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Two stories from The Times this weekend (pasted below)

The Times: May's state controls will destroy the press
http://www.thetimes.co.uk/article/mays-state-controls-will-destroy-the-press-37p3pk7mm

Downing Street is threatening to hobble newspapers with a cockeyed plan to penalise them whether they're guilty or not

From the debate on press regulation, columnists in quality papers sometimes stand back a bit prissily. We don't want to appear as poodles to what might look like corporate self-interest. Nor do we approve of gutter journalism or wish to seem to defend it.

We sense, too, that at any social gathering that isn't of media people, the words "press regulation" — or, worse, "the Leveson inquiry" — will have guests rushing for the doors and windows. We don't want you, our readers, to do likewise.

But this matters. Look away if you don't care about it, but don't look away for too long because when your attention returns there may no longer be a free press to look at. If (as rumoured) Theresa May's government now plans to activate the as-yet uninvoked Section 40 of the Crime and Courts Act 2013, then newspapers in England and Wales may have to choose between state regulation and death.

Too theatrical? Well, imagine your angry next-door neighbour thinks a tree in your garden spoils his view. He wants to sue, but isn't confident he could win. Now he learns that there's been a change in the law. He can sue you, and even if he loses, you will have to pay his legal costs — unless the judge decides this would not be "just and equitable in all the circumstances".

Alice in Wonderland? Evidently. But that is what Section 40 would do to newspapers. It would allow anyone to take libel action against a local or national newspaper knowing that the defendant — the journal — will probably have to pay the costs even if they win the case. It's like sticking a "kick me" sign on somebody's back. This is so cockeyed as to defy satire.

Nobody knows how judges might interpret that weird let-out "just and equitable in all the circumstances". "Just" and "equitable" mean the same thing. "In all the circumstances" adds nothing. So, stripped of repetition and padding, what Section 40 says is that the judge is not required to act unjustly.

Gee, thanks.

There's a legal draftsman out there who should feel some sense of professional shame about this phrase, except that without it the whole section would be in danger of being struck down on judicial review. The resulting measure leaves everyone all at sea as to what the law means, exposing newspapers to unknown and unknowable risks, and costs that for smaller papers (most

of them) can be ruinous.

This may sound rather abstract, but for daily reporters it's anything but. As the stories of sporting personalities and performance-enhancing drugs have shown in recent years, most people start out by denying everything and sending a letter threatening to sue.

But at that point a newspaper does face a risk, even under the law as it stands. Is the individual bluffing? Do we call a possible bluff? If an allegation can't in the end be substantiated in court then we'd be going down a potentially expensive road. But so would the sporting personality, who would have to pay costs if their suit fails. Each party, in short, needs to ask themselves searching questions about the truth, and how to substantiate it.

Under Section 40 the potential plaintiff is relieved of that restraint, while the potential defendant (the newspaper) finds it doubled. The law wants both sets of costs to be paid by the newspaper, even if the case fails.

Intolerable? Yes, but those who drafted this legislation knew that. They intended to place newspapers in permanent and unsustainable jeopardy. This is blackmail with a purpose. The threat of ruin is to act as an electric prod that forces every paper to submit — "voluntarily" — to state regulation. If they do so, they are exempted from these provisions.

And, yes, I do realise that the regulator proposed in Lord Justice Leveson's report would be at arm's length from the state. "Arm's length" means just that: the state is skulking in the background. It does not directly approve the board of regulators. Another board does that. But the state sets up the board that does the approving. So, yes, it's true: the state does not direct. It lurks. But if lurking behind the board that approves the board that regulates the press proves too indirect for our increasingly populist politicians' tastes, then during one of Britain's periodic fits of public indignation the act would be quickly amendable to tighten the state's grip.

It's all so cowardly. If the prime minister, and Karen Bradley, the secretary of state for culture, media and sport, want enhanced state regulation of the press, why don't they just say so? We have ended up in a bizarre situation where a "press recognition panel" established and funded by the government is about to "recognise" an outfit called Impress, funded by Max Mosley, as fit to regulate those newspapers who have been blackmailed into joining it so they can escape potential financial ruin if Section 40 is invoked. Why not just cut the crap and appoint an Ofpress?

And all this is just for traditional newspapers. Meanwhile the ever-growing industry of digital news and commentary and social media is left largely untouched. In a majestic failure of peripheral vision, Leveson devoted only 12 pages in a 2,000-page report to this embarrassing thingumyjiggy internety whatjamacallit. Savour the charming naivety of his lordship's thoughts:

"People will not assume that what they read on the internet is trustworthy or that it carries any particular assurance or accuracy; it need be no more than one person's view. There is none of the notional imprimatur or kitemark which comes from being the publisher of a respected broadsheet or, in its different style, an equally respected mass circulation tabloid."

The moral I suppose we must draw from this helpful overview is that if you retail report or

commentary on an internet platform, you must take care not to gain a reputation for assurance or accuracy, or Leveson's strange dog, the press recognition panel, may sniff you out and (awful fate) "recognise" you.

David Cameron made a mess of all this, and had the wit to realise he had and usher it gently back into the waiting room. The newspaper industry, meanwhile, got a big fright — and a good thing too. Amid an array of fist-fights you can't avoid, Mrs May, here is one you can. A wonderful opportunity to do nothing presents itself. Seize it.

Sunday Times: Say no to state regulation of the press
http://www.thetimes.co.uk/edition/comment/say-no-to-state-regulation-of-the-press-pzbjjccw0

Press freedom, hard won over many centuries, is in grave peril. Sir Alan Moses, the former Appeal Court judge who chairs the Independent Press Standards Organisation (Ipso), the independent press watchdog that the majority of newspapers have signed up to, is not given to hyperbole. But last week he warned that newspapers were "doomed" if they become regulated by the state and lose what he rightly described as their "precious independence".

A government decision this week could pave the way for what will amount to state regulation of the press. It has arisen as a result of the ill-judged response to the Leveson inquiry. That inquiry into the press, while largely ignoring the internet, was established by David Cameron and reported at the end of 2012. A deal was stitched together with opposition parties after which a press recognition panel (PRP) was established, generously funded with public money and given the task of recognising press regulators under a royal charter.

Now a would-be press regulator, Impress, largely funded by the motor racing tycoon Max Mosley, together with the Joseph Rowntree Trust, has been established.

If this week the PRP recognises Impress, as expected, it is likely to call on the government to implement section 40 of the Crime and Courts Act 2013. If the government accedes, it would become open season for press complainants. Newspapers would be required to pay their opponents' costs in libel and privacy cases, even when the case was won by the newspaper and lost by the complainant. That would be more than a slippery slope.

As Sir Alan put it: "The real and underlying danger of section 40 . . . designed to make you pay up even if you've proved that someone is a liar in court, lies not in the purpose which it proclaims — that your regulator should be recognised by and paid for by the state — but a far more fundamental and underlying current. It is intended to herd you, force you into something you don't want to do."

Section 40 would achieve what newspapers warned of when the royal charter was proposed: the first state regulation of the press for more than 300 years. The prime minister can prevent this by refusing to agree to implement section 40. She must do so.

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