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Engaging with the Media in a Pre and Post Brexit World: Racism, Xenophobia and Regulation: A United Kingdom Perspective

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ABSTRACT

This paper engages with the perception that the UK media was instrumental in promoting racism and xenophobia in the period before the UK EU referendum. Furthermore, that this promotion led to actual hate crimes within the UK: How and why this occurred are central research issues. However, a further question is why no prosecution took place of either individuals within the media, or media companies themselves, promoting such rhetoric. Primary data analysis consisted of surveying newspaper content, online or otherwise, and particularly the tabloid press, but also EU reports, legislation, including Article 10 and 10.2 European Convention on Human Rights (Freedom of Expression), and European Court of Human Rights cases. Academic literature on Racism and Xenophobia, and their encouragement was utilised. The conclusions revealed weaknesses in the perception, identification and prosecution of ‘hate speech’ and racist and xenophobic material. Moreover, that prosecution has also proven problematic because of competing notions of ‘Freedom of Expression’ for individuals and organisations. However, regarding the media, the internal procedures, lack of adherence to ethical standards and lack of compulsory external regulation, further enabled such content. The effect cannot be conclusively determined, although spikes in recorded hate crimes coincided with virulent media content.

Key Words: Media, Racism, Intolerance, EU, UK. Regulation, Perception.

INTRODUCTION

In the UK, various opinion polls have been conducted since the 2016 EU referendum. (European Commission Against Racism and Intolerance, 2016). These have produced “evidence” of many population viewpoints which appear to entail dehumanising or demonising others. The 2016 European Commission against Racism and Intolerance (ECRI) report on the United Kingdom noted considerable intolerant political discourse in the

United Kingdom, particularly regarding immigration, a high number of violent racist incidents, a sharp rise in anti-Muslim violence, as well as record levels of anti-Semitic incidents. In that regard, according to Christian Ahlund the Chair of ECRI, (as cited in Euractiv.com, 2016, October 4) "The Brexit referendum seems to have led to a further rise in 'anti-foreigner' sentiment . . ."

Furthermore, the European Commission against Racism and Intolerance (ECRI) stated that:

. . . the ECRI considers that hate speech in some traditional media continues to be a serious problem, notably as concerns tabloid newspapers. According to NGOs, the media play a prominent role in encouraging prejudice against Roma, Gypsies and Travellers, as well as other vulnerable groups. The European Roma and Travellers Forum has expressed concern that some media regularly disseminate biased or ill-founded information about these communities and that they distort and exaggerate facts and reinforce stereotypes. (European Commission Against Racism and Intolerance, 2016, p. 9)

This article will analyse the role of the UK media, and in particular the tabloid press, to determine its potential role in promoting xenophobia and racism in the years 2013-2016. It will consider how the oft repeated claims to Freedom of Expression have complicated the regulation of xenophobia within the UK. Moreover, the article will suggest how the media could address these issues more appropriately in the future, as the final deadline for Brexit is on the horizon (October 2019), with the potential for increased xenophobia, racism and violent incidents. It concludes that the absence of 'perception' of racism, xenophobia and hate crimes, or proof of this, limits any desired effect. The need for a community of practice, academics, practitioners, the public, to raise awareness, challenge racism and promote ethical behaviour continues.

Xenophobia is defined herein as literally 'fear of the stranger', but more usually the term is taken to mean 'hatred of strangers' (Smelser & Baltes, 2001) According to Boehnke, (as cited in NGO Working Group on Migration and Xenophobia, 2001, p.2), Xenophobia can be understood as "an attitudinal orientation of hostility against non-natives in a given population." This paper will argue that the press contributed to this hostility, and that this is indicative of existing prejudices: neither are currently being sufficiently acknowledged nor controlled. Indeed, the author argues that perception of an "undesirable other," but also a *lack of perception of such representations as potentially "hate crimes"*, whether the legislation exists or not, should be the essential foci of research and education.

