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Investigative journalism and human rights

Michael Bromley

Abstract

The early years of the twenty-first century may have brought a renewed global impetus to investigative journalism's concern with human rights. Founded in normative views of journalism as a social watchdog, and the specificities of its investigative turn as combative and challenging, investigative journalism has been intimately connected with the recognition, promotion and protection of human rights over more than two centuries. The waxing of investigative journalism appears to occur when social disruption coincides with enhanced communication capabilities – from the early throes of modernisation to current processes of democratisation, globalisation and digitisation. Investigative journalism acts as a form of social conscience, exposing lapses in a commitment to human rights. At the same time, investigative journalism lays claim to its own right to freedom of expression.

Investigative journalism has played a prominent role in the recognition, protection and promotion of human rights (Lublinski, Spurk et al 2015, 8). This has derived from its status as an idealised form of journalism (Bromley 2005, 319-320). Investigative journalists have been described as the 'special forces' of journalism (Hunter and Hanson 2011, 9), and widely presented, if not always viewed, as heroic figures (Bromley 2008, 184). Thus, investigative journalism has epitomised the normative functions of journalism in asserting the rights of journalism itself to assure free flows of communication as enshrined in a number of international and national conventions and legal frameworks of human rights (most notably, Article 19 of the Universal Declaration of Human Rights) (Johnston 2015; White 2011), while undertaking a 'watchdog' oversight of human rights (and specifically their violation) (Chambers 2000, 112ff) as well as 'triggering change' (Lublinski, Spurk et al 2015), in its role as an actor independent of government and its institutions. Investigative journalism has been posited as the most effective operationalisation of the journalistic mission to hold all forms of power to account by robustly promulgating a combative right to bring information into the public domain; challenging the *status quo*, and sponsoring freedom of expression through the exposure of 'matters that are concealed – either deliberately by someone in a position of power, or accidentally, behind a chaotic mass of facts and circumstances that obscure understanding' (Hunter and Hanson 2011, 8). In this way, investigative journalism extends the boundaries of mundane journalism, going 'beyond conventional reporting' to enforce social accountability (Peruzzotti and Smulovitz 2002, 214; Waisbord 2002, 377). This has suggested that 'journalists, at least as much as governments, have a vested interest in the defence and promotion of high standards of human rights' (White 2011). As the former British newspaper editor, Harold Evans, put it, investigative journalism seeks to stop 'evil practices' (Spark 1999, 8) albeit that neither what constitutes 'evil', nor investigative journalism's response to it in all cases, are necessarily universally agreed (Waisbord 1996, 357).

Key to understanding investigative journalism's role in relation to human rights is its function as the custodian of public conscience (Ettema and Glasser 1998), patrolling 'the boundaries of ... civic consciousness' and locating transgressions (Protest et al 1991, 5). A distinction between reporting and investigative journalism was expressed by Hodgson (2010), a former member of the London *Sunday Times* newspaper Insight investigative team: reporting is focussed on the manifest and episodic, whereas investigative journalism involves 'seeking out the larger, less obvious truth' of the systemic. Tulloch (2011, 320) differentiated between the 'simple-minded narrative' of ordinary reporting and the 'imaginary understanding' required of investigative journalism; as well as between the information needs of citizens (suggesting a circumscribed geo-political interest) and those of humans (implying universality). A further distinction has been drawn between 'responsible journalism in the public interest ... [and] infringing privacy through intrusive photographs or "kiss and tell" revelations' (Whittle and Cooper 2009, 95). However, 'coverage of human rights issues is often difficult to fit into the breaking news format' of contemporary local, national and global 24/7 news channels and web sites (*Journalism, Media and the Challenge of Human Rights Reporting* 2002, 46), leading to human rights being 'reported more than covered' (Gregory 2006, 197), and their import submerged in 'the daily inundations of news broadcasts showcasing violence, militancy, and condemnations of rights violations framed in lifeless legalese' (Avni 2006, 212). The emergence of citizen journalists has acted as something of a corrective to this tendency, providing alternative, direct, and often personal accounts of human rights and their violations (Allan, Sonwalkar and Carter 2007). Finally, there has been both a withdrawal of mainstream Western journalists from what are termed 'hostile environments' (a factor which itself has prompted the intervention of citizen journalists [Ciobanu 2015]) and a shift in the sponsorship of those who still travel to such destinations from the media to NGOs and others (Cooper 2011, 30; Powers 2016; Sullivan 2013, 17).

A contrast may be drawn, therefore, between journalists who report the evidence, claims and campaigns of external actors, such as human rights organisations and victims of abuse (sometimes sponsored by those organisations), or NGOs and charities reporting directly (Turvill 2015b), which then amplifies those data, claims and campaigns, thereby raising public awareness, and journalists who pursue their own investigations into human rights (Peruzzotti and Smulovitz 2002, 221-225). In this second role in particular, investigative journalists are autonomous agents in a system of vertical social management (Peruzzotti and Smulovitz 2006, 11-15).

