The Leveson inquiry was quick and cheap by the standards of public inquiries. Compendious in length, it was intended as a solution to the problems posed by press malfeasance – but its reception merely reaffirmed pre-existing political sentiment. Chris Hanretty reports.

On 29 November last year, Lord Justice Leveson presented his report on the culture, practices and ethics of the press to Parliament. Leveson had been asked to undertake an inquiry by the Prime Minister following claims that a private investigator working for the News of the World had hacked the phone of murdered schoolchild Milly Dowler. Leveson concluded that the British press had too often acted in an ‘outrageous’ fashion and that the existing system of press self-regulation was inadequate. Leveson concluded that there was no evidence of widespread police corruption, despite a sequence of poor decisions relating to the initial investigation into hacking at the News of the World, but found that politicians, as a group, had developed ‘too close a relationship with the press’.

The report made 92 recommendations. Some were relatively uncontroversial (for example, those concerning amendments to the Data Protection Act and civil damages). Others – in particular, the recommendation that a system of press self-regulation have a statutory underpinning – proved far more contentious.

Though the publication of the report lacked the theatre of earlier public hearings, the inquiry as a whole was an important political event. It was not, however, sui generis. Leveson belongs within a particular genus (judicial inquiries) and species (inquiries under the Inquiries Act 2005). Such taxonomic rigour helps us understand several points about Leveson: first, that the decision to hold an inquiry can be understood with reference to common theories of blame avoidance; second, that the cost and length of the inquiry were limited compared to other similar inquiries; third, that the nature of the inquiry demonstrated the increasing judicialisation of British politics; and fourth, that reactions to the inquiry were strongly conditioned by initial attitudes towards regulation of the press and party politics. This does not help us to predict the likely fate of Leveson’s recommendations, but it should make us realise that this issue will not go away.

Blame Avoidance

The initial decision, subsequently revised, was to appoint an inquiry into the narrow issue of phone hacking. Understanding decisions to set up such inquiries is devilishly difficult because of the problem of negative cases – instances where it was conceivable that an inquiry might have been established, but where no inquiry resulted. We know, for example, that the rate at which public inquiries are established has increased from roughly one per year until 1980, to a peak of four per year in the period 1997–2001. From this trend, however, it is difficult to say whether we have more public inquiries because politicians increasingly favour public inquiries as their preferred ‘mechanism for ascertaining the facts after any major breakdown or controversy’ (Burgess, 2011), or because major (perceived) breakdowns or controversies are simply more numerous.

Nevertheless, we can hazard some generalisations about the factors that make public inquiries more likely. Using a carefully curated catalogue of calls for inquiries, Raanan Sulitzeanu-Kenan has been able to identify three factors that make an inquiry more likely: if the government is popular at the time; if the issue is salient; and if the original target of blame is remote from the government. These three factors all feed into politicians’ calculations. Other things being equal, politicians would rather not call public inquiries, because to call a public inquiry is to admit that something has gone wrong on the government’s watch. That is, the government loses from acknowledging problems. Popular governments are happier taking a short-term loss by acknowledging a problem. Salient issues are those that are foremost in the public mind and for which immediate relief is of greatest benefit. Remote concerns are issues where the long-term risk for the government of a castigatory report is limited.

How does this help us understand Cameron’s 6 July decision to establish a public inquiry into phone hacking? Certainly, the issue was extremely salient – the media likes to talk about itself, and the hacking of a dead girl’s voicemail is an act so ghoulish it is unlikely the issue would have dropped off the agenda. The primary targets of blame – News International editors and executives – were socially close to the Prime Minister, but they were...
more remote than a minister. In terms of popularity, the combined vote share of both government parties was above the average for the period Sulitzeanu-Kenan investigated. So, based on the factors that have been found to explain the establishment of public inquiries, it would have been perfectly understandable for Cameron to have set up a narrow inquiry into phone hacking.