As the 2001 Declaration on Racism stated:

(xenophobia) . . . is growing out of the existence of essentialist symbolic and normative systems that legitimate processes of integration or exclusion. Thus, xenophobic behaviour is based on existing racist, ethnic, religious, cultural, or national prejudice. Xenophobia can be defined as the “attitudes, prejudices and behaviour that reject, exclude and often vilify persons, based on the perception that they are outsiders or foreigners to the community, society or national identity”. (Declaration on Racism, 2001)

As the Declaration also noted, xenophobia and racism often overlap, but are distinct phenomena:

Whereas racism usually entails distinction based on physical characteristic differences, such as skin colour, hair type, facial features, etc., xenophobia implies behaviour based on the idea that the other is foreign to or originates from outside the community or nation. (ILO, IOM, OHCHR, 2001)

For many, the Brexit vote was seen as a response to perceived uncontrolled immigration, and included refugees, heightened ‘nationalism’, and for some, xenophobia and racism.

BREXIT

Brexit is more formally known as the United Kingdom European Union membership referendum, but also the EU referendum and the Brexit referendum: the result will lead to British exit from the EU. This referendum took place on 23 June 2016 in the United Kingdom (UK) and Gibraltar. Its aim was to gauge support for the country either remaining a member of, or leaving, the European Union (EU). The referendum resulted in 51.9% of voters voting in favour of leaving the EU (UK votes to LEAVE the EU. n.d.). The United Kingdom government initiated the official EU withdrawal process on 29 March 2017; with the complete withdrawal process originally scheduled for 29 March 2019, changed to 31st October 2019. At the time of writing this article it is unclear when the withdrawal will actually take place.

Xenophobia and Racism in the Press.

Migration and immigration were crucial issues in the UK in the years before and up to Brexit, and for some influenced their vote. Below analyses how such migration was reported and reveals significant differences in the tabloid and broadsheet press. Indeed, in 2014 The Migration Observatory of

the University of Oxford revealed similar findings in their research on Bulgarians and Romanians in the British National Press for the period December 2012 - 1 December 2013. (The Migration Observatory, 2014). Whilst both types of newspapers were concerned with travel, the broadsheets used the following verbs: “come, arrive, move, travel, head.”

Tabloids, however, utilised metaphors related to scale, and often in animalistic forms: flood, flock (The Migration Observatory, 2014). This difference is important, since the latter is not only “naturalistic” but also emphasises number and particularly the perception of being “overwhelmed”: any lack of specific content denigrating potential immigrant groups is not indicative of the effect the media may have. The lack of specificity did, however, limit the potential for prosecution. That such rhetoric is not automatically prosecuted is indicative of the *lack of perception* of the potential impact of language, whether written or spoken. Criticism is made, but no prosecutions result.

Indeed, even politicians used this animalistic and apocalyptic language. In 2015 the then Prime Minister, David Cameron had called the Calais migrants “a swarm” in an interview (David Cameron criticised over migrant ‘swarm’ language, 2015). The UN Special Representative for International Migration subsequently accused British politicians of adopting a “xenophobic response” to the migrants’ crisis and said that the language had been “grossly excessive”. (David Cameron criticised over migrant ‘swarm’ language, 2015) Other political parties were similarly critical: The Scottish Nationalist Party said the PM’s language risked “inflaming what is already a tense situation”, while Liberal Democrat leader Tim Farron said it risked “dehumanising some of the world’s most desperate people”. (David Cameron criticised over migrant ‘swarm’ language, 2015) Green Party deputy leader Shahrar Ali said: “People will be disgusted at Cameron’s Calais comments and he should retract them immediately” (David Cameron criticised over migrant ‘swarm’ language, 2015). As argued above, the perception that immigrants and migrants would overwhelm the state, exhibiting a simultaneous non-human identity, proliferated within the press, and appeared bolstered by politicians’ statements.

