

Bill Emmott

The last emperor: the Murdoch case

Last summer's Murdoch scandal raises basic questions about responsibility and power, about modern democracies and media regulations in a digital age, about privacy and freedom of speech. How can conflicts of interest between politics and news be kept under control? How to avoid the abuses that derive from excessive interdependence? We need new rules.

The British media is often guilty of having a superiority complex. Comparing themselves to journalists in other countries, they often boast (justifiably) of the quality and independence of the British Broadcasting Corporation (BBC) and (unjustifiably) of the supposed clarity, efficacy and independence of spirit of British newspapers. They are

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right that the British media is one of the most competitive in the world, with nine national daily newspapers. But they are wrong if they claim any moral superiority.

This was amply proved last summer, as the scandal over phone hacking by the *News of the World*, Rupert

Murdoch's popular Sunday newspaper, led to the paper's demise.

The issues that have arisen from the Murdoch scandal are not just about the media. In reality, their reach is much wider than just journalism. They are about how to ensure accountability in a modern democracy – accountability not just for politicians but also for the media and for the organs of law and order, namely the police – but also about the right to privacy for individuals. In democratic terms, these issues go back to Montesquieu, and his emphasis on the eternal importance, in a democracy, of the separation of powers, of keeping apart as much as possible the executive, the legislature and the judiciary, with the help even of a fourth estate, the press.

When Murdoch's scandal leaped on to our front pages and television screens in July 2011, the story had actually been developing for several years – at least since 2007 when the royal reporter of the *News of the World*, Clive Goodman, was jailed, along with a private investigator, Glenn Mulcaire, for illegally obtaining and listening to voice messages on the phones of royal aides. Arguably, it has been developing for far longer than that, in the gossip circulating around the now metaphorical Fleet Street (once home to the British press, though almost everyone has moved out now). After all, it became known sometime during the 1990s that it was possible to gain access to other people's mobile phone messages.

MORE THAN JUST PERSONALITIES. The hue and cry around the Murdoch scandal focused, understandably, on personalities and power. The *News of the World* had to be closed, Rupert and James Murdoch had to give evidence to a Parliamentary Select Committee, David Cameron had to express regret at ever having hired Andy Coulson (former editor of the *News of the World*), senior policemen in the Metropolitan Police had to resign... all gripping stuff, to be sure. However, most of the revelations over the summer and fall ultimately became, as they used to say in Fleet Street, fish-and-chip wrapping. It is the deeper, longer-term issues that remain, and there is some risk that they could be forgotten or distorted amid all the personalities and political point scoring.

Those issues are separate but connected: how to ensure accountability and the separation of powers in a modern democracy in which the media is on technological steroids; and how to regulate the media itself in this new digital age, but also in a way that reconciles the case for privacy, the need for accountability, and the need for full freedom of speech.

OLD CONCERNS IN NEW CLOTHING. Ever since newspapers began, every editor has known that both for him and for his journalists there is a dangerous conflict of interests: to get good information, you need to become close to a wide range of well-connected sources, but if closeness becomes dependency and friendship, then your ability to publish harsh truths, or even just aggressive criticism, diminishes.

Every politician has known of the corresponding problem from their side of the table: they need the media to reach voters and to protect their reputations, but too great a dependency on a particular media outlet can itself be damaging, and limit freedom of maneuver. In fact, the same is true of the police: there is a clear mutual interest

between the police and media in a cooperative relationship, in helping to catch criminals, in maintaining public confidence and, for the media, in getting good stories, but there is a slippery slope from that relationship to corruption, to abuse, and to a disastrous loss of public confidence.

These are all facets of the question of how to keep people and institutions accountable even as they – and indeed the public at large – share an interest in cooperation with the very institutions that are supposed to hold them to account. Phone hacking is illegal, so it was the police’s job to hold the media to account for it: in the case of the *News of the World*, it turns out that the police were disinclined to do so, either because of the relationship of mutual dependency that existed between them and News International, Mr. Murdoch’s company, or for fear of exposing a rat’s nest of corruption that could destroy public confidence in policing. If ever it should be proven that policemen actually handed private information (mobile phone numbers and voicemail access codes, for example) directly to journalists or private investigators, the furor over privacy and data protection will never end.

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At the same time, politicians have been disinclined to press for a serious investigation of illegal practices in the media for fear of retribution or of losing access to voters. Some have even thought to hire as their communications advisers former journalists familiar with the most popular, sensationalist and often law-breaking parts of the media. Ideally, we might have relied on the media to police itself, on the view that Fleet Street has always been a dog-eat-dog world. Yet actually, beyond a few personal rivalries, that is a myth: newspaper proprietors have often agreed among themselves on mutual disarmament pacts, to avoid being caught in media crossfire; indeed, newspaper competition works more often by emulation than by exposure. If one paper is getting scoops by a new method, others are likelier to copy it than to trash it.

