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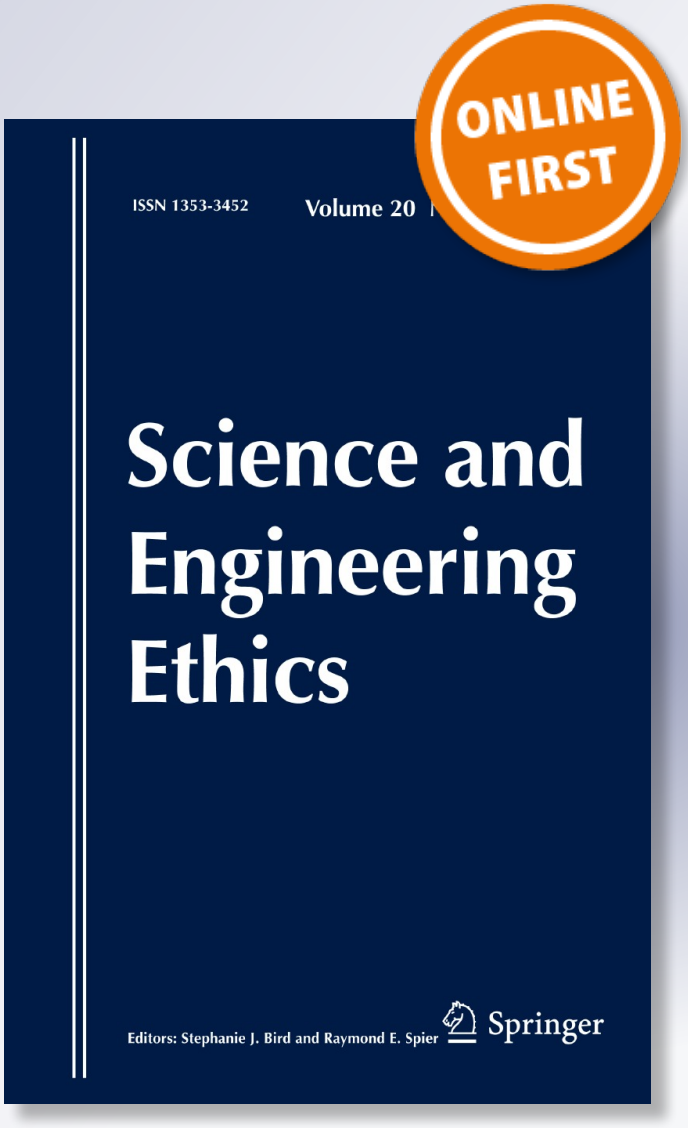

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ORIGINAL PAPER

Press Self-Regulation in Britain: A Critique

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Abstract This article reviews the history of press self-regulation in Britain, from the 1947 Ross Commission to the 2012 Leveson Inquiry Commission. It considers the history of the Press Council and the Press Complaints Commission, analysing the ways they developed, their work, and how they have reached their current non-status. It is argued that the existing situation in Britain is far from satisfactory, and that the press should advance more elaborate mechanisms of self-control, establishing a new regulatory body called the Public and Press Council that will be anchored in law, empowering the new regulator with greater and unprecedented authority, and equipping it with substantive sanctioning abilities. The Public and Press Council should be independent and effective, with transparent policies, processes and responsibilities. Its adjudication should be made in accordance with a written, detailed Code of Practice.

Keywords Britain · Code of Practice · Leveson Inquiry Commission · Press Council · Press Complaints Commission · Public and Press Council · Self-regulation

Unlimited power is apt to corrupt the minds of those who possess it.
William Pitt the Elder, *1770*

All websites mentioned were accessed on 1 January 2014.

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No man ought certainly to be a judge in his own cause, or in any cause in respect to which he has the least interest or bias.

Alexander Hamilton, Federalist No. 80, 1788

Introduction

On 13 July 2011, Prime Minister David Cameron set up an official inquiry committee headed by Lord Justice Brian Leveson to study the culture, practice and ethics of the press. He asked Leveson to make recommendations for change so as to devise a more effective press regulator (Leveson 2012a, Vol. I, Part A, chapter 1: 3–5). This was in the wake of revelations concerning phone-hacking conducted by the *News of the World* tabloid into the phones of celebrities, politicians and other members of the public. The phone-hacking scandal was so large in magnitude that Rupert Murdoch was pushed to close down his profitable *News of the World,* hoping that this drastic step would relieve the pressure. The media mogul sacrificed one newspaper in order to maintain his other prospering businesses in Britain.

The lengthy Leveson Report of 1,987 pages was published on 29 November 2012. Its most significant recommendation was the regulation of the press by the establishment of a new press standards organization backed by legislation to ensure its effectiveness. The new regulator should be independent of both the press industry and the government. This essay thus focuses its attention on this important issue.

The competition between British tabloids is fierce. Each tabloid relentlessly aims to capture the attention of those who are looking for sensational, 'sexy' and intrusive news. That competition has driven the tabloids to unethical and even illegal practices. While press standards keep declining, peeping-tom reportage is not new. The tabloids have a long history of reckless behaviour which the press regulatory bodies were unable to restrain. The staggering incompetence of the regulators, on the one hand, and the tabloids hunger for profits, on the other, led to unrestrained levels of intrusiveness, free of any ethical boundaries, and to flagrant violations of the law.

This essay opens with a review of the history of press regulation in Britain, analysing the work of press standards organizations, the ways they developed, and how the Press Complaints Commission (PCC) reached its current non-status. It agrees with Leveson that the existing situation in Britain is far from satisfactory; that the press should advance more elaborate mechanisms of education, raising awareness of ethical concerns and self-control, and that while these empowerment mechanisms are indeed necessary, they are not sufficient. This essay agrees with Leveson that there is a need for empowering the new regulatory body with legal authority, thus equipping it with substantive ability to sanction.

The writing of this article has been informed by my firsthand experience as a member of the Israel Press Council (1997–2000). As a public representative on the Israel Press Council, I have gained important insights regarding the extent that public interests are secondary to those of the press when it comes to decision-making processes within press standards organizations (Cohen-Almagor 2002, 2005). The Israel Press Council has followed the same erroneous British model that

was built to serve first and foremost the interests of the press industry, not those of the public.