Insofar as investigative journalism addresses lapses in proclaimed public morality, it contributes to eradicating, correcting, redefining or even disregarding – but always making public – violations (Aucoin 2007, 7-8). Investigative journalism proceeds from regarding declarations, codes and bills of human rights as representing an agreed moral position; that deviations from this affront the settlement, and are likely to be effected in conditions of attempted or realised concealment. Investigative journalists hold that it is their duty to expose digressions to public scrutiny, and where necessary to penetrate any obfuscation shielding 'the truth' from open view. This has led investigative journalists to be proactive in their

approach to freedom of information; to adopt specific ways of reporting, and to utilise a common range of methods. Enumerating the distinctive practices of investigative journalists, the executive editor of the Global Investigative Journalism Network argued, ‘There is a moral compass to investigative journalism, and that’s why the field attracts men and women who want to right wrongs, stick up for the dispossessed and forgotten, and stop abuses of power’ (Kaplan 2015).

Thus, it can be said that investigative journalism acts as a private regulator of public actions, including the operation of human rights, but without a legally sanctioned mandate, relying on its ability to acquire information and then disseminate it; the trust it builds in society, and its capacity to undertake this work. In this way, it acts like interest, pressure and social action groups perhaps more than mainstream journalism (Scott 2002, 62 & 66-68). According to the UK’s Centre for Investigative Journalism, this regulatory attention is brought to bear in ‘the public interest’ on ‘the principles of social justice, human rights, whistleblowing and the protection of the environment’ (<http://www.tcij.org/about-cij>). That has led to investigative journalism claiming ‘rights’ specific to its own condition. While not always precisely expressed, these appeared to include the ‘rights’ not to be stymied in investigations by vested interests; to protect sources, particularly whistleblowers; to undertake undercover reporting, and to make clandestine recordings (Bebawi 2016, np; Fratkin, Hwang and O’Brien 2011; *Investigative Journalism Manual* 2010; Investigative Reporters and Editors, nd; Public Interest Journalism Foundation, 2014). Underpinning these claims is the operation of the rule of law. When David Miranda, the partner of the investigative journalist Glenn Greenwald, who was responsible for the disclosure in 2013 of networks of global State surveillance, was arrested in the UK under anti-terrorism legislation, it was claimed that this constituted intimidation designed to restrain investigative journalism (although the UK’s high court found that the arrest was justified on the grounds of ‘national security’). Similarly, the editor-in-chief of Wikileaks, the online publisher of secret documents, and the founders of the German news site Netzpolitik have been pursued by the authorities, not for practising investigative journalism, but for espionage, theft, treason and conspiracy (Nyst 2015; Pilger 2015). Investigative journalism may expose wrong doing (Norris 2008, 68) but it is unlikely that it can do so without provoking use of the criminal law ‘as a tool for disposing of those who use their right of free speech to embarrass or inconvenience the authorities’ (cf. Robertson 1999, 104).

As the formalisation and adoption of human rights, including the right to know, have been extended (driven in part by investigative journalism) (Blanton 2002) so, somewhat paradoxically, has the criminal law been used increasingly to curtail investigative journalism (Peters 2003, 45; Shaw 2012, 31). Whereas the European Court of Human Rights has reasserted the right of ‘press freedom ... [especially] in circumstances in which State activities and decisions escape democratic or judicial scrutiny on account of their confidential or secret nature’ (cited Voorhoof and Cannie 2010, 415), for example, in the United Kingdom, the Human Rights Act 1998 which incorporated the European Convention on Human Rights (ECHR) into domestic law, effectively introduced a right to privacy (contained in Article 8 of the ECHR which has its equivalence in the Fourth Amendment of

the US Constitution) somewhat at odds with the right to free expression (Article 10 – Europe’s version of the First Amendment) which had been previously paramount in the UK. Moreover, under Article 8 journalists could be compelled to reveal their sources (Welch 2011). In 2015 the Bureau of Investigative Journalism claimed that the Regulation of Investigatory Powers Act 2000, which permitted the authorities to intercept journalists’ communications, breached journalists’ own rights to privacy and contravened the right to free expression (Turvill 2015a). The investigations editor of *The Sun* newspaper claimed that the Bribery Act 2010, which provides no public interest defence, led to journalists declining offers of information from whistleblowers if they asked for financial remuneration (Ponsford 2012). Investigative journalists relying on public office holders for information have been charged with conspiracy to commit misconduct in public office, a common law offence carrying a maximum sentence of life imprisonment (Haria and Turvill 2015). Investigative journalists have been threatened with arrest under the Protection from Harassment Act 1997 if they continued to pursue individuals (Ponsford 2014). Yet, as Tumber and Waisbord (2004, 1145) noted, although the scope for investigative journalism may have narrowed in parts of the global West, it has gained new impetus elsewhere as democratisation has promoted a concern with human rights (Coronel 2012, 19).