Newspapers, particularly the tabloids, had been consistently highlighting immigrant numbers for some years up to 2016, with interest “spiking” at times of potential widening of access to the UK and up to Brexit. Academics have charted simultaneous spikes in hate crimes (Devine 2018). Whilst the press contained elements of “truth,” or “fact” regarding empirical evidence, the language used, and the lack of context created a climate of fear for many. The existence of “fact” is a requirement of legislation in states such as Belgium and Ireland, (Article 5 Belgium’s Code, Irish Code

of Practice), but similar legislation in the rest of the UK would not necessarily make prosecution more effective.

Indeed, the press did utilise facts, for example, that from 1st January 2014 Bulgarian and Romanian citizens were free to live and work in the UK after the expiration of controls that had been in place since 2007. However, such facts were accompanied by alarmist rhetoric in various newspapers in the preceding period. In January 2013, for example, *The Telegraph* gave the headline “250,000 Bulgarians and Romanians ‘head to UK’”, with the text not making clear that this was an estimated five-year figure, and with no discussion of the likelihood of these groups making the journey. (*The Telegraph*, 2013)

Sir Andrew Green, the Chairman of Migration Watch stated that “It is likely to be on a scale that will have significant consequences for housing and public services. . . it will also add further to the competition which young British workers already face” (Johnson, 2013, January 17). Public memory may have seen similarities between the extension to Bulgarians and Romanians and the earlier situation when Poland and other Eastern European countries gained the same rights in 2004. As a result of the latter, “more than one million people arrived in (the UK in) one of the biggest waves of immigration seen in this country.” (Johnson, 2013, January 17) Government ministers, seeing potential similarities and fears, utilised *The Telegraph* to reassure readers that the 2004 situation would not be repeated. However, they were subsequently criticised for being unable to provide “reassuring figures” (Dominiczak, 2013). The tabloid press created its own panic by stating numbers who would be entitled to come, not always making it clear that not all would choose to take advantage of this.

The Mail Online stated “Up to 70,000 Romanian and Bulgarian migrants ‘will come to Britain’ when controls on EU migrants expire, and that ‘figures could soar if the nearly 1million Romanians already in other EU countries also come” (Webb, 2013). Whilst the language was not animalistic, it was accompanied by a visual image suggestive of a destitute alternative cultural group, with the caption highlighting their poverty and that Britain would thus be a desirable prospect. (Webb, 2013)

The Telegraph used a photograph of the then Prime Minister David Cameron, looking troubled but resolute at such pronouncements. In May 2013 the *Daily Express* had stated:

Up to 29 million citizens of the two countries will have the right to come to Britain to live when controls barring them from entering the country without a job are dropped at the end of the year. The curbs were introduced to prevent a repeat of the immigration chaos when Poland, Latvia and other former eastern bloc countries joined the EU in 2004. The Gov-

ernment has repeatedly refused to give any estimate of the numbers expected to arrive here. But experts predict that up to 250,000 could come to Britain over the next five years. (Daily Express, 2013)

By October, the same newspaper headlined with: "Britain is full and fed up: Today join our Daily Express crusade to stop new flood of Romanian and Bulgarian migrants" (Daily Express, 2013). Many urged the PM to "defy Brussels", suggesting this would give greater control to the UK over its own borders. Arguably, most British citizens recognised and accepted that being part of the European Union entailed accepting new migrants.

However, some politicians, most notably Nigel Farage of the British Nationalist Party utilised imagery suggestive of Nazi propaganda in his campaigns. (Media Mole 2016) Many writers in the press appear to have similarly taken advantage of the fragile social and economic situation. Some had historically been inflammatory on a wide variety of issues, beyond race. Katie Hopkins' for example, had long been a source of extremist views on class, and race. There is no denying that her article in *The Sun*, a tabloid newspaper, likening refugees to cockroaches, was potentially highly inflammatory, and subsequently criticised by the UN High Commissioner for Human Rights (Plunkett, 2016, July 28; Stone, 2015). To many her words were perceived as offensive, but not necessarily inciting violence or genocide to which she claimed to be unaware.