When I was elected to serve as a public representative on the Israel Press Council, I firmly believed in press self-regulation and equally opposed to legislation. In my system of beliefs, freedom of the press is a value. My perception of the role of the journalists assigned great importance to their professional autonomy and integrity. I was aware of the 1993 Calcutt Report (*infra*) and disagreed with his reasoning. Immediately after the death of Princess Diana I requested an interview with Sir David Calcutt. In a letter dated 6 October 1997 Sir David refused my request, saying that he had to move to other things, and that he had "not been able to maintain the close interest [in the press] which I once took".

My 3 years on the Council brought me to change my mind. The frustrating experience on the Council clearly showed that ethical standards and public interests were secondary to freedom of expression in its widest possible sense and press interests. The gap between the 'ought' and the 'is' became evidently clear. The 'ought' was free, ethical and responsible press. The 'is' was free press. As a student of Aristotle (1962) I believed in compromise, and in striking a balance between competing interests. Aristotle's Rule of the Golden Mean holds that for every polarity there is a mean which provides good standards for life of moderation. However, from the first meeting it became obvious that the Aristotelian reasoning was not shared by the representatives of the press industry. Because they constituted a two-thirds majority, the Council's public representatives witnessed time and again the same pattern of giving clear precedence to press interests under the guise of "the search for truth", "the public's right to know" and "freedom of expression". These concepts opened the way for low journalistic standards, unethical conduct and irresponsible decisions in which public interests featured merely as euphemisms and hollow statements. As a result of this educational experience I could no longer support self-regulation.

This is the third essay in a trilogy I have written following the publication of the Leveson Report (see Cohen-Almagor 2014a, b). The first article (2014a) criticizes Leveson for failing to introduce a specific cap on the percentage of media ownership and provides concrete recommendations as to how to improve the work of the press and to ensure that it will adhere to basic ethical and professional standards. The second article (2014b) draws on the codes of ethics of a wide range of countries to propose an ideal one for a newly constituted press regulatory body in the United Kingdom. It also suggests the adoption of a Journalist Oath and including a conscience clause in press journalists' contract which would protect them from being coerced into doing clearly unethical work. My recommendations for a comprehensive Code of Practice appear in this and the other articles.[1] As some of these recommendations may be pertinent to other professions, and as each and every profession should have a Code of Practice, I

[1] The terms 'Code of Practice' and 'Code of Conduct' are used interchangeably.

wish to share my proposal of a comprehensive code with scientists and engineers.

History and Context

The Ross Commission

In 1931, Rt Hon Stanley Baldwin MP accused the press of exercising "power without responsibility" (Select Committee on Culture, Media and Sport 2003). Seven years later, a think-tank called Political and Economic Planning proposed an organization that would protect the press from the government and, at the same time, also the public from the press. During those years, British politicians were concerned about the growing tendency toward concentration of ownership and about the ethical standards of newspaper proprietors and journalists. In 1947, the first Royal Commission, the Ross Commission, was set up "to inquire into the control, management and ownership of the newspaper and periodical Press and the news agencies, including the financial structure and the monopolistic tendencies in control, and to make recommendations" (Murray 1972: 27–28). In 1949, the Ross Commission recommended the establishment of a council to consider complaints relating to the conduct of the press. The language of the recommendations was vague and quite incoherent. Thus, for instance, Ross recommended that the council would deal with complaints "in whatever manner might seem practical and appropriate and record resultant action" (*Royal Commission on the Press* 1949: 174). The Ross Commission expressed concern regarding press monopolies but recommended nothing in terms of restricting monopolies and setting quotas on media ownership. All it did was to recommend reporting developments "that may tend towards greater concentration or monopoly" in the press and to publish statistical information relating to such trends (*Royal Commission on the Press* 1949: 174). The Ross Commission's cautious tone wanted to hold the stick at both ends as it wished to preserve the established freedom of the British press, maintain its character and encourage public responsibility and public service in the profession. The proposed council would consist of members from the newspaper owners', editors', and journalists' organisations, with lay people representing the public and an independent chairman. The newspaper industry showed no enthusiasm to set up the council, and only after two more years of negotiations and an implied threat on the part of government to impose a statutory council did the newspaper industry agree to form the press council (Murray 1972: 66; Morgan 1990: 131; Home Office 1990: 58; Cohen-Almagor 2005: 125).

In 1952, the Parliament passed the Defamation Act[2] and a year later the Press Council was founded. It was a voluntary body, not imposed by or answerable to the government. It was formed and sponsored by the press. The obvious potential conflict of interests was ignored. How effective can a press regulator be if it is sponsored by the press? Can such an organization freely bite the hand that enables

[2] Defamation Act 1952, http://www.legislation.gov.uk/ukpga/Geo6and1Eliz2/15-16/66.

its existence, knowing full well that if it bites too hard funding might be curtailed or even stopped altogether? Indeed, quite quickly it became clear that the Press Council aimed to preserve the freedom of the press while trying "to further the efficiency of the profession and the well-being of those who practise it" (Blom-Cooper 1992: 2). The Council was initially composed of twenty-five newspaper proprietors, and later included magazine proprietors, editors and journalists. The Ross' recommendations to include lay persons (a modest 20 per cent) and independent chair were rejected *tout court*.

The introduction of the Press Council did not better the press conduct. The poor performance of the Press Council was rightfully subjected to scathing criticism. The Council did little to influence the development of professional standards and failed to draw attention to increasingly monopolistic tendencies in the industry (Murray 1972: 87–89; Robertson 1983: 11; Gibbons 1998: 275). The government was compelled to act but yet again its reaction lacked innovation and creativity in addressing the growing challenge. It followed the same pattern of devising yet another committee, playing into the industry's hands.

The Shawcross Commission

In February 1961, the government appointed the Shawcross Commission to take another look at the ethics and economics of newspapering. The Commission recommended a *reformed* press council which, in addition to its existing duties, would scrutinise and give publicity to changes in ownership and control of newspapers; publish up-to-date statistics; ensure that newspapers carried the name of the company or individual in ultimate control of its affairs; hear complaints from journalists of undue influence from advertisers, and change the membership composition of the Council so as to include lay members in it (Special Senate Committee on Mass Media 1970, Vol. I, 114–115; Levy 1967; Murray 1972: 117–139, 157–159; Cohen-Almagor and Seiterle 2004; Frost 2007: 215–216).

In 1963, following the recommendations of the Shawcross Commission, members of the public were introduced into the Council in the proportion of five of them to twenty press people. It took 14 years to convince the press industry of the need for such lay inclusion. The Council also accepted the Royal Commission's recommendation to appoint an independent chairman. The first lay chairman was appointed in 1964. It was Lord Devlin, a distinguished and well-respected retired judge who had no connections with the press. Fourteen years later, in 1978, the balance between members of the public and members of the industry was made even with eighteen representatives on each side, and an independent, voting chairperson to tip the scales to the public side. These were steps in the right direction but they were too few and too little to influence the tabloid press to adopt ethical norms of conduct.

