The Leveson Inquiry: Trauma or Catharsis?

Transcript

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If you study the news media and teach would-be journalists, as I do, the last couple of years have been remarkable ones. We have learnt more about the operations of certain newspapers than we probably wanted to know, and we certainly learnt more than we had learnt in the previous twenty years about the printed news media in general.

There was a very enjoyable irony about this, and one well worth relishing: newspapers – and I speak, as you have heard, as an ex-newspaper journalist – are very keen on inspecting any other activity whose working they might fancy revealing to their readers. Journalists, however, are hypocrites and not at all keen on being inspected themselves. Proprietors have not been in the habit of explaining themselves to anyone, but the phone-hacking scandal did make that happen. A spell, which had protected proprietors like Rupert Murdoch from closer inspection and accountability, was broken; how exactly that spell had been woven in the first place was one of the themes of the Leveson Inquiry.

You could say, to change the metaphor, that a lid was lifted; now (and this is another irony I think), it is back in place. It is hard to know what is going on because the arguments set off by the publication of the Leveson Report at the end of November have now moved on to parliamentary wrangling behind closed doors. We only know what we know from selective and self-serving leaks. Experts are arguing over what my ex-colleague Matthew Parris rather nicely called “each sliver of whalebone in the disputed legal corsetry of statutory underpinning”.

So, a spectacular public humiliation has become a complex technical wrangle. The aggregate disclosure that Leveson brought about sharpened and shifted public consciousness. No one could any longer deny, or minimise, the simple fact that something had gone very horribly wrong.

But I am going to argue this evening that we may be at some risk of over-compensating. Much of the public argument, shaped by celebrity victims and the shrewdly-steered group Hacked Off, turns on whether the Government will implement Leveson in full, or fail to do so. I think this is the wrong end of the telescope to be looking down. There is an equal danger that political parties will lurch into changes which they will come to regret – but more of that in a moment.

I would like to sort, if I can, all this into some sort of perspective, by trying to answer three questions: why did this crisis occur, what does it tell us, and what should be done now?

My first question: “Why did this occur?” and particularly “Why did it happen when it did?” You may say, well, it was all about phone-hacking, wasn’t it? Yes, indeed it was, but I think we need to wind history back a few years, not least because Lord Leveson himself saw his Inquiry in a very long historical perspective. He said that his Inquiry was established to address “arguably the greatest crisis in public confidence in information privacy since the creation of the data privacy regime”. He was, we must assume, referring to the Data Protection Act of 1998, fifteen years ago.

Actually, he also saw his Inquiry as an opportunity to turn around a record of failure which stretched back 60 years: three Royal Commissions on the press and two other inquiries, specifically into privacy since the Second World War. Leveson wrote that they had left problems “broadly unchanged and unaddressed”.

Now, not everybody saw it that way. While it was going on, you could hear three objections to the Leveson Inquiry: first, that it was a grossly overblown reaction to simple law-breaking; second, that we had somehow heard it all before; and third, that even to open up the question of regulation of the press is threatening, or chilling (in lawyers’ jargon), to press freedom.

There is a bit of truth in the first claim, that it was a very wide Inquiry. I think that the report does show that, in the time he was given, Leveson felt that he could not really do justice to all of the items on the very long shopping-list in his terms of reference. Even at the Guardian, whose disclosures uncovered the phone-hacking scandal, they were a little surprised at the breadth of the Inquiry’s scope. They thought that what they were doing was exposing stuff which would be corrected by the enforcement of the law; actually, it went a great deal wider.

But there is no truth at all in the idea that “we”, whoever that might be, had heard it all before. Some journalists may have known something, but many did not, and certainly the public did not. Still less truth is to be found in the idea that even discussing these issues somehow creates a climate of fear which prevents important truth being known.

Before he ever recommended anything, Leveson performed an immensely valuable service by simply ventilating and recording a large amount of information which deserved to be known. The interpretation of that information has generated a lot of megaphone politics.

