

Creepy clowns have
always haunted us

Ben Macintyre

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Comment

May's state controls will destroy the press

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

Matthew
Parris



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

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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



Newspapers may have to choose between state regulation and death

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

Why don't they just cut the crap and appoint an Ofpress?

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.

Red Box

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Daniel Finkelstein Notebook

Little-known lyrics that make me wax lyrical

One of my secret passions is the music of Pete Atkin and Clive James. It is secret not because I have kept it so. It's just that not many people have taken any interest in it.

Among the most-played albums in my collection are Pete's work of the early 1970s, with Clive's lyrics as brilliant as anything he has written. His words sparkle and each song tells a story. About the My Lai massacre, say ("And all the dead were strangers"), or falling in love with a beautiful girl on a train ("And

so my heart mended and broke in the course of an hour").

This week there is a new book, *Loose Canon* by Ian Shircore, that celebrates their songs. Shircore's book publishes some of Clive's best lyrics and it's good to see them written down.

I'm not very good at making out words, having for years thought that in *Bohemian Rhapsody* Queen sang "spare him his life from these warm sausages" rather than monstrosity. I learnt from the Atkin and James book that the protagonist in one of my favourite pieces, loved "a chick" rather than loving chicken.

I once wrote a *Times* leader in which I contrived to sneak in a reference to Atkin and James. I was very proud of this piece of fandom but I heard afterwards that



Clive thought it utterly ridiculous. So I say it nervously, but with feeling — you've got to listen to their music if you can.

Silence is golden

I am often asked to act as a public foil for somebody who has a book out.

I learnt early on two rules. The first is to prepare carefully, really getting on top of the subject. The second is to let the author speak. The audience has come to see them rather than you.

When I interviewed Sir David Attenborough we talked about evolution and it went well enough that he asked me to do it again. A few days before our second encounter I discovered that this time we were to talk about birds of paradise. I had

to take a full day off work to learn about plumage.

This week, after another similar event, I wasn't sure whether to be proud or crestfallen when a member of the audience said how much he had enjoyed the event. "You kept quiet," he said. "Which was great."

It's the way we tell 'em

Among the pleasures of being Jewish is finding that the perfect moment to deliver a Jewish joke has arrived.

A friend reported his delight when the chairman of a committee he was attending informed members that the meeting would last twice as long as usual, before adding: "Are you all comfortable?" This allowed my friend to reply: "Well, I'm not sure I'd say comfortable, but I earn a living."

Expectations sink

Making my way through the rubbish dump and building site that is Luton airport, I spot a sign. "Did our washrooms

meet expectation?" I was able to say that they did.

Thanks, but no Tanks

Lunch with the team behind my Fink Tank football column, where we exchange stories about our attempts to explain statistical analysis to football players.

Let's just say that most people in the game are sceptical about concepts like randomness and regression to the mean.

I recalled telling the goalscorer Ian Wright that data demonstrated the worst time to concede a goal was not just before half time. Nonsense, he said. It was indeed the worst time. The Arsenal manager George Graham would shout at them.

But my favourite story is when the Fink Tank team tried to explain their model to Andy Gray. He looked more and more irritated before angrily exclaiming: "So who did your computer play for, then?"

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