THE DISTRACTION OF PLURALITY. Once the Murdoch scandal broke, much of this came to seem obvious. But consider this point: right up until the phone hacking issue exploded – with revelations that the phone of a missing schoolgirl, later found murdered, had been hacked – regulators, politicians and commentators were focusing on a quite different question. They were evaluating whether Britain’s most powerful private media organization, News Corporation, should be permitted to take full control of BSkyB, by buying the 60.9% of the satellite broadcaster that it did not already own. The question at hand was not one of accountability but of plurality: whether the control of tv news broadcasts would be in too few hands for the health of democracy.

The question had to be asked, because that is how the public interest test is phrased in British law and public policy. However, this concern with pluralism, with having a wide variety of voices, channels and sources of information for voters, while not wrong, has been rendered fairly unimportant. First, by the continued – arguably strengthening – dominance of the BBC in providing news to the public, and second, by the internet, by the explosion of sources of information and channels of opinion.



IT'S THE ACCOUNTABILITY, STUPID. Pluralism could in theory still be a problem, but does not actually represent one in Britain. Concentration of media power, however, plainly is a problem – not because of pluralism but because of accountability. When Rupert Murdoch bought *The Times* and *Sunday Times* in 1981, adding them to *The Sun* and *News of the World* (and giving himself about 40% of British newspaper readership), the acquisition was not held to be a threat to pluralism because of the powerful presence of the BBC and ITV, its commercial competitor. Furthermore, due to the scourge of the print unions in the early 1980s, he was seen to be battling another threat to democracy. What is clear now, from the more recent scandal, is that the real threat from allowing such a concentration of power was to accountability, not plurality. After all, given that neither politicians nor the police can expect to influence the BBC, the News Corporation gained a disproportionate share of what one could call “influenceable” media. In a perhaps very British way, our regulation of the media has developed in a patchwork manner, relying on different methods for different types of media, and putting a heavy stress on self-regulation. We are suspicious of government controls, have what

now could be called an Alan Greenspan-type faith in the likelihood that, in the end, private operators will avoid excesses because they will realize that committing them is not in their long-term interest, and, generally, we think we must take the rough with the smooth in order to have the benefits of a free media and freedom of speech.

Much of this approach will endure. Rigid regulatory systems, after all, often do not achieve what they are intended to: Italy has a licensing system for journalists and an agency supposed to ensure that broadcasters follow rules of balance, for example, but it has no effect in a political culture that does not respect independence and which permits concentrated ownership in the media. No British government is likely to propose either licensing (especially absurd now that the internet has blurred the definition of what is a journalist) or direct statutory controls.

Nevertheless, the pressure for some change is intensifying. The British autumn was given added color by the opening of a public inquiry into the conduct of the media, chaired by a senior judge, Lord Leveson. This showed that the use of illegal and dubious practices is not confined to the Murdoch papers, and that the abuses go beyond phone hacking. Issues of how to protect the privacy both of celebrities and of ordinary people have come to the fore. So has the question of how best to punish or deter the media from malpractice, without harming its democratic role.

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TOWARDS A POST-SCANDAL REGULATORY SYSTEM. Whatever the new legislation or other proposals that emerge from the Leveson inquiry, the British government could well – and in my view should – propose three things.

First, a new rule to prevent excessively concentrated ownership in the media. There will have to be a debate about exactly how that is to be defined. In modern circumstances, it would have to find its definition across different media, rather than just in print, digital or broadcast; and it would have to deal with the presence of the BBC by defining its threshold so as to encompass private media rather than all media. The lesson of this scandal is that concentration is not just a commercial issue, and so cannot just be dealt with by competition law as happens for supermarkets or airlines.

Second, a new regulatory agency to cover all media (not as things stand now, with separate agencies for print and for broadcast media). It would need to be independent of government, and have some limited powers to enforce sanctions: requirements to publish apologies and retractions in certain forms, the ability even to impose fines. This agency could, if necessary, be financed by a compulsory levy on all media companies. Third, a stronger law defining the right to privacy, while also reforming our defama-

tion law to provide a clearer “public interest” defense. The right of ordinary individuals and celebrities to choose which parts of their lives should remain private is poorly defined and protected in British law (unlike in France, for instance), while our defamation law has proven a costly and draconian alternative form of protection. Freedom of speech requires us to ensure that revelations can be published if they are legitimately in the public interest: this defense for the media, which exists in America, does not exist in Britain, but it should, as a counterbalance to greater protection for privacy.

QUESTIONS UNANSWERED. How should the board and staff of such a new regulatory agency be chosen? How can we ensure in future that existing laws, such as over phone hacking or other data protection infringements, are enforced by the police? How can we ensure that the prime minister has the right amount of contact with editors and proprietors, and not the wrong amount?

The answer is that, in the end, we can’t be sure of getting all of these things right. We can, however, make it less likely that things go badly wrong, for so long, as they did.