An organisation called the Free Speech Network, strongly opposed to any form of new legislation on the media, produced an advertisement just before the Leveson Report was published. The advertisement objected to any possibility that the press might be shackled by new law and showed a picture of six front pages, asking if these pages would have been published under state regulation, as they called it. The advertisement was careful not to try and answer its own question. The stories were: Daily Telegraph on MPs’ expenses; the Guardian front page on phone-hacking; the Daily Mail accusing six men of being involved in the killing of Stephen Lawrence; the Sun, more recently, on Andrew Mitchell MP, allegedly calling policemen plebs; a Times investigation on rich tax avoiders; and the Mirror on John Prescott’s affair with his secretary when he was a Government Minister. You could, at a stretch, just about argue that the last of those problems “broadly unchanged and unaddressed”.

What we now call journalism has always existed in a structure of law – libel, contempt of court, privacy, harassment, data protection, copyright, interception of communications of various kinds… That list is not exhaustive, but you get the point.

Freedom of the press has been expanded over centuries, but it has always been a balance between rights and obligations, hammered out in particular social and political conditions, and embedded or entrenched by constitutive decisions made by governments. In Britain, we have ended up with a mixed system of rules for news media: strict regulation written into law for broadcast; relatively light self-regulation, so far, for print; and virtually no regulation at all for the internet. Leveson thought that a mixed system was better. His concentration on press regulation was designed to preserve a mixed system. He did not think that multi-platform news, with the frontiers between different platforms on which you can transmit news converging, that regulation should converge. I am sorry to say that he did not really consider that question and dodged around it.
The heart of Leveson is privacy versus free expression, and it is important to remember that this is a clash of rights. You cannot solve a clash of rights. You cannot settle it definitively. You can only manage it, and the search is for the best balance.

As a background to Leveson, there were two important decisions in the recent past which are part of the story. There was the Data Protection Act in 1998, which controlled how information could be retrieved from databases. There were no prison penalties for journalists, there was a public interest defence, and the Act set up the office of something called the Information Commissioner.

Before that, strictly on the privacy track, there had been in inquiry in 1990 by a distinguished lawyer called Sir David Calcutt. He was very scathing about the self-regulation system for the press, considering it not in order. He gave them a short number of years to improve things, held a second, brief re-visiting Inquiry in 1992, reported back in 1993 and said there should be a privacy law – this just is not good enough, you are going to have to do much better.

One way or another, by combination of the fact that this was the John Major Government in the midst of European crises (and a good many others), and the fact that there was very powerful lobbying by the press groups, Calcutt’s proposals were derailed.

They were brought back in some form in the Human Rights Act, which incorporated the European Convention of Human Rights into British law in 1998. However, that created a privacy law by simply saying there is a right to the freedom of expression and there is a right to privacy. It made those two flat statements and then left the judges in the courts to sort out everything after that. It did not work perfectly.

Please note that both of these laws, the Data Protection Act and the Human Rights Act, have public interest tests of sorts built into them. Public interest tests come in various forms. They are essentially grounds on which an apparent breach of the law may be justified. They are a way of testing ends against means.

Now, at the time that all these debates, arguments and lobbying were going on in Britain, we were not the only country to be talking about this kind of thing. Australian judges were developing a tort of unjustified invasion of privacy in the ‘90s as well.

The European Court of Human Rights ruled, in 2004, that a long-lens picture of Princess Caroline of Monaco on a public beach was not okay and violated her privacy. The Court ruled, eccentrically I think, that her rights of privacy had been breached because such pictures did not contribute to public debate over the role of the Princess. Just try imagining the application of that kind of law here!

Tony Blair, describing the media as “feral beasts”, worried about the effect of 24/7 accelerated news on public life, and the paparazzi dispute surrounding Princess Diana left a very powerful image imprinted on the public imagination.