The Press Council had no power of sanction. The norm was to first try to resolve any matter through correspondence with the editor of the offending paper. If no satisfaction was obtained, the Council would then take action. Any newspaper against which a complaint was upheld was required to publish in full the Press Council's adjudication on the complaint. But usually the publication was hidden in

the back pages so no one would read it (Cohen-Almagor 2005: 126), and the Press Council, cautious of its strained abilities, did not press for noticeable publication.

The feeling was that the Press Council was ineffective, without sufficient authority or powers. Its bureaucracy was very slow and its work was little known to the public. The press did not regard this body as an authority to decide matters because it never codified its views, and because its decisions were inconsistent: different panels decided similar cases differently (O'Malley and Soley 2000; Snoddy 1992). The erroneous model of press regulation was unable to gain good reputation among the public, and it did not gain the respect of the press either.

The Younger Committee on Privacy

In 1972, the Younger Committee on Privacy analysed the Council's performance on that subject. Its view was that freedom of the press was the Council's main priority. It argued that the Council could not expect to command public confidence in its work as long as the interests of complainants were held secondary to the interests of the press. The Younger Committee (1972) recommended that the Council's adjudication be published with a prominence equal to that given to the original offending article, and that it should codify its adjudication and keep the code up to date. Neither of these recommendations were implemented (Dworkin 1973; House of Lords Debate 1973). The Younger Committee further advised that the use of surveillance devices should be restricted, and that the lay component in the Council's membership should be increased to half (Frost 2007: 217). The press resisted and the compromise was to increase the Council's membership to thirty people, of which ten were lay members.

The McGregor Commission

In 1974, the third Royal Commission, the McGregor Commission, was established, and after 3 years of work it issued its report. The McGregor Commission made a detailed study (published in 1977) of the Press Council, arguing that the Council "had so far failed to persuade the knowledgeable public that it deals satisfactorily with complaints against newspapers" (Home Office 1990; Leveson 2012a, Vol. I, Part D, chapter 1: 203–205). The Commission held that the work of the Press Council was more concerned with unfettered journalism than with raising standards in the interests of the public. The Commission also noted the evident absence of a code of conduct, the Council's refusal to condemn inaccuracy and distortion, and the ineffectiveness of its sanctions. The Commission found evidence of "flagrant breaches of acceptable standards", "inexcusable intrusions into privacy", and that there was "a pressing call to enhance the standing of the Press Council in the eyes of the public and potential complainants" (Home Office 1990: 60).

The McGregor Commission, like the Younger Committee, recommended that adjudications be published in full on the front pages with a similar prominence to the original story (Home Office 1990: 60; Bulmer and Bell 1985: 19). It further recommended the publication of a Code of Practice, a fast-track conciliation service, an equal number of lay to professional members on the Council with an

independent chair, seeking more funds and publicity for its services, and undertakings from newspapers to give prominence to complaints upheld against them. The press industry, as usual, dragged its feet and was reluctant to oblige. As customary, while celebrating freedom of expression and of the press, the press continued its war of attrition against any further regulatory steps that might interfere with its highly partisan interpretation of appropriate press conduct.

By the end of the 1980s, the British press was subjected to contemptuous and angry criticism for its intrusive conduct especially into the lives of celebrities and members of the Royal family. In December 1988, *The Sun*, owned by Rupert Murdoch, had to pay Elton John $1.7 million after a series of articles that said he used the services of a male prostitute turned out to be erroneous. Elton John's friend, Princess Diana, attracted exceptional and unprecedented public attention. Her personal life generated innumerable stories for the reporters and photographers who followed her. The tabloids were willing to pay enterprising and shameless photographers millions of dollars for capturing Diana in her private moments. The more private, the better. Tapes of Dianna's intimate phone conversations were leaked to the media; she was watched by spy agencies, and journalists dissected her every move (Brown 2008; Cohen-Almagor 2006; Stanyer 2013).

In 1989, two Private Members' Bills were initiated in Parliament, a Protection of Privacy Act, and a Right of Reply Act, to enforce responsibility on the press.[3] The growing press sensationalism which manifested itself in the *Sun's* front page publication of gruesome pictures of dead bodies of victims of a train crash triggered public concern and prompted legislative reaction. But the government was not interested in such legislation and instead, yet again, decided to form an inquiry committee to consider the behaviour of the press and to suggest remedies for the people who complained that the press had invaded their privacy. That decision was strategically a way to reassume control by placing all issues around press regulation into a single manageable inquiry that would at least put matters 'on hold' for a while if not provide an eventual solution.[4]

The Calcutt Committee

Unsurprisingly, the issue of privacy was the main concern of the inquiry committee, headed by David Calcutt. The committee held that "the Press Council's poor image derives from its ineffectiveness. This in turn is the result of its nature, procedures and inadequate funding" (Calcutt 1990: 77). The committee recommended, among other things, various procedural changes, in particular the establishment of a hot line, a public commitment by publishers, and a quicker handling of complaints. The committee also recommended that the Press Council be replaced by a new body, the PCC, similarly voluntary, but the recommendation was accompanied with the threat to turn it into a statutory body armed with powers of law if the voluntary system did

[3] The bills were introduced by John Brown MP and Tony Worthington MP respectively. For further deliberation see Blom-Cooper (1992: 4–5), Curran and Seaton (2010: 334). In 1993, Clive Soley tabled the Press Freedom and Responsibility Bill. *House of Commons Debates* (1993). The bill was not enacted. For critique of this bill, see Hunt (2012).

[4] I am grateful to one referee for his instructive comments on this matter.

not work (Shannon 2001; Cohen-Almagor 2005: 129). Calcutt had realized that statutory mechanisms were required to constrain the unrelenting drive for profitable sensationalism. Self-regulation of the press is no more than wishful-thinking as the press have no interest in introducing breaks on their thriving business.

The Calcutt Report, issued in June 1990, concluded that "the press should be given one last chance to demonstrate that non-statutory self-regulation can be made to work effectively. This is a stiff test for the press. If it fails, we recommend that a statutory system for handling complaints should be introduced" (Calcutt 1990: 73; Blom-Cooper 2011; Leveson 2012a, Vol. I, Part B, chapter 2: 60; Part D, chapter 1: 205–210). While this was going on, after dozens of years of foot dragging the Press Council drafted and adopted, in 1991, a Code of Conduct.

