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### Privacy and the Press: Is Law the Answer?

Newspaper tycoon Randolph Hearst defined news as something someone would rather not see in print. The rest, he said, was advertising. Although a generalisation, a lot of news will be regarded by someone as intrusive - yet is this necessarily a bad thing? And, as Labour plan to introduce increased privacy protection, how can this best be achieved?

English law does not protect privacy, and although indirect protections are available, gaps in the law exist. It is not clear that incorporating the European Convention on Human Rights will balance protection for privacy and freedom of expression satisfactorily. Using broadly defined laws to protect this nebulous concept is fraught with problems: a flexible approach such as self-regulation would be more appropriate. This would obviously require major reform - few could argue the Press Complaints Commission has been effective in curbing the more excessive tabloid tendencies. However, with real power and an independent make-up the PCC could be revived.

Calls for privacy laws usually come from public figures or hypocritical politicians caught out. A broad privacy law could place undesirable restrictions on the media, who are vital in a democratic society, allowing scrutiny of politicians' actions. It is hardly surprising the powerful support privacy laws: such laws could have dangerous powers to protect exactly those whose actions should be open to investigation. Current safeguards arguably only work for the rich; yet this is a political decision. The protection of reputation has been long established but legal aid is unavailable. Would a law of privacy provide for this? Unlikely, considering the proposal to restrict legal aid - if not, once again the law will be used by powerful figures to avoid public questions while ordinary people are unable to afford redress.

Most consider that as governmental acts affect us, we are entitled to be informed. This 'desire to know' may legitimately extend to the private behaviour of politicians. It was considered in the public interest by most to know that Tory MP Stephen Milligan, espousing 'traditional family values', was involved in bizarre sexual practices. However, in contrast, if an MP voting consistently in favour of gay rights did not wish to 'come out', most would consider an article on his sexuality an unwarranted intrusion. This highlights a significant problem: is a clear, unambiguous definition possible? Intrusion is subjective, dependent on the individual's attitudes and surrounding circumstances. If someone sunbathes on a public beach, arguably they forego privacy. Yet if, as with Princess Diana, that individual were 5 km from shore, most would consider that private activity, despite the ability to take photographs with a telephoto lens. If that lens captured illegal activity, would that become public once more? The infinite variety of considerations in ascertaining a privacy violation would render any broad law

unworkable. Such a law is not the answer, although a strengthening of existing common law, or enactment of narrowly defined statutes may provide a solution.

A variety of indirect protections are available, including defamation, trespass and breach of confidence. The latter is particularly useful as it can prevent truthful communications. Recent judicial statements imply a widening definition; the suggestion in *Hellewell* that taking photographs without permission constitutes a breach is one example. If this is the case, the need for a privacy law seems further reduced.

Law could be an answer if it entails the enactment of narrowly defined legislation concerning specific invasions. These could include taking photographs without consent, bugging and intrusion onto private property - in public one can reasonably be considered 'fair game'. Although this type of protection may leave gaps in the law, it would be preferable to err on the side of caution. 'Privacy' is too broad a concept to be the subject of legislation in itself. It may be dangerous to define in isolation, without a counterbalance to protect the press.

Intrusion should only be allowed in the public interest; however, editors must bear in mind the difference between stories in the public interest and those merely interesting the public. In their defence the press are simply satisfying public demand - yet this is a simplistic argument. It can be equated to giving sweets to a child - he knows he should not eat them all, but will still eat more if given them. The press must be responsible in deciding what is intrusive, although this moral duty could be ignored if a particularly juicy story arises. Strict guidelines are vital, and should be drawn up by an independent tribunal, rather than the industry-dominated PCC. The power to sanction code violations and award compensation where appropriate would give the tribunal real authority. To increase this editors could enter a contractual relationship with the tribunal, agreeing to be bound by their findings. Any financial penalty or award could therefore be enforced through the Courts.

Elsewhere, legal systems have revealed inherent difficulties in legislating to protect privacy. In the USA laws can be 'overruled' by the constitutional principles of freedom of information and speech. In addition, a general defence of 'newsworthiness' exists, allowing embarrassing or painful stories to be published (this may, however, catch the more lurid examples of tabloid reporting. A photograph of Cherie Blair in her nightie clearly has no informative value.). France also has strict privacy laws - yet these refer to publication, not necessarily how the information was obtained. Laws did not prevent French photographers chasing Princess Diana on the night she died. While law could be used to prevent publication, the actual intrusion is in obtaining the details - knocking on the door at 5am, for example. If legislation prevented this investigative journalism would be seriously restricted. Again, an independent commission could be effective, providing clear guidelines and acting on complaints.

As novelist Arnold Bennett said, the price of justice is eternal publicity. Justice and privacy cannot be reconciled; the press should be free to print whatever is in the public interest, provided it is true. The disadvantages of a privacy law would outweigh the benefits: law is not the answer.