One last piece of historical background: in 2001, before anybody had thought about phone-hacking in connection with journalism, two academics, David Morrison and Michael Svennevig, did some opinion research on attitudes to the public interest, the media and privacy. Media professionals, they discovered, did not want legal intervention in deciding the public interest – no great surprise there. The opinion of the public that they polled and talked to in focus groups, however, was quite different. As the authors put it, “The majority of the public approve of quite firm parameters being set on what the media can do in the name of serving the public interest.” So, well before these issues were highlighted by phone-hacking and associated alleged crimes, people seemed to have been clear that unlimited invasion of privacy was not such a good idea and that public interest was one way of saying where it should stop.

The public had the commonsense to realise something which a number of editors cannot yet bring themselves to admit. Ideas about press freedom were mostly formulated in an age in which the only media were printed media and they circulated inside an educated elite. The arrival of mass media, of visual media, and finally the internet, have altered the equation: power and influence are greater, and they can be concentrated in a smaller number of hands. The contrast between truth and falsehood envisaged by John Stuart Mill does not invariably result in the victory of the truth. Scholars such as Onora O’Neill in Britain or James Carey in America were pointing out, more or less simultaneously, and long before phone-hacking, that big TV networks and press barons were not the powers they were when the First Amendment to the American Constitution was passed or when J.S. Mill was writing about press freedom.

So these developments - new laws, inquiries, and a growing sense that there was something wrong – intersected with a quite different crisis affecting printed news. The business model for daily printed newspapers is in very deep, long-term trouble. I say “daily printed newspapers” because weekend papers and magazines are a bit better off. Please note that I am not about to argue that financial trouble for newspapers excuses anything at all, but it is relevant to what happened at Leveson and probably to what happens afterwards.

Here are a few quick dimensions of the issue. The peak year for the total circulations of British national newspapers was 1950. Their aggregate circulation has been coming down; there have been bumps and ups and downs, but they have been coming down ever since that. The dirty secret of national newspapers (or the other dirty secret, if you prefer) is how elderly their readers are. They do not declare these statistics but, from a certain amount of inside knowledge, I think I can guess that none of them will have average reader ages of under 45, and several of them will be over 50 – those are the averages, don’t forget.

These crises did not start with the internet; the internet just made them worse. Popular national papers in Britain, and in most other places, have been going downwards in circulation for at least two decades, well before the internet arrived.

This has accelerated very sharply since about 2008/2009. Obviously, the recession has had a small effect here, but between 2005 and 2010, the number of households in Britain that have broadband doubled. It doubled from about a third to two-thirds, just in five years – that is a very fast increase. At that point, the fall in newspaper circulations began to accelerate.

Even in the countries that seemed relatively immune to this kind of thing – the growth zones of China and India - the growth of newspapers has now begun to stall.

The last aspect of the crisis is that no income from the internet is offsetting the falls in print advertising revenue.

The point at which this intersected with Leveson was very well-caught in an exchange between Leveson and Adam Boulton, the Political Editor of Sky News. Boulton had been talking to Leveson about the competitive pressures threatening the viability of print media. Because of electronic routes for distributing information, Boulton said, “Print media had been forced, to a certain extent, into a secondary market of comment and disclosure.”

Leveson said, “That’s presumably got worse, not merely because of the internet, the elephant in the room, but also as, for example, Government Departments put more material out electronically themselves.”

“Indeed,” said Boulton, and Leveson goes on: “It is all very well handing out a press release to the journalists in the room, but if they can press a button and send it to every journalist in the country, then you need something different. I’d not really thought about it.”

Boulton said: “The point is, they don’t even send it to every member of the public. The traditional way that a lot of people started out in the print media - re-writing press releases and making a phone call – is no longer...
practical, because it is already out there."

Leveson: "So it is critical that the press look for some other way of adding value to the story."

Boulton: " Exactly, yes, and that, I think, in some areas, perhaps pertinent to this inquiry, that’s led to a degree of desperation in the pursuit of something different."

“That’s very interesting…” said Lord Leveson.

So, we have three forces, tending towards a car crash: economic desperation, richer opportunities for the interception and leakage of electronic information. I think we could also add something of a sense of immunity from danger in the case of News International, which, at that time, owned and ran four major papers.

