
4. What is the public interest?

We have seen how privacy is now regarded by journalists; how the everyday understanding of what constitutes privacy is changing under the impact of self-revelation television and the internet; and how the law is changing to contain what it sees as the unacceptable intrusions made on people's private lives. It is time to ask: how far can and should privacy be protected from intrusion on the part of journalism? An answer to that question is only possible if we can get to a definition of what should, for journalism, constitute the public interest. And though the phrase is constantly used, it means different things to different people.

Adam Cannon, a lawyer at the *Daily Mail*, argued definitions were unhelpful; it was more of a 'feel' issue¹²⁵—'you knew it when you saw it'. But people see it in quite different ways. Many of the examples we have given throughout this essay are of journalists unmasking private, often sexual, behaviour, and claiming that it is in the public interest (and not just of interest to the public) that this be done. This kind of exposure—the modern equivalent of the revelation of sin punished by the stocks—is a powerful tradition in the press, especially the British press. Often despised by critics, it must be taken seriously.

The revelation of sin

Paul Dacre, editor-in-chief of Mail newspapers, is the strongest public proponent of this view. As the editor who most strongly enshrines the old Fleet Street model of one wholly in charge of the style and message of his paper, he believes that a large task of the popular press is the unmasking of amorality.

¹²⁵ Interview, London, 10 Sept. 2008.

We saw this expressed in his speech to the Society of Editors. But he made a further important point. Having underlined that the naming and shaming of sexual transgressors was a vital part of the job of the popular press, he went on—‘if mass circulation newspapers, which also devote considerable space to reporting and analysis of public affairs, don’t have the freedom to write about scandal, I doubt whether they will retain their mass circulations, with worrying implications for the democratic process’.¹²⁶

This is a telling argument, especially at a time of falling circulations. It is also one wholly familiar to TV channel controllers, who argue that they must retain their mass audiences with popular drama, reality and celebrity shows if they are to keep any of that mass for public service programmes. It’s also obviously right, in at least one sense. Human society and human communication rely heavily on gossip as currency for the exchange of information. In every society, stories are told about the doings of others. Sometimes the stories are told with affection, sometimes to make a moral point, and sometimes to do harm. Gossip is an essential ingredient of most everyday conversations. Just as no conversation is without a reference to others, so no newspaper or magazine can survive without some reference to the doings of the rich and famous, the celebrity or the public figure. Media gossip is at one level ordinary conversation writ on a much larger screen in which light and shade mix. Andrew Marr provided a much quoted definition:

*we are perpetually intrigued by the extreme, the gruesome, the outlandish ... so journalists learn to take less extraordinary things and fashion them into words that make them seem like news instead ... journalists reshape real life, cutting away details, simplifying events, improving ordinary speech, sometimes inventing quotes, to create a narrative which will work ... journalism is the industrialisation of gossip.*¹²⁷

One of the issues to which we have devoted some space here is that this ‘industrialization of gossip’ has hugely expanded—both through the collusion that takes place between celebrities, their agents and the media and through the actions of those who reveal large amounts of personal information on social networking sites, from popstars like Lily Allen—who in 2007 wrote emotional blogposts on MySpace complaining how fat

¹²⁶ Dacre, Society of Editors’ speech (see n. 120).

¹²⁷ A. Marr, *My Trade: A Short History of British Journalism* (Macmillan, 2004).

and ugly she felt¹²⁸—through unknowns thrust into the public gaze, such as Amanda Knox, to the great majority, whose details circulate among their friends, acquaintances and the browsing curious. The sheer explosion of social networks demonstrates the importance of the personal, the gossipy and the scandalous to human interaction—and with it, the habit of making implicit or explicit moral judgements about the characters revealed to us in whatever medium.

Moreover, both the view that the public interest is served by exposing (im)moral example, and the view that public interest should exclude all private life considerations except those demonstrably linked to public dereliction, cover-up or crime, depend on a conception of shared interests and, in investigative journalism, very often a shared potential outrage. The investigative journalists to whom we spoke—such as Davis, Leigh and John Ware—all had in mind an audience who should be informed about such issues as bribery by British Aerospace, the maltreatment in mental homes or the continued freedom of Irish Republican terrorists known to have committed mass murder—and who should be concerned over the possibility that the state of affairs being examined may be as bad as the reporters claim.

But those who argue that the mass media should play a *moral* role also presume that there is a consensus against certain kinds of behaviour—as Dacre put it, of the details of the Mosley case, ‘most people would consider such activities to be perverted, depraved, the very abrogation of civilised behaviour of which the law is supposed to be the safeguard ... (the press) has the freedom to identify those who have offended public standards of decency—the very standards its readers believe in—and hold the transgressors up to public condemnation’. Both sides assume a concerned citizen: but the first aims to ensure public virtue, while the second also wishes to police private morality.