Whether Hopkins was aware of the 1994 Rwandan genocide, and simultaneous and prior incitement using the term cockroaches is debatable, but does not lessen the offensiveness. Whilst her effect on the public cannot be automatically determined, (Katz 1957), such imagery has historically been seen as influential, and has led to criminal conviction of perpetrators, for example, Mugesera and the 1994 massacre of Tutsis in Rwanda, due to the result (Smith, 2003). Prosecution of those involved in hate speech, or even genocide has, however, historically proven difficult, not solely due to legislation or material facts. Indeed, previous work by this author has considered the legal difficulty of proving a causal link between words and actions, and even the influence of the actors, particularly in severe cases of incitement (Eastwood, McGuire, & Salter, 2013).

Mugesera's lawyer had argued in early 2012 that his trial for the Rwanda massacre was unfair because no complete recording of the speech existed (and thus full context was missing). Decades earlier, the Nuremberg trials of Schmitt, Streicher and Fritzsche revealed that the former two were perceived as the creative source and initiators of anti-Semitic propaganda. However, Fritzsche was held to be a mere conduit for the hate speech of others, thus lessening his 'crime'. I conclude that

it is arguable that the explanation for the discrepancies and divergent outcomes in these three cases was related less to the application of settled legal doctrine to material facts, than to the selective interpretation of the facts themselves, driven in part by the subjective impression created by these three individuals (Eastwood, et al., 2013, p.123).

In more contemporary context, and with regard to the Hopkins cockroach article, and potential prosecution, Matt Tee of the Independent Press Standards Organisation used *The Guardian* newspaper to cite the legal arguments for non-prosecution. He argued that migrants could not be viewed as victims of discrimination even when they were compared to cockroaches. His claims focused upon specific linguistic interpretation of "legal complainant". He stated the comments were also not covered by the editors' code, and he was unclear whether Hopkins comments could indeed be prosecuted as an incitement to racial hatred. Tee commented,

Migrants as such are not a group that can be discriminated against . . . And actually in our terms for it to be discrimination, the complainant would have had to show that an individual or a group of individuals were discriminated against by that phrase . . . I felt that the phrase was in very bad taste but bad taste is not something that is covered by the editors' code. (as cited in Plunkett, 2016, July 28)

Regarding incitement to racial hatred Tee further added that:

There were suggestions with the Katie Hopkins piece that it was an incitement to racial hatred. That's a legal matter. I don't think the commissioner of the Metropolitan police has taken any action over that. . . . In terms of the editors' code, there wasn't anything that could lead to a successful complaint against that column. (as cited in Plunkett, 2016, July 28)

The Society of Black Lawyers did report Hopkins to the Metropolitan Police, claiming that her words were offensive and xenophobic. Arguably, her comments met the legal threshold for the Public Order Act 1986, Part 111, s18, inciting racial hatred: they could be seen as threatening, abusive or insulting and either intended to stir up racial hatred, or make it likely that racial hatred will be stirred up. However, any prosecution would need to balance this threshold against the rights of people to "robustly exchange views, even when these may cause offence". (Plunkett, 2016, July 28)

Miss Hopkins was interviewed, but later wrote in a tabloid online newspaper, *The Mailonline*: "During my interview under caution, I delivered a long Hopkins rant about the importance of free speech and how I stood by every word I said and wrote" (as cited in Duell, 2015, November

23). Proving Hopkins' intent might have proven problematic, and it is significant that she drew upon the concept of "free speech". Potentially how influential her words might be in "making it likely that racial hatred would be stirred up" was presumably determined as unlikely, since the Crown Prosecution Service decided not to prosecute. Moreover, it is not an offence if the person is not aware that the material might be threatening, abusive or insulting.