Actually, under the surface, there was a very high degree of dependence on law-breaking already, across quite a lot of newspapers. This was revealed in an operation that has become known as Operation Motorman, which was actually the accidental discovery of the archives of a private detective who worked in Hampshire. When they looked at his work between 1997 and 2003, they discovered that he had done 13,000 transactions, worth somewhere between £300,000 and £500,000, for journalists, basically blagging addresses, ex-directory numbers, that kind of thing. In that period, 91 reports from the Daily Mail and the Mail on Sunday had commissioned 1,218 pieces of information from him. The prosecution fizzled out. There was no prosecution of journalists, despite the fact that the Information Commissioner was plainly told that almost all of them had no public interest defence. The Press Complaints Commission said very little and did absolutely nothing. For quite understandable and very good reasons, this episode is analysed in some detail in Leveson’s Report, and he concludes at the end that if that had gone differently, it might just possibly have been a turning point and might have prevented phone-hacking and associated crimes being as bad as they were.

The story of the actual trigger for the Leveson Inquiry is fairly well-known. In 2006, two people were arrested, one of them a News of the World reporter, actually assumed that he could go back to work after he had been in prison, which, as Leveson remarks, in an acid aside, “tells you something about the assumptions of that period”.

The police then managed either to forget all the additional evidence about phone-hacking or they messed it up: it is not clear from the Leveson Report which.

The denials of wider responsibility at News International continued until 2011, and many opportunities for delving into the truth of what had happened were missed.

In July 2011, it was revealed that the phone-hacking victims of Glen Mulcaire, the detective, had included Milly Dowler, the murdered schoolgirl. At that moment, a story in which people had seemingly been rationing their sympathy (having seen it affect only celebrities until then) really became a major item. It was a disaster for News International and its owner News Corporation. Let’s not forget, they had to shut a newspaper and, worse, withdraw their bid for 61% of Sky Television. It had blowback not just on newspapers.

The Prime Minister, I would assume, probably regrets setting up the Leveson Inquiry with terms of reference quite as wide. You will remember, no doubt, Rebekah Brooks and the LOL texts.

The police re-started their investigations and discovered that phone-hacking had been the least of it. Do not forget that, when the criminal trials start in September, phone-hacking is almost the least serious offence they will be trying. Conspiracy to pervert the course of justice and bribery of public servants are treated vastly more seriously by the courts. 144 of the civil cases were settled last week alone.

So this has been a two-part public humiliation for several newspapers, and we have only seen part one. The trials will be part two. Theoretically, there is a possible second phase of the Leveson Inquiry. The first was the thematic phase, supposed to recommend policy answers; if he and the Government so decide, he can hold a second phase after the criminal trials. I, like a lot of other people, think that is rather unlikely, but it could be a three-phase humiliation, just possibly.

What does it tell us? I am going to divide this answer into two bits: what Leveson actually says (not particularly well-reported); and, secondly, what I think and what I told Leveson.

Leveson did a very important thing by abandoning the style of distilled, impersonal English in which many of these reports are written. He wrote at length. I would like to be able to point to a Leveson Report, but it weighs 10 kilograms and I could not be bothered to get the wheely-suitcase down to bring it here! It is enormously long, and he goes into a lot of detail, so he has created an historical record of some importance.

On a single page, he details reporting which can only be described as appallingly cruel, contributing to four suicides. He is very scathing about self-regulation. I will just make one story here stand for a number.

The Press Complaints Commission was chaired in the 1990s by an affable Conservative peer, Lord Wakeham. After some particular scandal, and I think it may have been the recommendations from Calcutt that I spoke about a moment ago, Wakeham said that he was going to stiffen up the system by having the Press Complaints Code of Conduct written into journalists’ employment contracts, so that their good behaviour could be enforced by their employers. It is a perfectly good idea in principle, but it depends entirely on the attitude of employers to what has been happening.

