

**Impact case study (REF3b)**

<p><b>Institution:</b> University of Stirling</p>
<p><b>Unit of Assessment:</b> D32 Philosophy</p>
<p><b>Title of case study:</b> Understanding competing rights: impact on Lord Leveson’s report on the Culture, Practices and Ethics of the Press.</p>
<p><b>1. Summary of the impact</b></p> <p>Rowan Cruft’s work on how a right’s moral importance reflects the nature of its grounds had a significant impact on Lord Leveson’s report, in particular on the principles which Leveson takes to ground a free press. Cruft was an expert witness at the Inquiry, and his evidence is cited (pp. 62-4, 71, 84, 88, 1684), forming a major part of the report’s theoretical underpinnings. Cruft’s evidence drew together research, presented in previous publications, on what can be learnt about the weight of different rights – e.g. individual citizens’ rights, the rights of journalists and media organisations – by examining their grounds.</p>
<p><b>2. Underpinning research</b></p> <p>Cruft has been employed as a Lecturer and then Senior Lecturer in Philosophy at Stirling since completing his PhD in 2002. His work focuses both on what rights are and on what we can learn about the relative importance of different rights by examining their grounds. See (A) and (F) in the references below for Cruft’s work on the former topic; for the latter, see (A), (B), (C), (D) and (E). In his written evidence, Cruft addressed eleven questions put to him by the Leveson Inquiry: questions on the nature of the public interest in a free press and in freedom of expression, and on conflicts between these and other values including privacy and security. Further questions concerned the ethical duties of the press, and appropriate methods for enforcing such duties. Cruft answered these questions in 4,500 words of written and 45 minutes of spoken evidence. Here, Cruft brought his research on the nature and grounding of rights to bear on the rights of the press and of individual freedom of expression.</p> <p>Three ideas developed by Cruft came to the fore in his Inquiry evidence. First, Cruft has argued that, as well as being useful means for fostering and upholding valuable relationships, rights and their correlative duties sometimes partially constitute such relationships (see (B) and (D)). The notion of the liberal public sphere as constituted by rights – a guiding theme of Cruft’s evidence to the Inquiry – rests on this view that rights can constitute relationships.</p> <p>Secondly, Cruft’s work distinguishes between rights that are valuable independently of their effects and rights whose value depends on their usefulness. An example of the former, Cruft argues, is the moral right not to be enslaved: this right is held by all persons and benefits a person even in a slave-holding society in which the right goes unrecognised, for it is (in a sense explained in (B)) better to be a slave who is wronged by one’s enslavement (even if nobody recognises this) than to be a slave who lacks the moral status of a wrongable being. By contrast, Cruft argues that most property rights are purely instrumentally valuable ((C) and (E)). Kamm and Nagel offer cognate views on the non-instrumental value of basic rights, but they fail to note that many rights – including those of ownership and other morally justified socially created rights – are purely instrumentally valuable. In his evidence, Cruft used this distinction to differentiate individual liberal rights, some of which are non-instrumentally valuable, from the rights of media organisations, whose role is purely instrumental.</p>

Thirdly, building on Raz's work, Cruft has argued that certain rights (e.g. to freedom of expression, or against slavery) are grounded individualistically by what they do for their holders, while others (e.g. property rights, parents' rights to child benefit payments) are grounded in what they do for people other than the right-holder, such as third parties or the wider community (see all six references below, especially (A), (E) and (F)). This played an important part in Cruft's Inquiry evidence, underpinning his claims that the rights of media organisations are not justified by what they do for such organisations but only by their benefits to the wider public, while in contrast some individual rights of expression and privacy are justified independently of whether they serve beings other than the right-holder.

### 3. References to the research

Cruft, R. 'Witness statement of Dr Rowan Cruft', evidence presented to the Leveson Inquiry. Available here: <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Witness-Statement-of-Dr-Rowan-Cruft.pdf>

Researchers for the Inquiry contacted Cruft, asking him to act as an expert witness. His statement was commissioned by the Inquiry, and is based on questions put to him by the Inquiry team.