Hopkins was presumably deemed insufficiently influential, or there were fears that prosecution would merely "fan her flames" and perhaps make her a martyr to free speech, or not in the public interest, or difficult to prove. She was however, sacked from *The Sun* newspaper following the furore over the comments. No major politicians were so treated, potentially raising the issue of gender discrimination, or the ease with which writers like Hopkins could be dismissed. Why her column was used by *The Sun* is a moot point, but her controversialist writing had been her "selling point" throughout her media career.

As suggested by the above, and according to the 2016 EU report, UK reporting on immigration, terrorism and the refugee crisis was conflated. Prejudicial comments from well-known political figures were stated to

Have an impact on the public and legitimise intolerance . . . (and) can only contribute further to the already high levels of hostility towards certain vulnerable groups, (European Commission Against Racism and Intolerance, 2016, para 38, p.18)

The report argued that such perceived influence could be countered by the establishment of a press regulator, (European Commission Against Racism and Intolerance, 2016, p.10) as per the recommendations set out in the Leveson Report (Leveson, 2012). As noted, however, immigrants and refugees were not necessarily covered by press regulation of "discrimination." Determining serious liability for incitement similarly seems to have proven difficult when comments are made in the public press. The UK currently has two competing supervisory bodies for the press, deemed to be insufficient by the EU report. Below will discuss the difficulties encountered during and following the Leveson Inquiry.

Regulating Derogatory or Inflammatory Content

In the absence of recognition of discrimination, or outright criminal incitement in the press, the question of how to regulate inaccuracies and prevent potential harm was a continuing issue after the publication of the Leveson Report (Leveson, 2012). The Leveson inquiry was a judicial public

inquiry into the culture, practices and ethics of the British press. This was instigated following the News International phone hacking scandal, and was chaired by Lord Justice Leveson, appointed in July 2011. As noted above the EU report of 2016 had called for press regulation, as per this Leveson report. The latter had recommended a new regulatory body to replace the Press Complaints Commission, and self-regulation (ECRI, 2016).

The National Union of Journalists issued a statement calling for journalists to “. . . operate within our recognised code of ethics” (Stanistreet, 2012, p. 7). In March 2013 the UK government announced a regulatory framework to be set up in a Royal Charter, but not by Statute. The new regulator would be able to order front page corrections. However, press participation would be crucial.

An important departure from the previous press complaints commission is the post- Leveson acceptance of a “conscience clause for journalists,” and the acceptance of third party responses to content in the press (Stanistreet, 2012, p. 7). Previously the latter could be refused if persons had not been specifically identified. However, the National Union of Journalists already has a Code of Conduct, s9 of which states that a journalist must not produce material, “likely to lead to hatred or discrimination on the grounds of a person’s age, gender, race, colour, creed, legal status or sexual orientation.” (Ethic Net. n.d). The current Independent Press Standards Organisation (IPSO) Code of Practice states that the press “must avoid prejudicial or pejorative reference to an individual’s, race, colour, religion, sex, gender identity, sexual orientation or to any physical or mental illness or disability.” (IPSO, December 2018, s12)

As the Katie Hopkins case above illustrates, this conscience code has not necessarily led to any actual significant change. It appears that labelling columns such as Hopkins as “opinion” is one method newspapers use to avoid breaching this code, and criminal sanction. As Tee, (cited in Plunkett, 2016, July 28) stated:

I think it is important that columnists, particularly where it is very clear that this is a personal opinion, a column, in Katie Hopkins terms or . . . whoever, people who cause mass offence, it is very clear there is a picture at the top of the column, it is very clearly a column, which is their view, their opinion.

According to an Article 19 report (Article 19, 2018, 1st March), the main difficulty with regulation of the press is that the UK has no written constitution, and English criminal law has no governing instrument such as a penal code. The report stated: the criminal restrictions upon “hate speech” and the media thus reflect the UK’s piecemeal legal structure. . . ’

(Article 19, 2018, March 1st, p.4). However, I argue that it is the perception of hate crime, or the lack of this perception, that creates the difficulty, irrespective of whether legislation exists or not.