There is a very funny passage in the Leveson Report in which Leveson looks at an episode which you can see from more than one angle. The News of the World had taken some long-lens photographs of Countess Spencer. I think, when she was receiving treatment in the drug clinic. There was an enormous fuss, and the News of the World was censured by the Press Complaints Commission. This was the sort of thing Lord Wakeham had said was supposed to happen and would improve standards and so on and so forth.

We have, of course, among other things, Piers Morgan’s diaries. They may not be wholly accurate and they were written a long time after the events they purport to record. Nevertheless, he records a conversation with Rupert Murdoch in which Murdoch says to him, “I am awfully sorry about that Press Complaints thingymajig.” When he gave evidence to Leveson, Morgan said Rupert Murdoch “didn’t give a toss” - his phrase - about regulation of any kind. Murdoch, in his turn, said he did not remember using language like that.

There are many episodes of this kind in the Report.

If you are a connoisseur of lethally polite dismissal language, have a look at the section of the Leveson Report in which he attacks a proposal by two more Conservative peers, Lord Hunt and Lord Black, who attempted to revamp and rebrand the Press Complaints Commission in time to have Leveson approve their idea. Leveson did not think much of their suggestions and is very brusque in saying
so. Leveson is very clear that the idea of press freedom has been contaminated by a lot of what has happened. He asked a question, right at the beginning of the Inquiry, “Who guards the guardians?” In what I think is probably the single sound-bite he would most like the Report to be remembered for, he says, “The answer to the question of "Who guards the guardians?" cannot be “No one”.”

Leveson proposes – and this became controversial - a regulator with much tougher powers, but insisted that there had to be some form of quality control. We have got to check that it is working properly, he argued, and if we do not embed that in statute, it is not likely to work, and it will get pushed over, diluted or thrust aside. Most of the proposals for the specific working of the regulator – right of reply, much greater transparency, strong funding, full measures for independence - are now, in the light of the shift of attitudes, relatively uncontroversial. I think that, whatever happens as a result of Leveson, the inquiry and investigation into things that have gone wrong in newspapers, stimulated by third-party complaints (impossible under the old PCC system), is very likely to happen.

Leveson said a lot of not particularly impressive things about journalists recording their exchanges with police and politicians. I think that is probably going to be the most rapidly forgotten bit of his Report. He was instead focused on how to control the power of some popular papers. He said very little about plurality of ownership. He just wanted it better measured, and I think it has to be said that he really just dodged round that issue.

I come at all of the core issues of Leveson from a slightly different perspective. I sympathise with his anger about the abuse, but I do not really believe that any free, open and pluralistic society will have a nicely behaved news media. I think Leveson missed an opportunity for framing a way of stopping crimes and misdemeanours which would be sustainable well into the future. Let me just briefly lay out for you these missed chances.

Leveson, for example, says that the regulator should cover “all significant news publishers”, but he does not define what that means. He does not really seem to grasp what digital technology, and indeed many prior developments, are doing to journalism as a whole.

He treats the internet as a smaller, separate and less powerful segment of publishing. At one point, in an extraordinary aside, he says that it is “understandable” that the gossip site, Popbitch, which is online only, has lower reporting standards because it is so small. Popbitch has 350,000 paid subscribers. By almost any standard, that is well on the way to being large.

Let me give you some examples of how digital change may impact on what Leveson might have been thinking about.

It can even be quite hard to determine what journalism is in the torrent of information. The biggest single change that is occurring at the moment is not the decline in newspaper circulations, it is simply the increase in the amount of information that is going round the world. Only a bit of this information, of course, is journalism.

The wizards at Google say that, between the beginning of human history and 2003, the world generated two exabytes of data. Do not worry about what an exabyte is exactly - it has eighteen zeros, it is vast! They now calculate that the world is generating that same quantity (two exabytes) every two or three days.

Now, even if 30% of the internet content is porn and another 30% of it is spam, that still leaves you with a hell of a lot of information. The problem faced by journalism is sometimes still the shortage of the right information, but there is now also the problem of the management of abundance.

