancock adopted Leveson's terminology to describe IPSO as 'a new independent self-regulator' (ibid, Col 974).[129]

The Culture Secretary regurgitated arguments that Section 40 would be particularly damaging to the commercial viability of the local press, suggesting what he called the 'punitive' cost-shifting measure would amount to 'shackling our free press' (HC Deb 01 March 2018, Col 969). This confluence between Government and press lines did not go unnoticed by the Opposition. Tom Watson, for example, perhaps mischievously claimed 'Paul Dacre, Rupert Murdoch and the Barclay brothers' had 'helped to write' (ibid, Col 968) the Culture Secretary's contribution to this debate.

Attempts came from the Lords to amend this direction of travel. Again, Baroness Hollins was at the forefront, tabling amendments to the Data Protection Bill to essentially reinstate the planned second stage of the Leveson Inquiry. Due to the remit of this bill the amendment positioned the Inquiry as an investigation into 'corporate governance and management failures at news publishers' (HL Deb 10 January 2018, Col 217) in relation to known breaches of data protection.

Despite this formal difference Hollins claimed that 'the terms of reference specified in the amendment' had been written to 'closely resemble those of part 2 of the Leveson inquiry' (HL Deb 10 January 2018, Col 217).[130] Simultaneously, a Conservative peer and grandson of

[129] A report from the MST the following year provides evidence countering this claim. It concluded that '[o]f the 38 Leveson recommendations for a regulatory system, IPSO in 2019 satisfies 13 – just over one-third – and fails 25' (Media Standards Trust, 2019: 3). This included IPSO's failure to maintain operational independence from their press backed funding body, the RFC, along with issues with the arbitration process already discussed (see footnote 110). IPSO also directly contravened Leveson's recommendations by allowing 'working politicians onto its board and into other key roles leaving them wide open to political meddling' (Fenton, 2016: 60). This provokes questions about the credibility of such concerns so adamantly stated by those arguing against Leveson's reforms.

[130] Lord Black criticised the amendment on this basis, claiming this new Inquiry's exclusive focus on the press amounted to an unjust singling out of the industry whilst attempting to 'cynically […] sweep everything else under the carpet' (HL Deb 10 January 2018, Col 228),

a post-war Labour Prime Minister, Earl Attlee, tabled an amendment which replicated the conditions of Section 40 and thus opposed his Government's position (ibid, Col 220).

Lord Black, the former PressBof chair who, according to his entries in the Register of Lords interests (UK Parliament, 2018) became Board Director of its successor body the RFC roughly four months on from this debate, voiced strong opposition. He claimed 'the spectre of yet another inquiry' represented 'a toxic threat to a free and independent press' (HL Deb 10 January 2018, Col 230) and described the Section 40 type intervention as a 'malignant law' which would have 'a destructive impact on our free press, not just national newspapers but the local press' (ibid).

Again, using Government tardiness for its own argument, the then Advocate-General for Scotland, Lord Keen, argued that these amendments had been tabled 'premature[ly]', coming months before the official response to the consultation. Despite the Conservatives' manifesto commitment, Keen argued that as Lord Justice Leveson was still being canvassed for his opinion, these amendments were attempting to reopen an inquiry which had not yet been officially closed (HL Deb 10 January 2018, Col 241).[131]

Despite such arguments, these amendments on Leveson's outstanding recommendations once again found themselves voted through the Lords with a majority of twenty-nine (HL Deb 10 January 2018, Col 245-247). The Culture Secretary responded by publicly chastising the Lords and claiming that 'by putting more pressure on local press' these amendments 'would be the death knell of democracy' whilst promising to counter them in the Commons (*Peston on Sunday*, 2018). There was perhaps more cause for optimism here, compared to the Lords' pre-election efforts thanks to the Conservatives' reduced majority.

By the time these amendments reached the Commons, the Government's above response to their public consultation had been announced. Many of the debating points aired in the post-Leveson context re-emerged and were applied to the two provisions of Section 40 and Leveson 2. In a bizarre rerun of late 2012 - early 2013, the likes of Richard Drax and Jacob Rees-Mogg, who were among the original few voting against their party, returned to their warnings of the threat posed to press freedoms with renewed vigour (see HC Deb 05 March 2018, Col 101, 119).

[131] In truth Leveson's opinion had little effect, despite the judge writing that he 'fundamentally disagree[d]' with the decision to abandon Leveson 2 in correspondence to the Culture Secretary (Leveson, 2018).

Both MPs pointedly reminded the House of their original stance, now secure in the knowledge they were no longer in their party's minority. Labour's Andy Slaughter suggested it was no coincidence that these arguments appeared to have more purchase in this new political context, as the Conservatives had 'simply waited until they think that time has moved on and the heat has gone out of this' (HC Deb 05 March 2018, Col 127).