Whilst the police and the Crown Prosecution Service are equipped (subject to funding constraints) and do prosecute individuals engaging in hate speech: the report found that

the criminal law has not been used against a media outlet for many years, and never for engaging in 'hate speech' in relation to any person or group of persons on the basis of a protected characteristic" . . . There is no mechanism by which the very powerful British print media may be held to account for the disparagement of a group of persons on the basis of a protected characteristic (Article 19, 2018, March 1st, p.4).

Arguably, this lack is due to misperception of the purpose of existing legislation, and misrecognition of acts as meeting the threshold for prosecution, even voluntary codes of ethics have not conquered this lack of identification.

Media Self-Regulation and Hate Speech

Indeed, another potential difficulty for regulation of the press in the UK is that the print media is self-regulated, either by one of the two independent regulators - the Independent Monitor of the Press (IMPRESS) or the Independent Press Standards Organisation (IPSO) - or by the media itself (e.g. Financial Times and The Guardian). However, there is no need for these regulators to ensure that minorities are represented, and potentially this limits the perception of offence, or racism, or xenophobic content. No figures are available to indicate that minorities are included in any key posts. Moreover, IMPRESS does not regulate any national newspaper, as the latter have refused to join IMPRESS, citing a perceived lack of independence (Article 19, 2018, March 1st, p.39). Another issue is that some involved in IMPRESS have previously been the object of press investigation for other alleged indiscretions, potentially suggesting a conflict of interest in media regulation.

Moreover, as the Article 19 report confirms, and the above commentary on the Katie Hopkins article, codes of conduct are limited in what they cover. IMPRESS's Standards Code, for example, includes provisions about accuracy and non-discrimination, and one provision specifically dealing with hate speech, but only to the extent that it constitutes "incitement to hatred." (Article 19, 2018, 1st March, p.39). The IPSO's Editors' Code of Practice (the ECP) does not contain any provision specifically dealing with

hate speech, but does include provisions about accuracy and non-discrimination (Article 19, 2018, p.39, s12 IPSO code of Practice 2018).

As the examples above have illustrated, proving that even these standards have been breached has proven problematic.

It is often argued that in an increasingly competitive media environment: . . . many media employers have sacrificed reporting standards in pursuit of commercial objectives, overriding ethical values with journalism that is populist, sensational and biased (OECD, 2010).

Equally, it is argued that legitimate discussion of immigration and potential effect should not automatically be prevented or portrayed as right wing. It is the language used and the intent that is potentially problematic when considering prosecution.

Academic, human rights, and legal articles on discrimination and the rise of hate crime legislation often cite historic tensions, particular the World War Two genocides, if considering mainland Europe (European Network of Legal Experts in the Non-Discrimination field, 2011). However, it is clear that immigration in whatever period can create new tensions, since member states of the EU expect freedom of movement, and access to resources, for their peoples. In 2003 Matthew Randall wrote that:

Irrespective of party, leading politicians repeatedly highlight issues of exclusion — fears of “invasion”, alleged “threats” and actual prejudices — ensuring a very negative image of immigrants despite their statistically small impact on society. . . . Concerns over crime, disease, terrorism, detention and surveillance are consistently pushed well to the fore. This lack of balance can be attributed to a number of factors, including the existence of a covert racist ideology and the political expediency of “the race card” — factors that repeatedly compromise the welfare of refugees and immigrants. (Randall, 2003 December 8).

