

Rupert, Rebekah and the Search for Media Ethics

Written by Richard Collins

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RICHARD COLLINS, JUL 14 2011

“Effix, effix? ‘at’s where they wear white socks innit?” This, reputedly, was what the great Kelvin MacKenzie, formerly editor of *The Sun* said (or, in the idiom of the redtops, was what a friend of Kelvin said) when asked what should be newspapers’ ethics. His response epitomises the chirpy refusal of responsibility and linguistic playfulness which, during his editorship, made *The Sun* such fun but also points to the kind of category mistake found in the promiscuous spurts of Guardianista indignation currently triggered by events at *The News of the World*.

Deception is a customary practice in UK journalism and is not confined to the *News of the Screws* – despite the orgasm of indignation enjoyed and aroused by the broadsheet press in much the same way as the *News of the Screws* was wont to do in the servants’ quarters. And there are other areas of life – eg police work – where deception is also customary and, like journalism, where it may be justifiable. In late May 2011, for example, the BBC screened an episode, *Undercover Care*, of *Panorama* which revealed care workers’ abuse of elderly residents. As the BBC stated, “a freelance journalist took a job as a support worker at the facility and secretly filmed what happened”.

I, and I think most others, regard this act of deception as justifiable – the end vindicated the means. So too, do I regard the *News of the World*’s 2010 exposure, through deception, of some cricketers’ bribe taking and match fixing. The BBC Trust has stated (rightly) that “Secret (including undercover) recording is an important tool for investigations”. However, the dangers of such habits of deception have been made evident by News International and also in another BBC *Panorama* programme: *Primark: On the Rack*, screened on June 23rd 2008, which purported to show garments, sold by the UK retailer Primark, being made by child labourers. The BBC Trust found that it was “more likely than not” that footage in this programme was faked and that the BBC Executive had not taken into account evidence provided by Primark (when deciding whether or not to uphold Primark’s complaint).

What then is justifiable deception (lying, cheating, invasion of privacy, blagging, doorstepping etc)? Let me clarify matters here: in my discussion below I am not glibly advocating law breaking, of which, it seems, there has been much on the watch of the incumbent News International management, but rather claim, first, that there are some occasions when law breaking is justifiable; second, that any debate about what should, or should not, be lawful necessitates considering where a possible re-alignment of the boundaries between the lawful and unlawful should take place and involves thought experiments where the unlawful may be considered lawful. And third, deliberation on journalistic ethics does not exhaust possible legitimate concerns about News’ Corporation’s personnel’s and subsidiaries’ actions: abuse of dominance, poor corporate governance and concentration of power are all relevant issues in this context.

Clearly some actions undertaken by, or at the behest of, journalists have been unjustifiable (but not necessarily unlawful): Johann Hari’s plagiarism in *The Independent* provides a convenient contemporary case in point. And many further unjustifiable actions have been gleefully rehearsed by the UK media as the News International scandal has unfolded. But demonising Rupert, Rebekah and their minions doesn’t answer the question “When does behaviour, which in other contexts would be unethical, become justifiable?” I think the answer is that the end (and usually the outcome) has to be sufficient to justify the means – i.e. the public interest (and not what the public’s interested in) has sufficiently to be served. Deciding whether the end is sufficient to justify the means involves a

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proportionate assessment of means and end. The United States' court judgement in *New York Times Co v Sullivan* (376 U.S. 254, 84 S.Ct. 710, 11 L.Ed.2d 686 (1964)) provides a handy guide to proportionality. The NYT v Sullivan judgement, essentially, said that the more you've put yourself in the public eye, the more you're fair game.

Applying the NYT v Sullivan principle, means that accessing politicians' (and their families') medical records is potentially justifiable: if politician x were to condemn private medicine publicly whilst using it, or funding her/his family's use of it then, I believe, publishing news of this inconsistency would be justifiable. It would satisfy criteria of proportionality, relevance and truthfulness. Justification in respect of similar actions concerning those not in the public eye would be considerably weaker as their entitlements to privacy and confidentiality are higher because of their private, not public, status. The justification for treating politicians (and some others) differently is that there is a public interest in them being held effectively to account. And it is the accountability baby that's in danger of being thrown out with the (certainly very grubby) News Corporation bathwater.