Adding to old arguments that Section 40 posed a threat to the freedoms and financial viability of the press at a time of precarity was again the idea that such measures attempted to solve problems belonging to a different era. It made little sense to spend time and money raking through decade-old events in a now much-transformed journalistic environment, as if in the six years which had passed since Leveson's report deep-seated issues concerning self-regulation and sporadic press scandal had been miraculously solved.

It would be a further two months before a Commons vote on these issues. By this time Baroness Hollins' amendment to the Data Protection Bill had been revised and tabled by former leader of the Labour Party Ed Miliband, along with Tory rebel Ken Clarke. These revisions addressed issues flagged by the Scottish National Party's Joanna Cherry during the previous debate, around devolved responsibilities for press regulation in Scotland (HC Deb 05 March 2018, Col 108).

The amendment introduced a formal commitment to consult the Scottish and Welsh Ministers before launching a Leveson 2 type inquiry to ensure 'the separate legal context and other circumstances of Scotland' (HC Deb 09 May 2018, Col 701) were properly accounted for. In a further concession to the SNP, publications circulated 'predominantly in Scotland, […] Wales, or […] Northern Ireland' (ibid, Col 703) along with local papers, were excluded from the cost-shifting incentives. SNP votes were clearly valued in this finely balanced parliament.

The pre-vote debate was notable for an impassioned speech from Ed Miliband, returning to his role in drafting the Royal Charter along with his fellow party leaders – neither of whom now sat in the House. Of those now arguing for the abandonment of these post-Leveson commitments Miliband asked '[h]ow dare they say that to the McCanns, the Dowlers and all the other victims? […] [T]his is a matter of honour, of a promise we made' (HC Deb 09 May 2018, Col 723-4).

Miliband claimed the Government's motivation was 'quite simple. It is fear: fear about the wrath of the press' (HC Deb 09 May 2018, Col 726). He ended his speech in an almost explicit homage to traditional collectivist definitions of the public interest (see chapter one),

by extoling the virtues of proportional state intervention when preventing harms caused by unfettered commercial actors. Miliband stated fear was 'not a good reason to allow' the press 'to trample on the powerless when we have it in our hands to do something about it. […] I say, "Think of the public, not the powerful, today"' (ibid).

Matt Hancock, on the other hand, repeated assertions that this intervention had already taken place without state involvement. IPSO was, according to the Culture Sectary, a 'full-blown independent press regulator' (HC Deb 09 May 2018, Col 704). Hancock's predecessor, John Whittingdale, took this claim further by stating that IPSO was virtually compliant with the Royal Charter, and thus with Leveson's recommendations, barring 'three tiny sections' (HC Deb 09 May 2018, Col 722).

He stated IPSO's decision not to seek recognition was 'because there is an objection in principle on the part of every single newspaper to a government-imposed system, which this represents' (HC Deb 09 May 2018, Col 722), rather than its risk of being found wanting. Hancock also appeared to be attempting to channel the views of 'many journalists' (ibid, Col 705), including *The Times'* Andrew Norfolk (see footnote 47) who had asserted that his journalistic investigation which uncovered child abuse in Rotherham would have been impossible if Section 40 were in place.

The Culture Secretary, of course, failed to mention that working for a publication from a recognised regulator, Section 40 would protect the journalist and their employer from the threat of litigation curtailing such investigations. When Liberal Democrat Christine Jardine, a former journalist herself, argued that Leveson 2 could benefit newsworkers by giving them an opportunity to demonstrate reflexive interrogation of their practices restoring the public's trust in their work, Hancock decided once more he was best placed to talk on behalf of the industry.

He claimed that 'representations from the press themselves show that they are not looking for help of that sort' (HC Deb 09 May 2018, Col 712). It seems likely such representations came by the way of senior industry figures rather than some collective of working journalists who are in no position to make demands of their working environments (see chapter three). The Government was now content to align itself entirely with these senior press representatives, unashamedly parroting their arguments as if they shared a tongue.

No matter how transparent, this tactic ultimately worked. In this precariously balanced Government's closest victory (Cathcart, 2019: 107), amendments to the Data Protection Bill

were voted down by a majority of nine (HC Deb 09 May 2018, Col 742 - 746). This narrowest of results was secured, in no small part, by nine DUP MPs voting with the Government under confidence-and-supply. Foreseeing this outcome, Tory MP Bill Wiggin, who spoke in defence of these amendments despite abstaining from the vote, alluded to the concerted whipping effort employed by his party to ensure this victory.