Following the Calcutt Report, a new and much smaller body was set up in January 1991: the PCC. It was set to adjudicate on complaints, rather than to tackle the broader issues of press freedom about which the Press Council had reported. The PCC, however, suffered from the same fallacies that had made the Press Council handicapped: it had the same offices; for a time, it had the director of the Press Council, and it was funded by the newspaper industry. The recipe for failure was clearly written on its wall. Furthermore, the PCC, like its predecessor, seemed overly concerned about protecting the privacy of the royal family and far less concerned about issues relating to ordinary people. The PCC did not realize that the press had become a willing partner in the media rivalries among royals and their manipulation of the media (Morton 1997; Tuohy 1993; Press Complaints Commission: Report 1992: 776–814; Princess Diana's Funeral).

Some 2 years after the establishment of the PCC, at the government's request in the wake of further scandalous intrusions into the privacy of the royal family which included publication of the topless Duchess of York and of intimate telephone conversations between the Prince of Wales and Lady Camilla Parker Bowles, Sir David Calcutt alone, this time without a committee, reviewed the work of the PCC. The January 1993 Report argued that the PCC was not an effective regulator of the press. Sir David maintained that the PCC did not "hold the balance fairly between the press and individual. It is not the truly independent body which it should be. As constituted, it is, in essence, a body set up by the industry, financed by the industry, dominated by the industry, and operating a Code of Practice devised by the industry and which is over-favourable to the industry" (Calcutt 1993: xi). Accordingly, the report recommended replacing the self-regulatory body of the press with a statutory regime designed to ensure that privacy "is protected from unjustifiable intrusion, and protected by a body in which the public, as well as the press, has confidence" (Calcutt 1993: xiv). In addition, Calcutt called for tighter restrictions on reporting of court cases involving minors and proposed that some offences should carry fines of £5,000 for invasion of privacy and the use of surveillance and bugging devices (Keeble 2009: 136; Frost 2007: 224; see also Bingham 2007).[5]

In June 1993, the PCC launched a helpline for members of the public who were concerned about press investigations relating to them which might breach the Code

[5] The same year, in March 1993, Report on Privacy and Media Intrusion from the National Heritage Committee recommended *inter alia* a statutory press ombudsman and a privacy law.

of Conduct. But the John Major government did not accept Sir David's recommendations. The feeling was that the formation of a statutory regime might hinder freedom of expression and the right of the public to know. That sentiment was accentuated in the report of the National Heritage Select Committee established after the Calcutt review, which agreed that his recommendations were inappropriate for regulating the press. The Select Committee preferred voluntary restraint combined with general laws not aimed solely and specifically at the press (Gibbons 1998: 281; Leveson 2012a, Vol. I, Part D, chapter 1: 210–214). Thus, in 1994 the PCC announced the establishment of a Privacy Commissioner with responsibility for investigating *prime facie* gross or calculated breaches of the Code of Conduct.[6]

Newspapers usually published the PCC's adjudication when asked. However, this was the only power the PCC has had—the requirement to publish the adjudication. This was too little to effectively control the conduct of the sensational press especially with regard to its treatment of the Royal family, and particularly with regard to Princess Diana. Still, there was a misplaced faith in the ability of the press to develop and lead a self-regulatory body capable of offering redress to those who were hard-done by the press. The press could continue its unethical conduct which sometimes was also illegal (Leveson 2012a, Vol. I, Part D, chapter 1: 195). It is quite revealing to note that in its first 10 years of operation (1991–2001), the PCC upheld a staggering 1.5 % of the complaints it received (Frost 2004; Blom-Cooper and Pruitt 2009). In January 1998 a new, more comprehensive Code was introduced and later a helpline for members of the public who felt that the press had wronged them was installed. But these measures were not of great significance. They did not compel editors and reporters to seriously reflect on their conduct in search for a moral compass.

And so the scandals continued. Let me mention a few illustrative examples on the road that led to the establishment of the Leveson inquiry committee.[7] Actor Hugh Grant became a subject of interest for the London tabloids ever since his successful movie "Four Weddings and a Funeral" (1994). Grant claimed his phone and voice mails were hacked, and his private medical records were leaked. He spoke of a mysterious break-in at his apartment during which nothing was stolen. Descriptions of the apartment later appeared in a tabloid newspaper (*Daily News* 2011). Actress Sienna Miller and best-seller novelist J.K. Rowling (Joanne Murray) were followed, photographed, entrapped and harassed by paparazzi journalists. Rowling said she had tried to keep her three children out of the media glare and was outraged when her eldest daughter returned home 1 day from primary school with a letter from a journalist in her backpack (Barr 2012). Rowling suffered so much paparazzi harassment that she was driven out from her home in 1997 by press attention. She initiated more than fifty court actions against the intrusive press (O'Carroll and Halliday 2011).

[6] One referee noted that Bob Pinker, the Privacy Commissioner, was a hugely respected and highly personable man, gifted communicator and someone of great commitment to press freedom and individual freedom; with the intellectual nous to square that particular circle. The referee maintained that an organisation can—in some cases—be less than the individuals who compose it. Pinker's individual contribution was substantial and noteworthy.

[7] For further discussion, see Kaufman and Cooper (1989), Whitney (1989).

In May 2007, Madeleine McCann (born 12 May 2003) vanished during a vacation in Portugal. The press coverage, which at first was sympathetic to the parents later turned hostile. One story said the couple had sold their daughter into slavery. Another alleged that they had killed Madeleine and hid her body in a freezer. The couple successfully sued several British newspapers over suggestions that they had caused their daughter's death and then covered it up. Kate McCann said she "felt totally violated… There was absolutely no respect shown to me as a grieving mother or as a human being, or to my daughter" (Barr 2012; Bond 2013).

In 2010, 25-year-old Joanna Yeates was murdered. Her landlord, Christopher Jefferies, was arrested on suspicion that he kidnapped and murdered her. Jefferies immediately attracted the attention of the tabloids that decided he was the murderer and portrayed him as a weird, demonic, cold-blooded murderer. The adjectives used to describe Jefferies ranged from loner to rude, nutty, dirty, eccentric, strange, weirdo and creep. Jefferies said: "My identity had been violated. I don't think it would be too strong a word to say that it was a kind a rape that had taken place" (Cathcart 2011). The tabloids took upon themselves the role of the judge and the jury in convicting law-abiding Jefferies without a hearing, without a trial.