Rupert (to use a convenient shorthand for News Corporation's UK media interests) is too powerful – but much of his power derives from the Faustian bargain struck by modern politicians with the modern media. Choking off Rupert, fun though the ritual symbolic murder of a contemporary folk demon doubtless is, won't deal with the problem of excessive intimacy between the media and the polities. Rather what it will do is shift the balance of power towards the polities. Little other than the mass media effectively holds modern politicians to account. True, we have Parliament's own self-scrutiny and periodical opportunities for voters to choose the least worst among usually unappealing alternatives. But for several years at a time, before the next election hoves into sight, it's only the media that has politicians running scared.

I am on the public record as advocating an “irresponsible” media – on the grounds that only an “irresponsible” media is likely to hold the powerful to account. Would a “responsible” press (of the kind the ANC is industriously creating in South Africa) do so? I don't think so. And I, therefore, think that it's not a baby called “democracy” that's in danger of infanticide, as the ponderous indignation mobilised by veterans of the scholarly war against the diabolical Rupert and his myrmidons would have it (how tedious to have a media earnestly dedicated to Habermasian deliberation and measured reflection between worthy social-democratic alternatives), but rather a baby named “accountability”. To be sure, Rupert (and other media centres of power) have played the accountability game selectively. He, better than others (though he has had adept pupils in the *Daily Mail* and elsewhere) cottoned onto the power which politicians' and celebrities' need for exposure gave to the media and, better than most, exacted his price for providing visibility to those hungry for it.

Rupert has also realised, and built a business on his insight, that few live, or wish to live, their lives by the principles of the *Nicomachean Ethics*. Who wants to be rational all the time? Most of us, most of the time, want a bit of fun and live by currently unfashionable Benthamite norms – we seek happiness and a bit of fun. As the mass media has recognised since, at least, the C18th and as News Corporation has realised better than most. Rather, News Corporation's present difficulties come from a combination of holding the wrong people to account, appearing to condone, and perhaps encourage, habitual law breaking without the justification of a valid end and a disproportionate emphasis on one of two rival and mutually incompatible goods – freedom of expression and an entitlement to privacy – which, if actions are to be ethical, requires agents to mediate proportionately between them rather than choose between them in a one-not-the-other way.

Effix is difficult. Because ethical behaviour often consists in deciding what balance to strike between mutually exclusive goods. In the contemporary case of news Corporation's UK journalistic practices, I am at one with the Guardianistas I have conjured rhetorically into existence – the balance has often not been struck in the right place and was certainly not been struck in the right place by those who hacked into, and were complicit in and/or actively encouraged hacking into, a dead teenager's voicemail. In this respect, more journalistic and editorial responsibility is, at the very least, required. Someone, it's now clear, has to guard the guardians better than the Press Complaints Commission (PCC) has done. The PCC has done a valuable job in acting as a mediating agency between newspapers and complainants but it has not been an effective regulator. The least worst alternative here is the courts, (recognising that journalists, like the police, are subject to the law) operating with more clearly codified (NYT v Sullivan again) guidelines to mediate between freedom of expression and privacy entitlements and a recognition

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that a successful mitigating plea of “public interest” requires a demonstration that the putatively unlawful/unethical act(s) was (were) proportionate and relevant and that resulting publications were truthful.

But let’s be careful about what we wish for. The prospect of a responsible press is too horrible to contemplate. Remember that the most important UK political story of the last years, the *Daily Telegraph’s* exposure of the Parliamentary expenses scandal, was a classic bit of irresponsibility: it invaded MPs privacy, it was probably based on an unlawful act (purchase of a stolen data set) and did an enormous service to democracy, the principle of accountability and the UK public interest. A press too responsible to do such a thing or to cease sending hidden cameras into care homes where residents are abused is a press that is excessively and unwelcomely responsible. They wouldn’t have it in Essex and I don’t want it west of the River Lea either.

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