Of course, we did not get an inquiry into phone hacking, but rather an inquiry into something broader: the culture, practices and ethics of the press. This mission creep arose in the week following the PM’s initial decision to grant an inquiry. Both the terms of reference and the assessors to the inquiry were agreed between the three party leaders. Clearly it was in the opposition’s interest to broaden the scope of the inquiry to include more general matters, since it believed that this would have embarrassed the government and led to the resignation of Jeremy Hunt. It is less clear why the Prime Minister should have agreed to an inquiry along these lines – particularly since a broader inquiry with a prospective remit has now placed him in a rather more difficult position. The initial instinct to avoid or deflect blame generated pressures that, it seems, were difficult for the Prime Minister to resist.

Cost

Strictly speaking, the Report is incomplete, since it deals only with the first part of the Inquiry’s terms of reference (‘to inquire into the culture, practices, and ethics of the press ... and make recommendations’). Leveson himself was ‘quite unable to say when it might be possible to even consider Part Two’, which deals more narrowly with criminal conduct at News International and its investigation by the Metropolitan Police.

The lack of a Part Two is perhaps fortunate, given that this installment is over one million words in length. This is three-fifths of the length of the final report of the decade-long Bloody Sunday Inquiry, but still four times longer than last year’s longest court judgment (the hugely expensive Berezovsky v Abramovich).

If we assume that Part Two of the inquiry is a dead letter, then we must conclude that the inquiry has completed its work at breakneck pace. The average duration of inquiries under the Inquiries Act 2005 (including on-going inquiries, but excluding ‘converted’ inquiries) is two years and ten months. The shortest inquiry (into an explosion at the ICL plastics factory in Glasgow) concluded in one year and seven months. This compares with one year and six months for Leveson. The costs of the inquiry (approximately £6 million) are approximately half those of the long-running inquiry into the Mid Staffordshire NHS Foundation Trust. The speed with which Leveson reported is certainly unlikely to deter politicians from calling for similar inquiries, a process that seems to invite ever-greater judicialisation.

Judicialisation

The Leveson inquiry demonstrated the increasing judicialisation of British politics. Judicialisation, in this context, means...
both the ‘expansion of the province of the courts or the judges at the expense of the politicians’, and ‘the spread of judicial decision-making methods outside the judicial province proper’ (Tate & Vallinder, 1995). The first aspect of this can be seen in the decision to entrust to Leveson not just the task of investigating what went wrong and who did it, nor even the task of recommending fixes to the system that allowed that wrong-doing. Instead the task of recommending changes to the structures governing an important component of public life was entrusted to a single individual (Lord Leveson), with the presumption – not, as it turned out, a reliable one – that those recommendations would be faithfully implemented.

This kind of undertaking – tricky, thankless, liable to result in unpalatable solutions – used to be given to Royal Commissions, a tool of government which now seems moribund, with the partial exception of the Dilnot Commission. Other single-authored inquiries have typically been exclusively retrospective (Hutton, the Laming inquiry into the death of Victoria Climbié). Inquiries or reviews that have attempted to identify lessons or issue recommendations for the future have either been joint efforts (the Committee on Standards on Public Life, the Iraq inquiry) or have been restricted to issues that do not raise such obvious and pressing normative issues as the regulation of the press (Sir Hayden Phillip’s Review of the funding of political parties, for example).

Whilst the appointment of a judge was probably over-determined in the Leveson inquiry given the criminal and civil law elements at play, it is difficult to imagine anyone other than a judge having the level of trust necessary to resolve competing normative claims without giving the appearance of doing anything other than finding a sensible solution to a technical problem.

All of Westminster, it seems, has become familiar with the requirements – psychological, political, practical or pedantic – of acting in a ‘quasi-judicial’ manner

This judicialisation of British politics is evident not just in the frequent recourse to ‘judge-led inquiries’, but also in the conduct of MPs and ministers themselves. All of Westminster, it seems, has become familiar with the requirements – psychological, political, practical or pedantic – of acting in a ‘quasi-judicial’ manner: something demanded of Vince Cable and Jeremy Hunt but, according to Lord Justice Leveson, something only satisfied by the latter. Politicians, indeed, seem fonder of the phrase than judges or legal academics: one author, writing in 1940, described it as ‘one of a number of pseudo-analytical expressions deriving from false premises as to the separation of powers’. Legal sentiment has not warmed over time.