In 2002, 13-year-old girl Milly Dowler was abducted and murdered. In July 2011, it was reported that the *News of the World* had hacked into her telephone while police were still searching for her. Crude reporters gave her parents false hopes that she was alive. Outrage over the tabloid's "shocking" and "truly dreadful" conduct prompted Prime Minister David Cameron to establish the Leveson inquiry (*Mirror* 2011).

Throughout this period, the PCC served primarily as a lightning rod and a window dressing, providing an ethical facade to an irresponsible, money-driven and often reckless press. So much so that Prime Minister Cameron described it as "ineffective and lacking in rigour" while the leader of the opposition, Ed Miliband, called it a "toothless poodle" (Leveson 2012b: 12; see also Bingham 2007).

As long as the PCC was funded by the press, it found it difficult to bite, on justifiable grounds, the hand that feeds its activities.[8] In the wake of the phone hacking scandal, it was widely agreed that the PCC had failed. In March 2012, the PCC itself has agreed to move into a transitional phase until finding the right solution. The Chairman of the PCC, Lord Hunt, who was appointed in October 2011, said he wanted a new "tough, independent regulator with teeth" (*BBC* 2012).

The history of press councils in Britain showed that until now no significant measures were taken to ensure the operation of free and responsible press that would serve first and foremost the interests of the public. All the changes that were introduced throughout the years were cosmetic in essence, aimed to pre-empt legislation that might hinder the free environment in which the press has been working (Kieran 1998; Cohen-Almagor 2006). Characteristic is Lord Hunt's proposal of what he termed "a new system of self-regulation" which is absolutely devoid of any constructive essence and designed, yet again, to protect only the

[8] The PCC was funded by the press: 54 % by the national press; 39 % by the regional newspapers, and 7 % by the magazines. To have a facade of independence, another body was established for finance and budgeting called The Press Standards Board of Finance. But it is only a facade.

interests of the press with little or no regard to the best interests of the public. Hunt (no date, http://www.pcc.org.uk/assets/0/Draft_proposal.pdf) proposed that the new regulator will have two arms: one that deals with complaints and mediation and one that audits and, where necessary, enforces standards and compliance with the Editors' Code. Greater emphasis, according to Hunt, must be placed on, yet again, internal self-regulation, with a named individual carrying personal responsibility for compliance at each publisher. This "new" proposal is no more than a variation on the old, failed, theme.

The Work of the Leveson Inquiry Commission

The Leveson Inquiry conducted oral hearings during which 337 witnesses gave evidence in person and nearly 300 others provided written statements. Leveson found abundant evidence to suggest, "beyond any doubt", that on many occasions the press disregarded its public responsibilities. As a result, the press caused "real hardship and, on occasion, wreaked havoc with the lives of innocent people whose rights and liberties have been disdained" (Leveson 2012b: 4). The evidence showed that large parts of the press had been engaged in a widespread trade in private and confidential information with little regard to the public interest. Although the press was fully aware of the gross transgression, no newspaper conducted an investigation into its own practice or into the practice of others. No newspaper sought to discover or expose whether its own journalists had complied with data protection legislation (Leveson 2012b: 7). 829 people were regarded by the police as being likely victims of phone hacking by the press in elaborate illegal schemes that involved payments to public officials, computer hacking, mobile phone theft and other irresponsible and unethical activities (Leveson 2012b: 8). There has been extensive evidence of the publication of private information without consent and legitimate public interest, exhibiting utter disregard of any ethical standards and very little thinking about the negative consequences for those whose privacy was invaded (Leveson 2012b: 10). Misrepresentation, distortion and embellishment became part of the press culture.

Regarding the PCC, Leveson concluded that it had failed to achieve its aims. That same culture vigorously resists or dismisses complaints as a matter of course (Leveson 2012b: 11). Being aware of the work of previous committees, he proposed a new press standards organization that would deal with complaints against newspapers via a cheap and easy arbitration process, so that aggrieved people who feel they have been wronged by the press can find justice without appealing to the courts. The new body would have the power to investigate serious breaches of conduct; be able to fine newspapers up to £1 million if it found they had acted badly, and form an arbitration system for people who felt that they fell victim of press intrusion. It would also promote high standards and encourage transparency. This arrangement would provide the public with confidence that their complaints would be dealt with seriously.

Leveson said this organisation must be independent of both the government and the press, and that it must be backed by law. He recommended some kind of "verifying" body to check every 2 or 3 years that it was doing its job properly.

Indeed, the government should protect journalists so as to enable them to do their job thoroughly and responsibly. The government should also ensure that appropriate steps are taken when journalists transgress professional boundaries and allow narrow, partisan interests to blind their better judgment.

Leveson emphasised the need for transparency. This core requirement enables consumers to make informed judgement about what they read, whether in print or online. Consumers will be able to distinguish between responsible journalism that accepts the basic standards of professionalism, and rough, yellow sensational media that are only interested in making money. Transparency will be achieved by clear standards flagged in print and online, by open channels of communications, and by clear and prompt feedbacks to suggestions and complaints. The data will also be published on the Public and Press Council's website.

Leveson (2012a: Vol. 4, Part K, Chapter 7, para. 4.42, p. 1768; 2012b: 35) recommended that the new body will publish an Annual Report identifying the body's subscribers, number of complaints, summary of investigations and their outcome, the adequacy and effectiveness of compliance processes and procedures adopters by subscribers, and information about the extent to which the arbitration service had been used.

Finally, Leveson (2012b: 16, 38) also suggested establishing a whistle-blowing hotline to enable reporters to complain against editorial pressures to write stories with disregard to ethical standards and even to law.

Leveson has made many important observations. He observed that large parts of the press had been engaged in a widespread trade in private and confidential information, disregarding public interest; that some tabloids preferred economic interests over obedience to the law; that there is a tendency within the press to resist or dismiss complainants; that the PCC is ill-suited to do its work because it lacks independence and has aligned itself with press interests; thus there is a need for a new regulator that would see to itself to represent the public at least to the same extent as it represents the press, with sufficient powers to make the press adhere to the legal and ethical codes. Many of his recommendations are in the right direction for more responsible press that enshrines the basic values that enable its operation in democracies: respect for others and not harming others. Individuals should be perceived as ends, never as means. The dignity of the person should be cherished and respected unless the person in question acted wrongly, in violation of these same basic liberal values.