What we call “the story”, the familiar vehicle, the standard unit of journalism, is now something which is endlessly malleable. It can be revised and moved on and changed and split up and altered and corrected, almost indefinitely if you wished to do so.

We do not really know who the new publishers of the digital age are going to be. Are we going to see a large number of people producing information and a layer of aggregators and search engines who become the powerful publishers? We do not yet know.

Privacy law is having a pretty hard time keeping up with technology, foreign servers and everything else. I have read more than one article already, by solemn media ethicists, debating what the rules should be for sending pilotless drones to grab anybody’s private information. What I am sure about is that anybody sending a pilotless drone with a camera over J.K. Rowling’s garden will not consider themselves to be part of anything called “the press”.

There are people recommending – and I think it is not a bad idea - that we should retire the phrase “the press”.

I can understand that Leveson, who had terms of reference too wide for his own comfort, would think that there had to be limits to futurology. The problem is, preoccupied as he was with slaying the monster of popular paper strength, he has risked producing a backward-looking solution.

I also think that there is a problem with his legal underpinning. His report rather gives the game away when it suggests that, if you cannot make up proper statutory arrangements for a proper regulator and nobody can agree this, then the backstop for the regulator should be Ofcom. There are obviously people who believe that Ofcom, the big telecom and broadcast regulator, should take over the regulation of all journalism. It is theoretically possible. Ofcom, when asked to give evidence to Leveson, said not on your life, no thank you! But Ofcom does have a politically-appointed head, and when organisations like the International Press Institute - I declare my interest as a member of its Board - or Index on Censorship are worried about these kinds of suggestions, I get worried too.

My last reservations about Leveson’s prescriptions - the issues of who to include under a regulator, how to compel them to follow a regulator’s sanctions, or obey a regulator’s sanctions, and funding it - are going to be very big problems, with or without statutory underpinning, if regulation is front and centre of the problem.

Now, I want to just tell you quickly what I think would have worked better.

The basis for accountability in journalism, in my view, is the law, which is where you need to start. I do not think you can balance privacy and freedom to report without a public interest test of some kind. Public interest is very elusive and hard to pin down. Early in the development of privacy law, there was a case about The Mirror photographing the model Naomi Campbell. The case eventually went right the way up through the court system, nine judges looked at it, and they broke five-four over several decisions. There was no obvious way to decide the public interest. But the fact that it is elusive and the fact that it has been abused does not, I think, render the public interest a hopeless test or one which we should not be using.

If we were to use a public interest test, we need to make it clear that the disclosure must affect, actually or potentially, a collective entity or a community; it needs to advance some benefit or harm, such as allowing a better decision to be made, a presumption in favour of disclosure, the free flow of information, a reluctance to limit communication, and a bias in favour of the quality of public debate or public reason. Quite a lot of versions of the public interest test then go into what you might call a shopping-list about preventing people being misled, promoting accountability, exposing crime, fraud or corruption. My point here is not to lay down my version, carved in stone, but to say that this definition is where the argument should be.
We already have a problem in British law with the inconsistency and weakness of these defences: Leveson was a wonderful opportunity, I believe, to have this remedied. With Data protection, you have a public interest defence – there is an extremely good one written into the new Libel Bill, which I shall come back to in a moment. However, there are none in the corruption, bribery or official secrets laws, for example, and some very good and very important investigative journalism takes place right at the edge of the law. There is good new guidance from the Director of Public Prosecutions, but that falls well short of a defence built into the law.

I would say that it needs to be better defined, and I think the scope of public interest defence needs to be much better defined in privacy law. The judges have done their best, with those two flat statements - right to privacy, right to freedom of expression - but of course they have zigzagged over and across in an attempt to find the answer in their judgments. What they have produced as a privacy law is more or less illegible in newsrooms, and if you take legal action under it, it is a gamble.