Publications developing ideas that informed the witness statement:

(A) Cruft, R. 'Human rights as rights', in G. Ernst and J.-C. Heilinger (eds.), *The Philosophy of Human Rights: Contemporary Controversies* (Berlin: de Gruyter, 2012), pp. 129-158.

Invited contribution reviewed by editors. Other contributors include Samuel Freeman, James Griffin, John Tasioulas.

(B) Cruft, R. 'On the non-instrumental value of basic rights', *Journal of Moral Philosophy*, vol. 7, no. 4 (2010), 441-461.

Peer-reviewed article. It has been selected for republication shortly in the collection, *Law and Legal Theory* (Brill, Studies in Moral Philosophy series, forthcoming 2013), ed. T. Brooks.

(C) Cruft, R. 'Are property rights ever basic human rights?', *British Journal of Politics and International Relations*, vol. 12, no. 1 (2010), 142-154.

Special issue on property rights. Invited contribution reviewed by editor.

(D) Cruft, R. 'What do basic rights demand?' in T. Chappell (ed.), *The Problem of Moral Demandingness* (Basingstoke: Palgrave, 2009), pp. 35-58.

Invited contribution reviewed by editor. Other contributors include Alan Carter, John Cottingham, Garrett Cullity, Jennie Louise, Timothy Mulgan, Onora O'Neill, Christine Swanton, Alan Thomas.

(E) Cruft, R. 'Against individualistic justifications of property rights', *Utilitas*, vol. 18, no. 2 (2006), 154-172. Peer-reviewed article.

(F) Cruft, R. 'Rights: Beyond Interest Theory and Will Theory?', *Law and Philosophy*, vol. 23, no. 4 (2004), 347-397. Peer-reviewed article.

This article is cited in the entry, 'Rights', §2, in the *Stanford Encyclopedia of Philosophy online* as the first of four papers that move beyond the traditional 'Interest' and 'Will' theories of rights.

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Work on articles (A)-(D) was funded by three AHRC grants: a Research Leave award ('The Moral Foundations of Rights', Spring 2006, £14,013), a Network grant bringing together academic and non-academic participants to assess human rights as a concept for institutionalising values ('Institutionalising values: beyond human rights?', 2009-11, £49,812) and an Early Career Research Project focused on the nature of the duties correlative to rights ('Rights and the Direction of Duties', 2010-12, with Leif Wenar (KCL) as co-investigator, £74,248).

In addition to this support from the AHRC, further indicators of quality include the new invitations Cruft's work has generated: to present to the Aristotelian Society (2013) and to act as lead editor for OUP's landmark *Philosophical Foundations of Human Rights* (38 essays; forthcoming 2014; co-ed. with S. M. Liao and M. Renzo).

**4. Details of the impact**

Cruft's evidence had significant impact on the theoretical underpinnings of the Leveson report. The most considerable impact was on the sections in which Lord Leveson outlines the principles which he takes to ground the importance of a free press. In these sections (Vol. I, Part B, Chapter 2, sections 3 and 4 (pp. 61-65)), Leveson gives significant weight to Cruft's evidence, citing Cruft four times here and quoting a total of 21 lines from his evidence. In conjunction with Onora O'Neill's evidence (cited four times here, quoting a total of 10 lines) and that of Neil Manson and Christopher Megone (two citations each) and Susan Mendus and Alan Rusbridger (one citation each), Cruft's work on the value of a free press is taken as a foundation for the report's approach to the value of a free press.