To insure that some ethical and professional standards are maintained, the press must have a strong, independent, and effective council, with significant powers of sanction and with transparent policies, processes and responsibilities. I suggest that this new organization should be called The Public and Press Council, its name reflecting the dual responsibility it has: to protect and promote freedom of expression and freedom of the press and, at the same time, ascertain that vital public interests such as individual privacy, state security and press accountability remain intact. It should be chaired by a public representative with impeccable credentials and ability to lead and communicate ideas to the public clearly. Serving cabinet members and members of the House of Commons and the House of Lords will not be permitted to serve on the Public and Press Council.

The Public and Press Council should publicise itself, its powers, work, and adjudication to make itself known to the public and to gain its trust. The budget to run the council's affairs should be far larger than it now is. Leveson noted that the PCC has been run on a tight budget and without sufficient resources (Leveson 2012b: 12). To avoid conflicts of interest, funding the activities of the Public and Press Council should not come from the press or the government.[9] The Council's conduct must be transparent and independent, free of pressures and attempts at coercion.

The Public and Press Council's adjudication should be made in accordance with a written, detailed Code of Practice. The Code of Practice should not cover areas that are covered by the law but should set normative standards for ethical and professional reporting. The Code of Practice should be circulated among press circles and among the public at large so people will be aware of its existence.

Code of Practice

Codes of practice fulfil several purposes. They are designed to provide ground rules for conduct. They bring to the fore an accepted set of values. Internally for the profession, an accepted code explicates that all abide by this set of transparent rules. Externally for the public, the code informs what the yardsticks for conduct are. Codes of conduct are practical, having a real-life application for day-to-day conduct, and they also have public relations implications.

Leveson (2012b: 15) suggested establishing a Code Committee which would include serving editors although, he noted, they should not have a decisive role. The Code of Practice should take into account the importance of freedom of speech, public interests and the rights of individuals (Leveson 2012b: 33). The Code should be incorporated into the contracts of editors and reporters. Editors should see that the Code is on the desk of every reporter. When I was a member of the Israel Press Council, I studied many code of ethics from different countries, including the United States, Australia, Canada, Israel and Europe and had many conversations with leading experts on codes of ethics.[10] Based on years of research and study, I suggest that the Code should contain the following norms.

General Principles[11]

- Human dignity of every individual must be respected (*German Press Council Guidelines* 2001, henceforth *German*).

[9] On this issue I disagree with Leveson (2012b: 33) who wrote: "Funding for the system should be settled in agreement between the industry and the Board, taking into account the cost of fulfilling the obligations of the regulator and the commercial pressures on the industry". It is difficult to fathom how this recommendation can be reconciled with another Leveson recommendation, that the new regulatory organisation be independent of the press.

[10] Kasher (2005), Limor and Himelboim (2006), Himelboim and Limor (2011).

[11] For an extended discussion, see Cohen-Almagor (2014a).

- Respect diversity, pluralism and multiculturalism (Canadian Association of Journalists, henceforth *Canadian*).
- Minimize harm (Society of Professional Journalists 1996 henceforth SPJ): Do not harm anyone unless you have strong moral justification; do not harm people caught up on the fringes of events that are not of their own making.
- Accountability: Be accountable to the public for the fairness, honesty and reliability of reporting (Patching and Hirst 2014: 46; Roberts 2012; Norms of Journalistic Conduct, India henceforth *Norms India*; Australian Press Council henceforth *Australian*; *Canadian*).
- Responsibility: Think about the likely consequences of your report prior publication and weigh justifications for reporting against important countervailing considerations.
- Privacy is a human right. As a general rule, do not invade personal privacy (*Norms India*; *Australian*; *Editors' Code UK*; Press Council of Ireland henceforth *Ireland*; *New Zealand Code: Press Council's Statement of Principles* henceforth *New Zealand Code*). You may invade privacy only when you are certain it is in the public interest, to be distinguished from prurient motives. Public figures have private lives. Their privacy should be respected when their conduct does not affect public interest and they ask for privacy. Following the lessons of the Princess Diana affair (Stanyer 2013; Barendt 2009; Brown 2008; Cohen-Almagor 2006), it is unacceptable to use long-lens photography to take pictures of people in private places without their consent.
- Accuracy: Strive for accurate reporting. Attempt at collecting all relevant facts and applying pertinent considerations. Do your homework before writing. Deliberate distortion is never permissible (Patching and Hirst 2014: 47; *Norms India*; *Australian*; SPJ; *Israel Code*: Rules of Professional Ethics of Journalism 1996 henceforth *Israel Code*; *Editors' Code UK*; *Canadian*; *Ireland*; *New Zealand Code;* Barker and Evans 2007).
- Conflict of interests: Journalists cannot have personal interest in the causes, businesses, or parties of their sources. They should be cognizant of potential conflict of interests and act with honesty and transparency. Relationships between the owners and sources or characters in reports have to be made known to the public (Herrscher 2002: 280).

Do

- Always check and recheck your sources and your own conduct (*New Zealand Code*).
- Invite dialogue and criticisms (SPJ). Doing so is beneficial as it could lead to further knowledge. Inviting criticisms is always a win–win situation: either you verify your data, or you save yourself from publishing error.
- Distinguish between comment, conjecture and fact (*Norms India*; *Editors' Code UK*; *Ireland*; *New Zealand Code;* Barker and Evans 2007).
- Distinguish between editorial text and advertisements (*German*),

- Admit error and strive to correct it promptly with due prominence (SPJ; *Israel Code*; *Canadian*; *Ireland*).
- Grant fair opportunity to reply to inaccuracies (*Canadian*).
- Give voice to the voiceless (SPJ).
- Treat interviewees with respect and fairness. Interviewees have the right to know in advance the context in which their statements will be used. They must also be told if the interview will be used in multiple mediums (*German Press Council Guidelines*). Recording of interviews require the consent of the interviewee (*Norms India*).
- Protect confidential sources (*Editors' Code UK*; *Ireland*).
- Apply ethical discretion when paying for stories. Paying criminals, terrorists, racists and other anti-social people for their stories is problematic. When payment is made, disclose this to the public and explain how public interest was served (*Editors' Code UK*; *Canadian*).
- Keep the business side of the paper (influence of companies owned by the publisher) from dictating content to the editorial side (news and views) (*Israel Code*; Steel 2012; Schudson 2008).
- Be vigilant and courageous when you seek justice and aim to hold those with power accountable for their deeds (SPJ).

