

Leveson Round Up: 'Twas Ever Thus' – And ever thus shall be?

'Twas ever thus' was the response of Michael Gove to Leveson's suggestion back in May that the reputations of politicians and the media had been sullied by the phone hacking scandal. And the phrase has been on or close to the lips of many of the leading politicians giving evidence this month. As the Inquiry begins to contemplate potential recommendations for policy change, a gap is opening up: between those who like Ed Miliband say 'this is awful, and something must be done' and those, like Gove[i] that say 'this is somewhat awful, but twas ever thus'.

What matters of course is whether the judge takes the view that nothing can, or should be done. The problem with Gove's position is that corruption is not excused by the fact that it is nothing new. Whilst it is true that there have always been shady practices and grey areas between journalism and politics, and that the public are sceptical of both as a result, Leveson should find ways to use his Inquiry creatively to clean up public life. It is no good harking back to the past of New Grub Street and J.S. Mill, because the media have never been as powerful as they have been in recent years, and politics has never been so mediated. This is why something *must* be done. But what?

Leveson was probably more annoyed by Gove than by any other witness, so there is some cause for optimism that the huge time, resource and distraction cost of the Inquiry will not be in vain. The discretion available to Lord Justice Leveson is vast. The **terms of reference**, as he has complained, ask him to make recommendations on a broad range of issues, including data protection, ownership, media pluralism and the current (self) regulatory arrangements. What he eventually recommends will depend on his personal judgement – and his reading of the public mood – on the question we first started to consider when the Milly Dowler hacking story broke exactly one year ago: is there evidence of a systemic, structural failure here, or is this caused by a few rotten apples?

If anything is clear to Leveson and his team of assessors, it is that the problem is systemic, structural and only a multi-pronged approach stands any chance of dealing with it. The current system of media mergers, along with the setting of the BBC license fee and the reform of privacy laws, VAT rules on news products and so on, are areas of regulatory decision making where an endemic conflict of interest resides and where transparency and independence are essential. Whilst an 'explicit deal' between politicians and the media was never going to be unearthed, the Inquiry has seen enough evidence to suggest that subtle reciprocities might exist. As we argue in **a paper on media pluralism** published today, there are many ways that policymakers can and do place checks and balances on media power: absolute caps on the market share controlled by media owners, tighter merger controls, internal guarantees for journalistic integrity and impartiality for broadcasters. The exact balance of these measures will take some time to work out, but what is clear is that there is a ready-made menu of measures for Leveson and team to investigate in Module 4 as they turn to policy.

A crucial dilemma for Leveson himself is to what extent he is prepared to lay down clear markers for government policy. There are some clear markers he can put forward:

- A new co-regulatory body should be established by both media owners and journalists, with prominent public representation, and cover all media.
- There should be legal and fiscal incentives to join such a cross media ethics body and journalists on all platforms should be able to opt in
- Fixed ownership limits should be (re)-established for media mergers and a regular review of the market carried out by an independent media regulator to assess media plurality and concentration of media power and influence
- Politicians should play no role in deciding individual cases involving media competition or plurality issues

Leveson will also be keen to work with the media on self-regulation reform. Furious activity has been going on in the background as PressBof (the owners organisation) and the Society of Editors try to stitch together some kind of successor to the PCC. Leveson himself set out a **proposed framework** and Guy Black gave a more developed suggestion for the contract based successor to the PCC. But as we argued in our **Policy Brief** published last week, these negotiations might be structurally flawed in themselves. Only a solution that involves journalists' representatives at the top table from the start will restore trust.

So even if it was ever thus, we can hope that the Inquiry will outline some real prospects for change. Leveson is not going to clean up the murky relationships of the 'politics-media complex' with a sweep of his gavel, but he could nudge the system towards more fairness, transparency and trust. Biting the bullet and making clear recommendations on the media ownership rules may be a good start for Leveson, and it may not be as unpopular with the media as we might expect. Much of the media are not concerned about the limits themselves. They just want a system that provides certainty. But regulation tends to be unpopular with regulatees and if he is to make a difference, the Judge must be prepared to make enemies of the press. Unlike Michael Gove and the other politicians he has been speaking with this month, he does not have to ask for votes. He is therefore free of the endemic conflicts of interest that will continue to undermine the next cycle of Whitehall policymaking.

[i] I paraphrase

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