This burgeoning of the application of investigative journalism to the oversight of human rights has been supported by international efforts to effect democratisation. Between 2007 and 2015 the United Nations Democracy Fund (2016) financed organisations with more than \$US2.5m to deliver projects connecting the promotion and defence of human rights and journalism in Africa, the Middle East, central and southern Asia and Latin America. While not always explicitly identifying investigative journalism, the projects implied the use of investigative techniques and approaches. In 2015 the European Union and the Norwegian government funded a project ‘Creating a culture of investigative journalism for furthering democratic reform – linking human rights organisations, government officials and the media to promote change’ in Kyrgyzstan (Kabar 2015). In 2004 the Norwegian Agency for Development Cooperation sponsored the establishment of a Master’s programme in journalism at Addis Ababa University in Ethiopia with an emphasis on investigation (Skjerdal 2009, 26). At the same time, there has been an escalation in the threats to journalists, and particularly those doing investigative work, resulting in murder, kidnapping, imprisonment and physical assaults: of more than 1,000 media personnel killed between 1992 and 2014, 18% were reporting on human rights (Daly 2014; Shaw 2012, 30). In conditions where not only freedom of expression was not guaranteed, but State censorship and control operated, providing an alternative, more critical version of events through investigative journalism was particularly difficult (*Journalism, Media and the Challenge of Human Rights Reporting* 2002, 64). In Malaysia, journalists’ failure to ‘ask[...] probing questions and investigate’ contributed to a situation in which human rights were disregarded (Anuar 2012). Conversely, a study of the coverage of human trafficking in the US newspapers the *New York Times* and *Washington Post* found that articles initiated by investigative journalists were more likely to publicise views which differed from official policy, including raising human rights as an issue (Gulati 2011, 375). Thus, investigative journalism plays a crucial role in ‘providing information that facilitates political competition and accountability’ which in turn leads to greater respect for human rights (Whitten-Woodring 2009, 596). Additionally,

investigative journalism assists in creating conditions in which people demand their rights through reference to them and exposure of their violation (*Journalism, Media and the Challenge of Human Rights Reporting* 2002, 76; Wang 2016, 31).

Nevertheless, investigative journalism has its limits. Whitten-Woodring (2009, 616) argued that its effectiveness was predetermined by the degree of contextual democratisation. More environments deemed to be hostile, unstable, insecure and contested and a decline in corporate and state media investment in investigative journalism, have given rise to anxieties about the nature and functioning of the practice (Downie 2012; House of Lords 2012). In turn, this has put an onus on journalists themselves to 'take charge of their profession' (Shaw 2012, 35). Proposing a reorientation of journalism more effectively to bring issues of human rights into the public domain, Shaw (2012, 37-38 & 40) appeared to draw in part on the approaches and techniques of orthodox investigation journalism, including going beyond 'just reporting the facts of the news'; producing 'in-depth analysis'; practising journalism which was 'diagnostic', and exploring 'people behind the story and the story behind the people'. With others (for example, Galusca 2012) he suggested that investigative journalism adopt a broader approach to human rights beyond the exotic, extremes of conflict and the transitorily 'newsworthy' to focus on the often more mundane manifestations of 'indirect forms of cultural and structural violence' (Shaw 2012, 11). While the so-called Arab spring brought to the world's attention the power of the Facebook generation to call authoritarianism to account, less noticed was the investigative journalism in the region exposing the mistreatment of domestic workers in Bahrain; child abuse in Jordan; neglect in Syrian nursing homes; pesticide poisoning in Palestine, and cancer risks from depleted uranium weapons in Iraq (Feldstein 2012).

Investigative journalists located outside the global west have focused on human rights issues arising out of the daily experiences of land grabs; environmental degradation; dangerous working conditions; the treatment of indigenous peoples; strike breaking; miscarriages of justice; criminal impunity; child abductions; medical misconduct; excessive profiteering; poverty; sexploitation; disenfranchisement; discrimination; extremism; police brutality, and migration (African Network of Centers for Investigative Reporting nd; Coronel 2016; JARING 2015; Philippine Center for Investigative Journalism 2016; Scoop 2015; Svensson 2014, 160). In several places, organisations have been established specifically to defend the rights of investigative journalists rather than investigating wider human rights (Foundation 19/29 nd; P-24 nd).¹ Globally, the practice of investigative journalism addressing human rights issues has spread beyond media organisations and individual journalists to include not-for-profits, NGOs, academic units, associations, foundations, bureaux, centres and training institutions in more than 60 countries (Clark 2015). By 2016 there were 18 university-based investigative journalism centres in the US and two in the UK.