Notably, the relevant sections of the report are organised in a way that mirrors Cruft's evidence and reflects the central distinctions in his research. The report's Ch. 2, section 3 ('The importance of a free press: free communication') focuses on the non-instrumental value of freedom of expression, citing and expounding Cruft's distinction between basic personal rights to free expression that are individualistically justified and non-instrumentally valuable, and the rights of press organisations whose value is purely instrumental, and which cannot be individualistically justified. Thus for example, section 3 ends with the claim that '[t]he fundamental point is that unlike freedom of expression for individuals, which has intrinsic merit as a form of self-expression, press freedom [...] is largely understood as an instrumental good, to be valued, promoted and protected to the extent that it is [...] to serve its important democratic functions' (p. 63). Continuing the continuity with Cruft's evidence, the report's section 4 ('The importance of a free press: public debate and holding power to account') moves on to the instrumental values of a free press, focusing on the two aspects – constraining power and enabling democratic deliberation – highlighted in Cruft's testimony. Later, the report's Chapter 3, section 2 (a section focused specifically on the value of individual freedom of expression) approvingly cites Cruft's notion of a non-instrumentally valuable liberal public sphere constituted by certain rights (p. 71). Reference to Cruft's view of the rights of media organisations as instrumentally and non-individualistically grounded occurs again on p. 84 (Chapter 4, section 4 'Press ethics and the role of a code of ethics').

A related central aspect of Cruft's work that plays a significant part in informing the Leveson report is Cruft's view on the relation between moral duties, professional practice and regulation. For Cruft, the relation between moral duties, law and regulation is complex; moral duties need not and

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sometimes should not be enshrined in law or regulation (see (A) and (F) above). In Chapter 4, sections 4.15 and 4.16, the report focuses on what culture and practices would make a media industry recognisably 'ethical'. In 4.16, Lord Leveson quotes 18 lines from Cruft's evidence, prefacing the quotation thus: 'It is worth setting out extracts from some of the answers to this question which appear to me to be particularly illuminative'.

In his evidence to the Inquiry, Cruft drew inferences about the particular requirements that his view of the grounding of competing rights supports. He suggested that the instrumental grounding for a free press was compatible with, and might often justify, requiring proprietors, editors and journalists to declare their financial and political interests, and to report payments made or received for publishing a story. This suggestion is cited in the report, Part K ('Regulatory Models for the Future'), section 8.15 (on the contents of a code of practice for the press), p. 1684.

In addition to its impact on Lord Leveson's report – and in particular, its foundational role in the conception of the value of a free press and freedom of expression grounding the report – Cruft's work on the nature and grounds of different rights also received a wider public airing through his participation in the Inquiry. The written and spoken evidence is in the public sphere, available online on the Inquiry website; Cruft's spoken evidence was also podcast live on <http://www.bbc.co.uk/democracylive/>, where a recording of the session is still available. As a result, Cruft's evidence was discussed by interested members of the public in online fora and in several comments (c. 20) on twitter. Cruft also gave a follow-up talk to students and members of the public in Stirling, outlining the position he expounded for the Inquiry.

**5. Sources to corroborate the impact**

- Report of the Leveson Inquiry, available here:  
<http://www.official-documents.gov.uk/document/hc1213/hc07/0780/0780.asp>
- Written evidence given to the Leveson Inquiry, available here:  
<http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Witness-Statement-of-Dr-Rowan-Cruft.pdf>
- Transcript of oral evidence presented to the Leveson Inquiry at the Royal Courts of Justice on the morning of 16 July 2012, available here (see pp. 64-95 for Cruft's evidence):  
<http://levesoninquiry.org.uk/wp-content/uploads/2012/07/Transcript-of-Morning-Hearing-16-July-2012.pdf>
- Video recording of the hearing at which oral evidence was presented, available here:  
[http://news.bbc.co.uk/democracylive/hi/bbc\\_parliament/newsid\\_9736000/9736352.stm](http://news.bbc.co.uk/democracylive/hi/bbc_parliament/newsid_9736000/9736352.stm)  
[NB. All the hearings in Module 4 are given together here. Please scroll down to the hearing on the morning of 16 July 2012.]