Do Not

- Never plagiarize (SPJ; *Israel Code*; *Norms India*; *Canadian*).
- Do not mislead, misrepresent, fabricate or plagiarise (*Israel Code*).
- Avoid altering images and sound in a way that might mislead the public (*Canadian*; *New Zealand Code*).
- Do not obtain or seek to obtain information or pictures through harassment, intimidation, extortion, threats, or persistent pursuit (*Israel Code*; *Ireland*).
- Do not aid in staging, promoting, or exaggerating events or rumours (SPJ).
- When using social networking sites to obtain information, do not use subterfuge to gain access to private information; verify the credibility of sources; apply ethical considerations and transparency (*Canadian*; *New Zealand Code*).
- Avoid undercover, misrepresentation, deceit, subterfuge or other clandestine methods of gathering information except when traditional open methods of information gathering were exhausted and failed to yield information vital to the public (SPJ; *Israel Code*; Barker and Evans 2007; *Canadian*; *Editors' Code UK*; *Ireland*). The use of unlawful means of obtaining information might seriously impair public trust in journalism (Ciaglia 2013).
- Every person wishes to protect her good name. Avoid smearing people by innuendo or implying guilt by association. Avoid malicious misrepresentation and unfounded accusations (*Ireland*).
- Avoid publication of material intended to cause grave offence, harm or to stir up hatred against an identified individual or group (*Ireland*). The application and employment of violence, terror, and racism should be condemned in explicit language.

- Avoid prejudicial, discriminatory or pejorative reference to a person's race, colour, religion, sex, or sexual orientation, and to any physical or mental illness or disability (*Israel Code*; *Editors' Code UK*; *Canadian*; *New Zealand Code*). Moreover, editors must make concerted, sustained efforts to recruit, retain, and develop staffs that reflect the variety of the communities they serve.
- Do not accept gifts, favours, free goods or services, and other benefits from news sources or organisations that the newspaper may cover (SPJ; *Canadian*).
- Do not use or pass to others financial information revealed during research.
- Remain free of associations and activities that may compromise integrity or damage credibility (SPJ; *Israel Code*; *Canadian*).
- Children deserve particular care and consideration. Do not exploit the innocence of children to get information (Guidelines on Media Reporting on Children, India; *Israel Code*; *Editors' Code UK*; *Canadian*; *Ireland*; *New Zealand Code*; Barker and Evans 2007).

It is suggested to create a two-tier press system of those who accept the professional responsibilities associated with membership in the Public and Press Council and those who do not. Those who prefer to be associated with the Council *ipso facto* declare that they see themselves as credible and professional. It is in their best interest to safeguard and protect the adopted Code of Practice. Association with the Council should be looked on with pride, as adding to the prestige of journalism. The public would grow in awareness to differentiate between those newspapers that accept and abide by ethical standards and accordingly publish news that are fit to print, and other newspapers that would print any news that are fit to sell.

Up until now, the press industries have perceived the press council and the PCC more or less as lightning rods. The only power that the press council and the PCC had was the publication of adjudication against the papers. The suggested Public and Press Council must be equipped with far more significant powers, including not only the publication of adjudication in prominent places but also the ability to impose significant fines on newspapers for gross misconduct.[12] These fines should be given to designated charities. Because of the inherent conflict of interests, the fines should not be made available to sponsor the work of the Public and Press Council. Furthermore, the Public and Press Council should have the ability to suspend journalists for gross misconduct for a limited period of time, and to suspend publication of newspapers (Cohen-Almagor 2014a).[13] In the British competitive tabloid market, the threat of suspending publication even for 1 day can serve as an instrumental deterrence against abuse of press power. The ability to enforce these sanctions should be enshrined in law. Leveson (2012b: 17) explained:

[12] Leveson (2012b: 34) wrote: "The Board should have the power to impose appropriate and proportionate sanctions, (including financial sanctions up to 1 % of turnover with a maximum of £1 m), on any subscriber found to be responsible for serious or systemic breaches of the standards code or governance requirements of the body".

[13] This is another point of disagreement with Leveson (2012b: 34) who argues: "The Board should not have the power to prevent publication of any material, by anyone, at any time although (in its discretion) it should be able to offer a service of advice to editors of subscribing publications relating to code compliance which editors, in their discretion, can deploy in civil proceedings arising out of publication".

> What would the legislation achieve? Three things. First, it would enshrine, for the first time, a legal duty on the Government to protect the freedom of the press. Second, it would provide an independent process to recognise the new self-regulatory body and reassure the public that the basic requirements of independence and effectiveness were met and continue to be met; in the Report, I recommend that this is done by Ofcom. Third, by recognising the new body, it would validate its standards code and the arbitral system sufficient to justify the benefits in law that would flow to those who subscribed; these could relate to data protection and the approach of the court to various issues concerning acceptable practice, in addition to costs consequences if appropriate alternative dispute resolution is available.

Leveson acknowledged what Calcutt came to realize 19 years before him. Simply put: self-regulation does not work. The drivers to maintain ethical standards are weak and hardly significant in comparison with the drivers for abusing press power. The latter include fierce competition, zeal for juicy stories and for profits, culture of invasive sensationalism, pushy and uninhibited editors, and the need to keep one's job.

Reaction to the Leveson Report

The Leveson Report is a damning indictment of press freedom in Britain. The corrupt culture and practices of the tabloids caused real suffering to innocent people. Editors and reporters behaved recklessly and irresponsibly. The Report is comprehensive in scope, and it makes a serious and careful attempt to change things for the better. Being cognizant of the many previous reports that were published with the aim of mending the culture and improving press practices which brought about very little change, Leveson aimed to issue substantive suggestions that would bring about the desired and quite necessary regulatory mechanisms. For his efforts and constructive criticisms, Leveson should be applauded. Indeed, organizations such as Hacked Off, originally founded to campaign for a public inquiry into illegal information-gathering by the press and into related matters including the conduct of the police, politicians and mobile phone companies, welcomed the Report and urged politicians to implement the recommended changes (*Hacked Off* response to Leveson's report 2012).[14]

However, the British government reacted with caution and reservations. PM David Cameron warned of the risks of statutory regulation of the press, announcing his opposition to state intervention in the free press and urging the House of Commons to think "very, very carefully" about such a move (Rayner and Winnett 2012). The press industry accepted the Report with caution and mixed opinions. *The*

[14] One referee accentuated the importance of Hacked Off, an untypical amalgam of journalists and press colleagues, with academics and public celebrities—who have funded it beyond most protest groups' wildest imaginations. TV access is relatively easy with members like Hugh Grant who made Hacked off instrumental in preventing the formally organised press groups from enjoying what has become almost a tradition veto power on regulation proposals.