The latter is both clearly potentially more popular and more testing. It is more popular because of the ‘perpetual intrigue’ of others’ private behaviour, especially sexual behaviour—and the content it provides for conversation, fantasy and reflection on moral stances, especially one’s own. But it is also more testing, because of the difficulty of ensuring that the news organization engaged in such moral police work collects verifiable evidence which will stand the test of a trial—especially now, when, as we’ve noted, the courts are more concerned to protect privacy than in the past. Further, there is the inevitable question of all moral policemen: what of your own standards? A policeman who upholds the law is compromised

¹²⁸ E. McIntosh, ‘Lily, Wills and the Rest of the World’, *Guardian*, 15 May 2007: <http://www.guardian.co.uk/commentisfree/2007/may/15/popstarlilyallencries>

if he breaks it: the same would apply to a moral policeman. Those who hold public figures to account for their moral failings are themselves public figures—if for no other reason than that they both collect the evidence and at least implicitly judge the individual concerned guilty. They are public figures because they intervene, sometimes mightily, in public affairs by following the route which Dacre, more than any other figure, has mapped out: their argument is that certain kinds of legal private behaviour could and at times should disqualify a man or woman from public office. Thucydides’ account of Pericles’ funeral oration—‘Just as our political life is free and open, so is our day-to-day life in our relations with others ... We are free and tolerant in our private lives; but in public affairs, we keep to the law’—is not their approach.

In the Mosley case, the nature of the behaviour itself (conjoined with the high public position which, the *News of the World* argued, he held) was enough to make the case of moral degradation. Elsewhere, the argument depends often on two related criteria: the fact of being a role model: and the fact of perpetuating a hypocrisy.

For example, pictures of the singer Kate Moss allegedly using cocaine at a recording studio are clearly an example of illegal behaviour: and the interest in publishing them is said to be because she is a role model. This approach also justifies the sagas of self-destruction of stars such as Amy Winehouse or George Michael, and the constant and relentless pursuit of Gary Glitter. It remains a question whether what this does is simply celebrate or condone the behaviour.

Hypocrisy was Camilla Wright’s justification for many of the exposés on Popbitch—particularly the stories on the Liberal Democrat MPs, Mark Oaten and Simon Hughes. For a period of months in 2004 and early 2005 Oaten, the Liberal Democrat Home Affairs spokesman, had a relationship with a rent boy, possibly involving one other. Oaten had criticised a judge who found himself in a similar predicament, and he had invited the cameras into family breakfast as part of his leadership campaign. Tom Crone whose paper broke the Oaten story, argues that ‘If an MP is doing this within 4–500 yards of his home, going around the corner to the local knocking shop, not just for a straight leg-over situation but for this extreme behaviour every three weeks and paying £2,500 a session, do his voters have a right to know? We say absolutely they do and then let them make up their mind.’¹²⁹

¹²⁹ Interview, London, 10 Sept. 2008.

The blogger Iain Dale takes a slightly different view: upholding the right of newspapers to pursue hypocrisy, but dissociating that from any implication of executive ability.

With a politician, I don't care if he trusses himself up in women's stockings. If he makes a moralistic issue about sex then that's a legitimate area. But does it affect his ability to run a Department if at 9pm on a Sunday evening he is doing things that some people might find rather distasteful? No it doesn't.... Mark Oaten [is] an interesting case where in theory you could argue his activities did not impact on his ability to be good home affairs spokesman. The fact that he was married and consorting with rent boys was obviously hypocritical but I wouldn't argue that means he could not do his job.¹³⁰

Simon Hughes, another contender for the Lib Dem leadership and whose sexuality had been an open secret for some time, was finally forced to declare that he was bisexual in a 'frank' interview in *The Sun*, which was clearly otherwise going to expose him after he had denied he was homosexual.¹³¹ Yet gay MPs have been an unremarkable feature of British life for some time now and Hughes is a member of the Liberal Democrats—whose watchword is liberality. The character flaw that was held to have mattered was that he dissembled—and that he had won his parliamentary seat in competition, at one time, with the gay rights activist, Peter Tatchell.

Camilla Wright thinks she was right to aid the exposé—although she now displays some unease about what has happened as a result:

There's much less reverence [now] and you can say anything about anyone. There's generally a feeling that if you become famous you have no right to privacy. The things you do often have unintended consequences. I think it was right to make coverage more truthful, that with celebrities it is not all about an idealised life. But now the pendulum has swung a long way from that. I don't feel responsible but I have played a part in it.¹³²

¹³⁰ Interview, London, 9 Sept. 2008.

¹³¹ T. Kavanagh, 'Hughes: I've had Gay Sex', *The Sun*, 26 Jan. 2006: www.thesun.co.uk/sol/homepage/news/article35699.ece

¹³² Interview, London, 7 Oct. 2008.

In Naomi Campbell's case, it was the 'hypocrisy' of denying addiction while attending a treatment centre. The commonest accusation of hypocrisy is if a politician is married and has ever been photographed with or referred to his wife or her husband, or if—as was the case in the John Major government—the party has itself taken a line in support of moral values.