Wiggin proclaimed, 'what a sad day', and with a heavy dose of sarcasm paid 'tribute to the Government Chief Whip, who has worked exceptionally hard […] given that in 2013, 530 MPs voted for section 40 and only 13 voted against it' (HC Deb 09 May 2018, Col 734). Such efforts to prescribe party unity is suggested by the fact that some Conservatives who had vocally supported Leveson's recommendations now voted against these measures.

This included most notably George Eustice along with Zac Goldsmith and Robert Buckland (see footnote 96) who made no contribution to the debates. Just five Conservatives defied the whip to vote for the Leveson amendments.[132] The much-needed SNP vote also partially faltered, dealing a further blow to the prospect of a Section 40 style incentive. Although voting with Labour on Leveson, the Scottish Nationals voiced concern that the cost-shifting arrangements did not sufficiently account for Holyrood, despite those concessions mentioned above.

This was confirmed prior to the vote when Brendan O'Hara stated, 'new clause 20 seeks to impose on Scotland a system of press regulation from Westminster, even though this is wholly devolved' (HC Deb 09 May 2018, Col 736). This caused the Section 40 amendment to be withdrawn because, as explained latterly by Tom Watson, the Labour party 'recognise that there is no majority in the House for it' (HC Deb 15 May 2018, Col 174).

I believe the decision to withdraw this incentive amounted to the realisation that attempts to facilitate effective regulatory oversight had become futile. As should be clear, Section 40 was possibly the key proposal for obtaining the press's participation. It might therefore be argued that longstanding trends of Labour's under-performance north of the border had significant impact on regulatory reform, although even with SNP votes the Leveson 2 amendment was also defeated. This vote was a final confirmation that the Government could proceed as they wished.

[132] Crispin Blunt, Peter Bone, Ken Clarke, Dominic Grieve and Philip Hollobone.

CONCLUSION

An Achievement of Sorts

The May 2018 parliamentary votes on Section 40 and the second part of the Leveson Inquiry ultimately handed the Government the power to deliver their manifesto promise by simply downing all tools related to Leveson and press regulation. These actions amount to a form of self-sabotage which, in the long-term, would enfeeble the efficacy of the infrastructure for regulatory oversight that parliament had spent the previous five years putting in place.

Reflecting on this pyrrhic victory following the vote, the Culture Secretary evoked the neoliberal argument that allowing the press freedom from any meaningfully independent or effective regulation would enable it to continue to modernise and adapt to commercial challenges. Hancock claimed, by voting the amendments down, parliament 'ensured that when it comes to the freedom of the press, we are prepared for the future, not stuck in the past' (HC Deb 09 May 2018, Col 833).

This, and similar sentiments heard throughout the debate, perpetuates the logic that the avoidance of any accountability will encourage the press, as an industry, to address the existential threat posed by digital technology through a market-based rationale and almost shaman-like entrepreneurial instinct to innovate. It relies on the fallacy that tells us 'innovation [is] unleashed if the state stays out of the picture' (Fenton, 2016: 62).

Under this description the press could be relied on to implement the necessary measures – or as Hancock appeared to believe had already implemented the measures – to both compete commercially and restore their reputation with their readerships and the broader public, solely because an economic imperative exists for them to do so. Whilst using his final contribution to express his 'disappointment' (HC Deb 09 May 2018, Col 834) with the outcome, Hancock's primary combatant during this debate, then Deputy Leader of the Labour Party Tom Watson, emphasised the exact opposite sentiment.

Watson claimed the parliamentary vote represented 'a missed opportunity to correct the sins of the past on Leveson' (HC Deb 09 May 2018, Col 834). Perhaps in Watson's view the future prosperity and standing of the press was contingent on an ability to scrutinise past behaviours both within the industry, and in its relationships with other institutions. It can be argued that this provides the best defence against the possibility of past patterns of socially

damaging and even criminal behaviours re-emerging within the ill-defined nexus between institutions like the press, parliament and police.

Recent history has shown the industry descending into scandal and crisis on a semi-regular basis when left to its own devices. In some ways the two above perspectives of Hancock and Watson neatly encapsulate opposing views on how to protect the press's standing in the post-Leveson era. On one side we see a determination to move on from the Inquiry by fully focusing on future possibilities whilst attempting to force unsightly scandals into the shadows of the past by starving them of attention.

On the other was hope that reflexive capacities could be fully utilised to interrogate past missteps and take appropriate corrective action to protect the public. This is not to argue, however, that only the latter position engaged *reflexively* with perspectives on the public interest. As I hope to have demonstrated throughout this thesis, this steadfast refusal to use past mistakes as a rationale for developing new regulatory structures was every bit as reflexive a response as the campaign to see these reforms realised. The effort to stop reform was not the result of unthinking preference for social reproduction, or habitual ascription to the status quo.

