

Credible Threats? Self-Regulation in the Shadow of the State

Leveson thinks that seven national convulsions over press regulation are enough. His proposal is for a 'grand bargain' with the press to ensure we never find ourselves in this situation again. In order to understand Leveson's plan to break the cycle, we need to ask exactly why the dance of threat and bluff between Parliament and the media recurs so cyclically, and why he is so anxious to avoid 'Leveson II'.

One simple reason that we find ourselves here again is that self-regulation works only when appropriate incentives are in place, and these incentives are not in place in the case of newspapers. After **several years of EC-Funded research** on media self regulation I reached the conclusion that it works well when at least one of two factors are in place.

- A common interest in improving overall trust of consumers in the sector. This is the case for example of travel agents or advertising self-regulation; in both sectors there is a common interest of the sector in ensuring that irresponsible companies do not impact demand for the whole sector.
- The need to avoid statutory regulation. Self-regulation is a standard script for sectors threatened by a potential burden of 'statutory' regulation: the professions of banking, medicine and law for example have generally argued for professional self-regulation in respect of some aspects of professional misconduct. Individual doctors that ignore the code, as well as the profession of medicine itself know that the consequences will be quick and may well involve the courts. And when there is a crisis, as in banking, the expectation is that collective rights to self-regulate will be swiftly revoked or reduced in scope and statutory regulation is likely to follow swiftly.

In the case of the press however, **self-regulation in the shadow of the state** is much more difficult to achieve. First, because journalism is one of those industries where enlightened self-interest will not fuel self-regulation, simply because the press has too much to gain by breaching the rules. (Readers are human – and nosey- so privacy breach sells papers). Second, and more fundamentally, self regulation in the shadow of the threat of state regulation fails because the threat of law is such a sensitive issue due to understandable press freedom concerns. The threat of state regulation, particularly if it is loudly denounced as **'illegal', cannot be credible**.

On an individual level, striking off journalists for breaching a code would be anathema, (though in many newspapers the PCC code is written into journalist's contracts which makes them easy to sack for breach). And on a collective level, as we have seen in the past week, the merest dab of statutory underpinning of the self regulatory body is likely to provoke shrill quotes from Milton. For all these reasons, credible threats of statutory regulation are difficult to mobilise, as we have seen during all seven previous inquiries into the press, including both of the Calcutt Inquiries.

In the media, as in banking and the professions, governance involves an interplay between self-regulation and statutory regulation over time. But this relationship is a little awkward in the context of 'press freedom'. If the threat of statutory regulation is not credible, self regulation is likely to fail, and standards will slip over time, particularly in an industry in crisis, threatened by online competition. Hence Leveson's modest proposals: legal reforms to make joining self regulation attractive, together with periodic auditing of the self-regulatory body Ofcom and – and this was not even a recommendation – an acknowledgement that the government may need to intervene if self-regulation fails.

The fundamental problem for 'self-regulation in the shadow of the state' is thus that in the context of a loose consensus about press freedom, the threat of a press law always sounds hollow. The irony for David Cameron and Maria Miller meeting editors today is that whilst they might want to talk the talk of press freedom and self regulation they might also have to give a credible threat of

something worse if it fails. After this meeting, they might understand Leveson's difficulties a little better.

It might of course be argued that the messy standoff between Parliament and the press is a healthy state of affairs; a transparent and robust way of periodically celebrating and challenging our free press. Much as I have personally enjoyed the Inquiry, that, I am afraid is nonsense. The Leveson Inquiry's direct **cost** is likely to be in excess of £5m. This is likely to be a fraction of the costs that have been borne by witnesses, core participants and time lost by hundreds of Government officials. Surely, both sides can agree that this is a hugely costly and inefficient form of media accountability. The editors do not want to be here again in five years either for 'Leveson II'. So perhaps there is hope.

December 4th, 2012 | [Communications Review](#), [Filtering and Censorship](#), [Internet Freedom](#), [Media](#)

[Plurality and Ownership](#), [Press Regulation](#), [Privacy](#) | [0 Comments](#)

⌵