Where Western media have maintained consistency over many years in pursuing investigative journalism, they have also been able to address the more day-to-day social

reality of abuses of human rights. As a former executive editor of *The Washington Post* and co-founder of the Investigative Reporters and Editors group observed

Their journalism went deeper, explaining while revealing, sometimes illuminating solutions while exposing problems. Investigative reporting in the pages of *The [Washington] Post* has helped reduce police shootings in the District; reform the treatment of helpless wards of the government, change practices of the United Way, the Nature Conservancy and the Smithsonian; expose corruption in Congress; and improve the rehabilitation and living conditions of severely disabled veterans at Walter Reed Army Medical Center. (Downie 2012)

In the UK, too, over at least 40 years investigative journalists, such as the late Paul Foot, the BBC television series *Rough Justice* and *Panorama*, Central Broadcasting's TV strand *The Cook Report*, Granada Television's *World in Action* and the *Guardian*, *Observer* and *Sunday Times* newspapers, among others, exposed where human rights had been denied almost routinely through miscarriages of justice; the operation of protection rackets; loan sharking; child pornography; the hidden health dangers of asbestos; abuses by UK companies overseas; police malfeasance; hospital failures; cruelty towards and neglect of the elderly, and the persecution of minorities (de Burgh 2008a; de Burgh 2008b, 343; de Burgh 2008c, 55 & 64-66; de Burgh 2008d, 76-77; Greenslade 2008, 335-337).² In many ways, these investigations of human rights violations culminated in the investigative journalist Nick Davies' exposure in *The Guardian* of British journalists' own denial of human rights in the so-called newspaper phone hacking scandal (Davies 2014; for a full archive, see <http://www.nickdavies.net/>).

Investigative journalism and human rights were interconnected from the seventeenth and eighteenth centuries as the modernising State grappled with maintaining control over growing populations with an enhanced sense of 'civil rights' in resistance to the arbitrariness of absolute power, providing an opportunity for an 'entrepreneurship in information' both to supply social data and to 'speak the truth to power' (de Burgh 2008e, 34; Feldstein 2006, 3-4).³ During the long nineteenth century many practitioners combined social inquiry, social activism and social realist literary activities with journalism which investigated human rights in rapidly industrialising economies – poverty; prostitution; alcohol abuse; poor housing; debilitating working conditions; crime; failures in education; colonialism, and, in the US, slavery and the status of indigenous peoples – paralleling State inspections, commissions and committees (Frankel 2006, 1-19). They included Friedrich Engels; Harriett Beecher Stowe; Charles Dickens; Nellie Bly; Émile Zola; Frederick Law Olmstead; Anton Chekhov; William Cobbett; William Lloyd Garrison; W.T. Stead; Jacob Riis; Henry Mayhew; Ida B. Wells; Henry Melville, and Fyodor Dostoevsky (Aucoin 2007, 25-32; Carson 2013, 11; Donovan and Rubery 2012; Feldstein 2009, 789-792; Schiffrin 2014).

This configuration of a demand for social information at times of profound change, a concern with human rights, and a greater capacity to supply evidence through improved communications, it has been suggested, provides a model for the waxing of investigative journalism and its focus on the condition of human rights – emerging again in the US during the Progressive era at the beginning of the twentieth century, and the period of civil rights

agitation in the 1960s (Feldstein 2006, 9-10); as well as in Australia (indigenous and women's rights) (Minchin 2001) and the UK (women's and gay rights) (de Burgh 2008c, 54-56). Interestingly, this coincidence of circumstances appeared to be replicated once more as economic reforms exposed human rights issues in China in the 1990s (Tong 2011, 34-35). If this analysis holds good, then it could explain why, at a time of globalisation, democratisation and digitisation, with their disruptive impact on social relations, some believe that the early twenty-first century has become a new global 'golden age' for journalists investigating human rights (Schiffrin 2014a).

Notes

1. Foundation 19/29 (Foundation for the Support of Investigative Journalism) was declared by the Russian Ministry of Justice in 2015 to be a 'foreign agent' in an attempt to curtail its activities (Human Rights Watch 2016).

2. A declaration of interest: with my then colleague Deric Henderson at the *Belfast Telegraph*, and Gavin Esler (1980), of the BBC, I was one of the first journalists to investigate the miscarriage of justice of what became known as the Guildford Four and Maguire Seven cases.

3. The phrase is attributed to the US civil rights leader Bayard Rustin (1942) (Long 2012, 2)

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