The European Convention on Human Rights and Xenophobia and Racism

Currently, the European Convention on Human Rights does not specifically address the freedom of the media. However, it does allow the freedoms under article 10 to be limited. Considering hate speech, there is the possibility of regulation through the European Court of Human Rights (ECtHR). The ECtHR does not give carte blanche freedom of speech, and excludes hate speech from protection by means of two approaches provided for by the European Convention on Human Rights: a) by applying Article 17 (Prohibition of abuse of rights) where the comments in question amount to hate speech and negate the fundamental values of the Convention, or b)

by applying the limitations provided for in the second paragraph of Article 10 and Article 11. However, the contexts and purposes of the media and of the speech are seen as crucial.

The reasoning behind limitation of Art 10 is illustrated in *Witzsch v Germany*, where it was stated that comments made in private letters could constitute “Abuse of freedom of expression (that) is incompatible with democracy and human rights and infringes the rights of others. (*Witzsch v Germany*, 2005, p. 8)

Conversely, the European Court of Human Rights in *Jersild v Denmark* (1994, Sep 23) emphasised the vital role of the press and audio visual media as “public watchdog”. (*Jersild v Denmark* 1994, Sep 23, para 31. In this case, where the racist extremist views of members of the Greenjackets were aired on a TV programme, the case concerned whether the conviction of the journalist ‘for having aided and abetted the dissemination of racist remarks violated his right to freedom of expression within the meaning of Article 10 of the [ECHR].’ *Jersild v Denmark*, 1994, Sep 23, para. 25) The ECtHR considered the programme, manner, contents, context, and purpose as crucial. It was stated that: “. . .the object of the programme was to address aspects of the problem, (racism) by identifying certain racist individuals and by portraying their mentality and social background. . . .” (*Jersild v Denmark*, 1994, Sep 23, para 33) The Court emphasised that the item was broadcast as part of a serious Danish news programme, intended for a well-informed audience, and that there were some features that counterbalanced the extremist views expressed:

although the specific remarks made by the Greenjackets, read out of context, were highly offensive, the way in which they were presented and the objective pursued by the applicant were, in the circumstances, sufficient to outweigh the effect, if any, on the reputation or rights of others. (*Jersild v Denmark*, 1994, Sep 23, para. 25)

The court stated that: “News reporting based on interviews, whether edited or not, constitutes one of the most important means whereby the press is able to play its vital role of “public watchdog”. (*Jersild v Denmark*, 1994, Sep 23, para 31) There were, however, seven dissenting judges to the decision that Article 10 rights had been violated. For a further two judges the defendant failed to react against racist remarks and should therefore receive no compensation.

It is likely that post Brexit the CJEU will continue to have an influence on UK domestic law. This is because section 6(2) of the EU (Withdrawal) Act 2018 states courts/ tribunals “may have regard to anything done on or after exit day by the European Court, another EU entity or the EU so far as

it is relevant to any matter before the court or tribunal.” (EU (Withdrawal) Act 2018 s 6.2). Second, the fundamental rights enshrined in the Charter of Fundamental Rights are unlikely to disappear. Although Section 5(4) of the Act states that the Charter will no longer be part of domestic law, paragraph 106 of the Explanatory Notes says “those underlying rights and principles will also be converted into UK law”. Arguably, this means lawyers will still be able to use case law in which these general principles were referred to, if interpreted as relevant (EU (Withdrawal) Act 2018: Young, 2018).

CONCLUSION

Whatever legislation exists to promote social cohesion, including the hate crime bias laws that are often included within this, these compete with alternative imagery and rhetoric, and popular interpretations. (Dixon & Gadd, 2006). Whether such disparities could be dealt with by regulation of the press as suggested by the Leveson inquiry, the EU report, self-regulation or the CJEU is problematic: the recent examples given above, suggest some difficulties. Indeed, I argue that the failure to perceive some acts as hate crimes remains the “elephant in the room”, limiting the potential to prevent racism and xenophobia, and curb the influence of the press. Thus there is a continued need for a community of practice, including academics and practitioners, to promote ethical journalism and awareness of the existence and reason for ‘hate crime’ legislation and human rights.

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