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Privacy and the press: Is state regulation in the public interest?

The right to privacy is a fundamental human right enshrined in the European Convention on Human Rights. Under current UK law the right to privacy can be compromised if it can be shown that to do so would be in the public interest. In the digital age there is controversy as to what the term "press" actually constitutes. Sources of news now include online newspapers as well as tweets, blogs and posts via social media. This essay will argue that, since self regulation as offered by the Press Complaints Commission (PCC) can no longer be regarded by the public as a credible method by which to regulate the press, some form of state regulation is required in order to safeguard the right to privacy of the public. At the same time, the freedom of the press, under which journalists enjoy the freedom to report on matters of public interest, need not be compromised. In this way regulation underpinned by statute should be embraced by the public and need not be feared by the press.

First this essay will question why the need for a new system of press regulation has arisen since ultimately it is the answer to this question which offers support to the view that, in the public interest, a new system underpinned by statute is required. The Leveson inquiry, set up in the wake of the phone hacking scandal into press ethics, has exposed the fundamental weaknesses in the current system of self regulation. Namely, that the PCC lacks the power to enforce its own rules thus enabling the newspapers to avoid all ethical and legal responsibilities. Clearly the PCC can no longer be upheld as an effective method by which to ensure ethical conduct of the press. Hence statute is necessary in order to ensure a regulator has sufficient clout to be effective. Further, to truly require publishers to join the system would require statute.

Moreover concerns that press regulation underpinned by statute may impinge upon the freedom of the press - the bedrock of a democratic society - are unfounded. It would be possible to enshrine in the law the regulator's independence from both the government and the newspaper industry. There is evidence to support this claim. Our judges, appointed under

statute, remain independent. It is also notable that the content of broadcast journalism is regulated by Ofcom, which derives its authority from the Communications Act 2003, yet broadcast journalism remains trusted by the public and, in the case of the BBC, routinely hated by the government. Further, press regulation by statute would not represent the first time that newspapers were restrained by law; newspapers can be sued for libel; they can be prosecuted for contempt of court or for breaking the Data Protection Act and they must register with tax authorities.

There are other countries struggling with the same dilemma. Namely, how best to curb the worst excesses of journalists without curbing the freedom of the press or giving government undue influence. This essay will briefly consider the Danish model of co-regulation whereby complaints from readers are handled by a press council set up by an Act of Parliament, whose members are government-appointed. The council compiles the press code of ethics and, on receiving complaints concerning breaches of this code, the council can go to court to ask for the paper in question to be fined. Whilst some may argue that such government oversight and a free press are mutually exclusive, this is not the case. Denmark offers tangible evidence that a fully functioning democracy, which values press freedom highly, together with statutory regulation, is possible.

The Rubicon argument, that Parliament may enact an innocent-looking law today which may then be exploited by a future government to suppress the press, fails to withstand scrutiny. If, as this essay advocates, the independence of a press regulator was enshrined in the law then any future government seeking censorship powers would be in the same position with or without a regulation law: it would need to get a bill through parliament. It is worth remembering that if the UK was to find itself under the rule of an authoritarian government our most pressing problem would be exactly that: an authoritarian government. Finally it must be recognised that this argument originates from unlikely and abstract concerns. The claim that a fascist regime might just be around the corner is unlikely. This is in contrast to the very real problem

facing Britain today. The unethical conduct of the British press, which encompasses everything from relentless dishonesty, serial libel and privacy intrusion as exposed by the Leveson Inquiry, can no longer be overlooked under the pretext of press freedom. It is these issues which pose a greater threat to the British public, not that of an improbable authoritarian government.

In conclusion to protect both robust journalism and the public it is now essential that a regulatory system underpinned by statute be established. It is paradoxical that the worst excesses of the press have stemmed from the fact that the public interest defence has been too elastic. The press, like all other institutions, organisations and individuals in society, must be accountable for its actions. The Leveson Inquiry has left two things certain. Firstly, that a free press is essential for a free society. Secondly, that there are fundamental weaknesses in the current model of self-regulation which cannot be ignored. Clearly there exists a public interest central to both of these points. However as this essay has outlined, regulation underpinned by statute would not be in breach of the former and is the most appropriate solution to the latter. Firstly statutory regulation does not necessarily entail a curtailment on the independence and freedom of the press. Secondly statutory regulation is necessary to ensure that a new regulatory system will be effective. The coalition government must seize the once in a generation opportunity offered by the Leveson Inquiry to put things right.