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Should people in the public eye have a right to privacy?

In 1785 Paris was flooded by pamphlets with stories of Marie Antoinette's debauchery, accusing her of incest, homosexual affairs, catching venereal disease from a cardinal and spreading it around the court. Little could be done against the authors of these fabrications and few were even caught or punished. There was more outrage at her alleged depravity than at the fact that her sex life was made public. In 2008 Max Mosley won £60,000 damages against *The News of the World* for its publication of genuine pictures and videos of his sadomasochistic 'orgy'. Somewhere between 1785 and 2008 the idea of a right to privacy was born.

The legal right to privacy is now article 8 of the European Convention on Human Rights, guaranteeing respect for private and family life, home and correspondence. However, this right is also limited, especially by the right to free expression (article 10). The balance and conflict between them forms the backdrop to this question. The real issue is not simply whether or not public figures should have the right to privacy, but where the law should draw the line between privacy and free speech.

The law should not take the same threshold for privacy for public figures as for private individuals. Fame depends on the press to sustain it and the value of celebrity is measured by public presence. It is hypocritical for celebrities to welcome flattering publicity, but complain that negative reporting invades their privacy, to welcome interviews on their terms, but complain of uninvited press coverage. For instance, Michael Douglas and Catherine Zeta-Jones had an exclusive deal with *OK!* to publish their wedding pictures, but complained that unauthorised pictures in *Hello!* breached their privacy. Surely their privacy was breached by the publication of any pictures, or not at all. Of course, the case really concerned financial interests and it was largely decided on that basis. But the argument that

only unauthorised pictures are an invasion of privacy is telling of celebrities' double standards.

Judges are capable of resisting such arguments. In a case where an unnamed celebrity sought to block a 'kiss-and-tell' revealing his extra-marital affairs, Lord Woolf said: 'If you have courted public attention then you have less ground to object to the intrusion which follows' and should expect greater press scrutiny, even of trivial facts unworthy of attention in a private individual. This approach must be correct: it acknowledges the public nature of celebrity, where minor details become objects of press interest. Arguments which equate public figures with ordinary individuals are inappropriate in an age when celebrities seek anything but ordinariness; aiming to become sources of universal recognition and universal fascination.

The main way to change the law's threshold for privacy is to broaden the public interest defence. A free press is clearly in the public interest and part of the right to free expression. Once, only 'serious' journalism was considered in the public interest, because 'there is a wide difference between what is interesting to the public and what is in the public interest'. The public interest now covers more of 'what is interesting to the public', including celebrity stories. The role of judges is to decide the law, not to dictate public taste or form moral judgements.

In the Mosley case Mr Justice Eady was correct not to moralise on Mosley's sexual activities (despite the cries of tabloid editors, especially Paul Dacre, for him to have done so). But he defined the public interest too restrictively: claiming that only the alleged Nazi element in the 'orgy' would make the story in the public interest. This ignores the public interest to be informed about the actions of public figures, especially about those with wider ramifications. The 'orgy' had consequences for Mosley's job, with calls for him resign from the FIA and reporting this was certainly in the public interest.

As with politics, celebrity news is a legitimate area of public interest. Allowing newspapers to publish it maintains their appeal to their readership. If more trivial stories are suppressed for not being in the public interest, there is no guarantee that major political stories will not be suppressed for the same reason. The only way to ensure that *The Times* can write freely is to allow *The Sun* to write freely.

There are limits even to the broadest public interest, when the press uses its power not to inform and report, but to abuse and vilify. The threshold for privacy should be drawn before this point. But, given most recent cases (like *Douglas* and *Mosley*), there is little danger of judges' being too lenient on newspapers, while there is a clear danger that they will treat celebrities too reverentially.

The press has a vital role: reporting news and shaping opinion, challenging assumptions and exposing hypocrisy. Its periodic failures to meet these goals do not justify limiting its role. Judges have partially recognised this. When Naomi Campbell stated publicly that she did not take drugs, *The Mirror* was justified in revealing that she was receiving drug treatment, so held the House of Lords. But sadly this was weakened; the law lords narrowly decided that the newspaper breached her privacy with a photograph of her leaving a Narcotics Anonymous meeting. The law produced no great vindication of the press.

The press can make public figures into giants and then reveal their feet of clay. The stories of Marie Antoinette's sex life disproved royal claims to divine approval and reduced her to a corrupt mortal. Modern celebrities are often accorded near-royal status and lauded as role models. It is beneficial for society to learn of their frailties and see that not all their actions deserve emulation.

The press should not have to play by celebrities' rules: to report their successes but not their failures, to allow them publicity when they crave it but privacy when they demand it. Public figures should not expect the same right to privacy as private individuals. For what then would a free press be, but a celebrity PR machine?