Leveson raises issues about judicialisation that are different from common lamentations about human rights jurisprudence. If difficult decisions involving normatively sensitive issues are systematically turned over to judges, what do we need politicians for?

Reactions

The reception given to the Leveson Report by newspapers was more negative than the reception given it by politicians; this in turn was more negative than the reception given to the report by the public (see Figure 1). As far as the national newspapers were concerned, the Guardian and the Financial Times (combined daily circulation in October 2012 of approximately 493,000) endorsed Lord Justice Leveson’s approach. Other newspapers aired ‘grave reservations’ (Daily Mail), ‘deep alarm’ (The Sun) or warned of slippery slopes (Daily Telegraph). These negative judgments – shared by regional newspaper editors – were mixed with blandishments for Leveson’s conduct of the inquiry.

There was no full frontal assault on Leveson per se. The London School of Economics Media Policy Project has found that the press has generally held fire on Leveson: the tone of most editorials written on the subject during the period in which the inquiry was hearing evidence was neutral. Negative evaluations were rare, and only arose once victims of hacking had already been heard by the inquiry. Whilst there were some exceptions – a rather strange Daily Mail piece on one of the Leveson assessors, Sir David Bell, and a promise from the Spectator to engage in civil disobedience should any new statute be passed – any rancour on the part of the press was transmuted into praise for David Cameron, who in the eyes of many editorialists became an overnight champion of hard-won liberties.

Given that the Prime Minister had indicated that he was minded to implement Leveson’s recommendations as long as they were not ‘bonkers’, his mixed reaction to the proposals in the debate immediately following the launch of the report might come...
as some surprise. That reactions should be strongly structured by party is perhaps less of a surprise. Of those interventions expressing a position on statutory underpinning, three of 14 Conservatives favoured statutory underpinning, compared to 12 of 13 Labour MPs and all Liberal Democrat MPs.

Public reaction was more favourable. According to a YouGov poll, 58 per cent of adults believed that new laws should be passed to encourage newspapers to join a self-regulatory scheme (i.e. to provide statutory underpinning), whereas 26 per cent opposed the passage of new laws. Excluding ‘don’t knows’, support for new legislation was strongest amongst Liberal Democrats, ABC1s, and those in the North and Scotland, but even a plurality of Conservative voters favoured new legislation. This support is conditional on politicians’ role in any future regulatory scheme being as small as possible. The predictability (in retrospect) of these reactions has been foreshadowed by previous research. Sulitzeanu-Kenan (2006) has shown that reactions to public inquiry findings are conditional on these inquiries giving the ‘right’ answer.

Outcomes

No research can predict the likely outcome of Leveson. Past research can tell us that self-regulation in other countries has proceeded under the threat of more coercive state measures, and thus that newspaper proprietors might be able to cobble something together. Opposition bills have a vanishingly low chance of success – Labour’s draft bill is a bargaining chip or ‘proof-of-concept’, and should be evaluated as such. And, since the median legislator favours statutory underpinning, statutory underpinning of some kind is likely. Past research cannot tell us anything about the detail of that underpinning, although it can debunk certain claims about independent regulation and legislative process. Newspaper editors have been surprised to find that the House of Commons can amend most agreements, potentially even including Royal Charters. Conservative MPs have been surprised to find that Ofcom, an imperious unelected quango in most instances, becomes a servile toady to ministers when recognising press self-regulatory schemes.

Whatever outcome is arrived at, the issue will likely rumble on: most public inquiries are not followed by a decrease in attention given to their subjects. Who will give odds on a Son of Leveson before 2025?

Selected References


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