So, if I included a public interest test in these laws, particularly in privacy laws, I would give the courts the ability to take the quality of editorial integrity, or, if you prefer, discipline, into account. I entirely agree with Leveson that, one way or another, cheaper and quicker access to remedy in law, particularly for libel and privacy, must be found. I am in favour of the principle, but there are real technical problems about how this is being done; some of Leveson’s solutions have clashed with one or two other things that were underway. For example, Lord Lester, one of our greatest legal experts on this kind of law, thinks that Leveson’s recommendations on exemplary damages actually violate the country’s undertakings in the European Convention on Human Rights.

My ‘package’ of suggestions would give any news publisher, any platform, any size, an incentive to take part in regulation, because, if you were going to find yourself in court, you would need that defence. You would need a defence of your own editorial integrity, which would, I think, produce a better, but still voluntary, regulator. It can produce an independent commentary on standards, investigate complaints, enforce transparency – the kinds of things which Leveson has wanted to see in the new one, but in a slightly different framework. I publishers did not participate, they would be at risk and would stand to lose heavily and often.

Recall the history of the News of the World. That paper was often in court. My suggestion of legal incentive would give editors in the newsroom a strong incentive to control what happens. I think that is the most effective way of doing it, and it integrates law and regulation to the best effect.

Above all, I would like to stay away from prior restraint and to concentrate regulation on editorial process rather than on content. So that, I think, would also be the best way of providing opportunities for the convergence of all media regulation if that has to happen in the end.

I now come to my third question: what is to be done, given that Lord Leveson did not, inexplicably, take my advice?! The story is – and I cannot avoid this – an unfinished one, and a lot of the devil is in the detail. I think the Government is right to be wary of legislating. They may have reached this view as a result of ordinary political pragmatism – they wish to avoid a split in the Cabinet – but if so, I think they have reached the right careful conclusion, possibly for the wrong reason.

Let me give you an example. There is a draft Bill from the group Hacked Off and it includes certain measures for control of the media, for “a legitimate purpose and necessary in a democratic society”. You may say that a public interest defence such as I was talking about is hard to pin down, but just try interpreting a phrase like “for a legitimate purpose and necessary in a democratic society”. It makes defining public interest look really quite easy!

I think we are looking, to some extent, at the law of unintended consequences. Cameron said, “I don’t want statutory underpinning for whatever new system there is”; however, if you are going to bring incentives into civil litigation, which is what Leveson wanted to do - he wanted to give incentives in damages for people to join the regulation system - legislation is almost certainly going to be required to bring that into effect.

The Government has tried to start with a Royal Charter that avoids legislation, but it is going to have to hang some legislation from it. They have only just published the documents about this, but as I read the Government’s document, a Royal Charter can be tampered with by the Privy Council. In effect, that means the Cabinet can change it. That seems to me to be weaker as a defence than legislation might be. Have they got themselves here into a tangle?

The Labour Party is apparently opposed to the idea of a Royal Charter, or that is what they have said, but we do not yet know what their intentions are in detail. These are all very good examples of the delicate complexities and of the devil being in the detail.

The Government proposal envisages two circles: those who are in the new regulator and those who are not. Publications in the inner circle are protected from exemplary damages, they have access to cheap arbitration, they may get costs even if they lose. You can qualify for the outer circle if you are anyone publishing news “aimed at a UK audience”. How they intend to enforce that for people with servers in the Caribbean when they aim it at a UK audience is just not clear.

And this is not, please note, a theoretical question. Executives on the Daily Mail during the Leveson Inquiry talked more or less openly about moving the editorial operation to New York. I was chairing a lunchtime talk this week with a senior commentator from the Financial Times. Now, he said, albeit playfully, “If we don’t like it, we’ve got a big operation in New York as well.” So this is not an entirely academic question.

We now have rumours that the regional press dislike the regulations so much, because of the likely very high costs they might meet, that they are not going to go into it themselves. That will be truly bizarre! The Press Complaints Commission, much criticised, and quite rightly, worked for two often neglected categories of publication, the regional papers and magazines. As a self-regulation system, the PCC worked really quite well. It would be very odd if we had regional papers outside any new system.