Daily Mail, The Sun and *The Mirror* expressed grave reservations about Leveson's proposals (Greenslade 2012). *The Daily Mail* said that Leveson "seems worryingly unable to grasp that once MPs and the media quango become involved, the freedom of the Press from state control will be fatally compromised for the first time since 1694" (*Daily Mail* Comment 2012). In a similar fashion, the *Telegraph*'s editorial accused Leveson of "either sophistry or naivety" since he has no idea what a Bill to underpin a new independent regulatory framework would look like: "How would it be drafted? How would the incentives and penalties for publications be framed? Could a definition of the public interest be bolted on? In other words, what is to stop MPs amending it now and in the future so that it no longer resembles the benign legislative vehicle envisaged by the judge?" (Telegraph View 2012). The Leveson Inquiry was further criticized for the relatively limited scope of the report, particularly in relation to online journalism, media plurality and diversity (Media Reform 2012), and its lack of engagement with a broader structural and wider social analysis relating to journalism's civic role (Steel 2013).

On the other hand, the *Guardian* (Editorial 2012a) asserted that the press should treat Leveson's report "with respect—and not a little humility." Similarly, the *Financial Times* (Editorial 2012b) urged that Fleet Street should have the humility to accept Leveson's criticisms of its conduct, saying: "The Fourth Estate basked in the privileges of the harlot: power without responsibility."

In March 2013, cross-party agreement was reached on implementing the Leveson recommendations. The agreement accepted Royal Charter that will introduce a new system that will protect the freedom of the press and at the same time protect the public from the kinds of abuses that made the Leveson Inquiry necessary. The Prime Minister, Deputy Prime Minister and the Leader of the Opposition accepted Leveson's recommendations for an independent self-regulator, established through the vehicle of a Royal Charter, with the power to deal fairly with complaints. This new regulator will ensure that corrections and apologies are given due prominence. It will be able to mount effective investigations and, where appropriate, impose meaningful sanctions, including substantial fines of up to £1 million. It will offer a free arbitration service for the public, and there will be no press veto on who will run it (Draft Royal Charter on Self-Regulation of the Press; Hope and Mason 2013; Morris and Burrell 2013; *Huffington Post UK* 2013; *Hacked Off* 2013).

In July 2013, the major news publishers announced plans to establish the "Independent Press Standards Organization". Yet again their plans were not to create any independent organization but one that would leave control of the regulatory apparatus in the hands of the main industry players and would make very little change (Barnett 2013). At this point of time, after years of excuses, of committees, of reports and of scandalous reporting, the public and the government know better. The time for significant change has arrived.

The press, however, continues the fight until the very last moment, recruiting powerful players on their side and appealing to anyone who could help them retain their power. In October 2013, a group of leading global press freedom and media organisations have written an open letter to Queen Elizabeth II asking her to reject a proposed Royal Charter that would "impose repressive statutory controls on the British press" (Media Groups Appeal to Queen Elizabeth II 2013). The

organizations included the Commonwealth Press Union Trust, the Worldwide Magazine Media Association (FIPP), the Inter American Press Association, the International Association of Broadcasting, the International Press Institute, the World Association of Newspapers and News Publishers (WAN-IFRA), and the World Press Freedom Committee. They all thought that the proposed Royal Charter was in reality a set of repressive statutory controls being imposed on the press against its will. These organizations are willing to pay a high price for freedom of the press. They are willing to condone gross ethical violations as well as stark illegal conduct. I doubt their view represent the view of the British public. After all, regulation of the press to assure accuracy, fairness, respect for the dignity of the person, and redress for journalistic corrupt malpractice need not entail limitations on freedom of expression. They are designed to promote responsible and professional press.

Conclusion

Many people in the media portray any limitation on free expression as the infringement of a virtue that lies at the heart of democracy. In his comments on a draft of this paper, John Lloyd of the Reuters Institute for the Study of Journalism in Oxford voiced disagreement with the proposal for strong regulation of the British press—especially with the measure to suspend publication of a newspaper—which he views as "a draconian form of censorship". He does not think the problem is one which regulation will do much for. In his opinion, the problem is with the culture of journalism, in which editors will do anything for a story and reporters will do anything the editor wants. While I agree with Lloyd that we have to work on the culture of journalism via organizations such as the Reuters Institute, the British public is both avid for stories which grossly breach privacy, and censorious of those who breach privacy. It would take many years of education to try to reverse the clear trend of sensationalism which has been developed during the past two centuries, possibly the same amount of time, perhaps more. As a society, we owe the public more remedies than a slow educational process that may, or may not yield the desired results. While Lloyd thinks that a regulator with the powers that I have outlined would set up an area of constant warfare between newspapers and the regulator—and no newspaper would voluntarily join it, I think that the media proprietors would opt for what they would perceive the lesser evil when confronted with the possibility of regulation, on the one hand, or stiff censorship and restrictions, on the other.

Furthermore, this portrayal of constant warfare between newspapers and the regulator is exaggerated. Often media professionals themselves recognize that the debate is not one of a zero-sum game. Quite the contrary: sometimes limitations on free speech are required to safeguard basic liberal values, such as the right to privacy. The freedom to print and publish does not include the freedom to invade one's home, to hack one's phone, to unjustifiably ruin one's name, or to irresponsibly tarnish one's honour and dignity. Unfortunately, British society has sensational tabloid journalism that up until now did not manifest careful standards

of conduct. For long years, the tabloids have abused the power granted to them. They have consistently printed whatever story that was likely to increase their sales. Financial and ethical considerations do not necessarily go hand in hand.

At the time of writing (February 2014), events are still unravelling and the outcomes of the Leveson Report are still undecided. One may assume that the government will do its best to protect freedom of the press. At the same time, it should also strive to protect public interests, aiming to strike a balance between incommensurable and competing rights and freedoms. The government, I trust, is aware of the strange duality in the British public. Many millions of people are keen to read sensational stories and are willing to pay with good money to satisfy their voyeurism. At the same time, when the tabloids exploit their power to infringe on the privacy of vulnerable third parties, such as children, they react with a sense of disgust. While royalty, celebrities and politicians have the capabilities to defend themselves, children and common people lack these capabilities. The power-hungry, business-for-profit press has always had difficulty in controlling its hunger and in delineating the lines of decent, responsible coverage. Hopefully, now the time has come to take effective steps to delineate those lines for the press as self-regulation has failed miserably. Free press is not a recipe for lawlessness. The conduct of the tabloids over the years can hardly be justified according to the same liberal principles that were formulated to protect freedom of expression, those of respect for others, and not harming others. Enough is enough.

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