When the phone hacking scandal broke and the extent of privacy invasion was slowly brought to light, widescale change, beyond the closure of a single newspaper and arrest of a few individual journalists and private investigators, seemed a more likely outcome than the sustaining of unchecked corporate press power. The fact that such change was avoided highlights a concerted and purposeful operation, carried out on multiple fronts, to render these reforms inoperable.

The dismemberment of Leveson's recommendation was an *achievement* in the sense that it was the result of purposeful reflexive action at both an institutional and individual level. A complex mix of formal processes and fraught political negotiations which were worked through institutional structures of the judiciary, parliament and government agencies contributed to this outcome. These actions were mostly carried out by those with a degree of reflexive appreciation of the structures and institutions they were operating within – which is not to say they successfully predicted the outcome of their actions.

Most of the individuals and groups covered in this case study were engaged in some form of deliberate activity or argument aimed at achieving a particular outcome. Lord Justice Leveson himself, for example, attempted to utilise his understanding of the likely

parliamentary and industry opposition some of his recommendations would provoke by offering an approach to press compliance based on an intricate system of 'carrots and sticks' which balanced competing public and press freedoms. The goal, which was never achieved, was clearly to give his recommendations the best chance of navigating the parliamentary process.

Another example of such purposeful action was the Government's decision to pursue reform through charter to avoid crossing their own self-imposed 'Rubicon' of legislative intervention. This was partly designed to secure the support of press owners and compliance of newspaper publishers, which again it ultimately failed to do. Hacked Off appeared determined to lobby on behalf of the concerns of victims of press intrusion and to ensure the final political settlement resembled the recommendations proposed by Leveson as closely as possible. This was something beyond the capabilities of the newly founded campaign group.

The reflexive actions which appear to have made the most substantial and long-lasting impact on press regulation were the persistent raft of lobbying activities and legal challenges which the corporate organisations representing the press mounted against any attempts to fulfil commitments made to the victims of press abuse in the aftermath of 'Hackgate'.[133] Whilst continuous legal challenges were rebuffed in court they arguably caused significant delay to the post-Leveson drive for reform and, perhaps most critically, provided a demonstration to the political establishment of the strength of opposition to the proposed reforms amongst the small group of powerful actors who dominate ownership of the national press.

Arguably all the actions listed above had consequences unforeseen or unintended by those pursuing them. Even the press industry bodies would presumably have preferred to win their days in court. Agential actions only ever provide a partial explanation of events in what Archer (2012: 46) calls 'open system'. As Archer maintains (see chapter two), structures and the collective practices which sustain them exert separate causal powers which influence such events. The institutional structures through which this attempted reform was implemented contributed to its demise in similarly multifaceted ways.

The need to maintain institutional separation between the judicial sphere in which the recommendations were authored and the political sphere in which they were intended to be implemented is one example of a structural constraint on the post-Leveson process. The lack

[133] Perhaps unsurprisingly the Press dropped an outstanding legal case against the PRP's decision to ratify IMPRESS once the Government made their intentions towards Section 40 known (Mayhew, 2019).

of political value collectively placed on agreement within a political structure geared towards antagonism was another significant factor. The simple passage of time, in relation to the loss of political momentum and public attention, appeared to heavily undermine the chance of regulatory change.

A set of specific and well-developed vested interests acted as the binding agent which fused certain activities and arguments to the structures which they intended to support. Such interests appeared to bind the motivations of the Government and the press to the point where they latterly became entirely indistinguishable. The concept of the public interest and divergent definitions pertaining to it were ever-present and appeared to provide ideological ballast for both sides of this clash.

Whilst reformers argued for the public interest existing in a responsible and transparent press, it is no surprise that the concept was often aligned to those vested interests shared by political and press actors. It is impossible to corroborate whether the concept was used in bad faith by those arguing for the status quo. By evoking the public interest what would otherwise be viewed as the patent abandonment of the victims of press abuse and an entirely cynical capitulation to the commercial interests of press barons was presented as an argument for freedom and opposition to despotism

An earnest and almost fundamentalist belief in the ultimate good served by an idea of the free press which precludes even the most meagre level of accountability may well explain the state of press regulation today. Either way the dovetailing of this ideological conception of the public interest and the structures which it helps sustain can only be explained as a reflexive process. Ultimately the cumulative and often opposing actions of individuals operating within the corporate bodies representing the press, campaign bodies representing the victims of press abuse and, of course, politicians, contributed to sustaining the status quo.

Above all regulatory morphostasis was the lasting achievement of those purposefully and actively pursuing it.

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