Furthermore, from what little we have had from the Government so far, it looks as if the representatives of the papers have watered down a certain amount about the independence of the regulator. Leveson said that, in the new regulator, the chair and the board should be appointed, “without any influence” from the industry or the Government. The current draft says “without any direction” from the industry or the government. Does that suppose a power of veto? We do not know.

Leveson said that the appointments panel will make, or should make, appointments. The draft charter says that the appointments panel will make nominations – which is not quite the same thing.

We will, in the future, have to tackle the plurality of ownership. Last year, Ofcom were asked by the Government, “Should there be upper limits on ownership for newspapers?” thinking, no doubt, of News Corporation with 34% of the newspaper market. Actually, when Ofcom answered, they spoke against upper numerical limits, partly because they could see enormous problems with the gigantic reach of the BBC. So it is not completely surprising that Leveson dodged this, but the issue will come back, and I suspect in the form of upper absolute limits, at least applying to the future. I cannot imagine a Government making them retrospective.
Here is something to take heart about: transparency will advance anyway. The era in which journalism is something done behind a curtain, only opened upon publication, is over. There is now software to spot “churnalism” or plagiarism, and it is far, far easier in the digital age to actually show what information lies behind things.

I cannot for the life of me understand why the Editor of the Financial Times, a paper moving rapidly to an all-digital future quite soon, does not insist on simply putting linked footnotes into what journalists write. It is incomprehensible to me. It seems that it would do them an enormous amount of good.

The stuff from Leveson on investigative journalism and the police is going to cause a lot of trouble. The Home Office have now put out for consultation regulations which are so stiff about contacts between newspaper reporters and police sources that it would almost certainly have prevented the reporting of the phone-hacking scandal itself. Police sources were extremely important to that story, as an absolutely scathing editorial in the Guardian recently pointed out. This is equally, if not more, important; under the cover of the post-Leveson atmosphere, the Home Office are now threatening to strengthen the Police & Criminal Evidence Act, making it much easier for police to seize reporters’ notebooks and materials.

Likewise, Leveson’s suggestion that investigative journalists should write contracts with their sources is well-meant but I am afraid entirely impractical.

This is an area, as I hope I am giving you the impression, of messy chaos which favours people with agendas which might not be popular if everybody caught on to what they are doing.

That is my lead-in to the recent manoeuvre by Lord Putnam, David Putnam as he was. He pulled off an ambush in the House of Lords. The House was considering the Libel Bill, and he attached to it two clauses which are entirely to do with the regulation regime proposed by Leveson. Putnam argued that this move was necessary to get the Government to implement all of Leveson as he would like.

The Libel Bill is the culmination of at least three years’ work in Parliament and fifteen years’ work of discussion. It is on the brink of going through. It has been hammered into shape over years, by every expert who could possibly be consulted.

Putnam’s manoeuvre puts the entire Libel Bill at risk. If the Libel Bill goes down, the cleverness of his ambush will, I hope, be forgotten, and the destruction of a valuable reform will be remembered as a piece of infamous foolishness which has lost, or would lose, a great deal more than it gained, partly because the issues thrown up by Leveson’s suggestion on arbitral process are very intricate.

One example, given yesterday, again by Lord Lester, the godfather of the Libel Bill himself, was that a paper in the regulatory system which did not consult a regulator or went against advice would be liable for exemplary damages. Now, that’s Putnam’s clause. That goes further than Leveson and, as Lester pointed out, the only European states with a law like that are from inside the former Soviet Union. “Into the bargain,” he added, “it breaches common law and the European Convention on Human Rights.” So I can only hope that Labour and Liberal MPs will see that the best thing to do is to disentangle this link which could sink the Libel Bill.

But, let me not end on a pessimistic note. Overall, journalism is going to get better, partly as a result of the catharsis that Leveson has brought about, and partly as a result of wider changes. However, we are going to have to be very careful about the way we change law and regulation.

Why am I optimistic? Well, who triggered the Leveson Inquiry in the first place? A journalist.

Thank you for your attention.