In the case of former Deputy Prime Minister John Prescott, exposed by his lover's disaffected boyfriend over his affair with an aide, the exposure was mixed in with photographs showing him playing croquet at his official country residence, Dorneywood. The adultery was thus conflated with the 'hypocrisy' inherent in a man of working class origin playing a sport associated with the leisured upper classes in a publicly owned country house.

Many of the revelations of the *News of the World's* 'Fake Sheikh' (Mazher Mahmood) are justified on the basis of hypocrisy—none more obviously so than when Mahmood revealed that Jerry Springer, the US chat show host, had had sex with two women, participants in his show, before it was broadcast—while, during that broadcast, lecturing the women that 'having sex with someone you're mad about is special, it's supposed to be something intimate, something personal ... when sex is involved you have to make sure you have at least some feeling with the person with whom you're having sex'.

The effective mixture of reasons for the moral approach are a presumed common agreement on norms of sexual behaviour and private morality together with a perceived public interest in policing these norms through exposure and ridicule. It also suggests an acceptance that public figures are regarded as models for the way in which the large majority of non-public figures live their lives. It requires the pointing up of hypocritical behaviour by public figures who proclaim, or who belong to organisations which proclaim, virtues in conflict with that behaviour. It is bolstered by the argument that this approach also sells newspapers and magazines: that people, for whatever reason, wish to read about the clay feet of the rich and famous—and that this popularity ensures (or has ensured: little is certain in the present newspaper market) the continuance of the popular press.

The classic case is not in the UK—but in the US. The American newspaper market differs markedly from that of the UK—there is, for example, no direct equivalent to the tabloid culture, though the (now declining) *National Inquirer* played something of that role. But the Monica Lewinsky affair of 1997/8 (the sexual affair had lasted from late 1995 to

early 1997) put into the public arena an encounter between the White House intern Lewinsky and the then President Bill Clinton which brought together private sexual behaviour and public morality in a dramatic and fascinating way. There was, and has been, no implication that the affair as such breached national security, or had an effect on any other area of public policy or action even if the aftermath of the revelation might have.

The condemnation of the affair, largely but not only from the political right as well as from religious figures and communities, was directed at the President's morals, and the unseemliness of sexual encounters taking place within the White House, and in an annexe to the Oval Office. The issue became a—for a time *the*—major plank of political opposition to Clinton from a right which had, by the late 1990s, lost much of the political impetus it had had in the early part of his presidency. And even on a strict view of a division between private and public, the private became uncontroversially public when, in 1998, President Clinton, if at times more than a little ambiguously, publically denied he had 'sexual relations' with Monica Lewinsky, and when both his wife (now US Secretary of State) Hillary Clinton and his Cabinet members supported him in his denial. That denial—the kind of statement a large number of exposed adulterers are, at least initially, prone to make—then convinced even those editors who felt uneasy trespassing on private concerns that they must give what became massive coverage to the event. Private became public by the public actions and statements of the private adulterer: of course, a frank confession at any stage would also have been huge news, but arguably would have ended the matter more quickly.

In an interview—with the *Daily Mail* (25 June 2004)—Lewinsky said that

*he could have made it right with the book (Clinton's biography, My Life, 2004), but he hasn't. He is a revisionist of history. He has lied. ... I really didn't expect him to go into detail about our relationship ... But if he had and he'd done it honestly, I wouldn't have minded. ... I did, though, at least expect him to correct the false statements he made when he was trying to protect the Presidency. Instead, he talked about it as though I had laid it all out there for the taking. I was the buffet and he just couldn't resist the dessert.*¹³³

¹³³ From an AP report on *USA Today*: 'Lewinsky: Clinton Lies about Affair in New Book', 25 July 2008: www.usatoday.com/life/books/news/2004-06-25-lewinsky-clinton_x.htm

The Monica Lewinsky revelations were the apogee of the private made public: and made so by a powerful current of opinion and of political organisation in the US which did see sexual behaviour as having a direct bearing on fitness for office. Bill Clinton's tendency to have extra-marital affairs had been well known for many years in Little Rock, the state capital of Arkansas where he had been governor: and it dogged him, through the Gennifer Flowers revelations, through his presidential election bid and into the White House. However, with his wife's support, he was able to sideline the issue: Lewinsky was the revenge of the so-called 'moral majority'. Certainly he was someone a large section of the American people had long suspected of being far too morally loose to be their president (it seemed, after the revelations, that they were not the majority, at least not a stable one: the bulk of those polled on the issue viewed it as a private matter, or at least not one deserving impeachment).

The power of this position is manifold. It connects with notions of sin which—even if now weakly anchored in a religious framework—remain strong, especially when connected with sexual behaviour. It exposes hypocrisy—a demonstration always popular, especially when practised by the powerful and the rich. It is comprehensible: almost everyone understands stories of moral failing. It also plays to our love of Schadenfreude—the joy of witnessing humiliation.

Policing the public space

The iconic revelations which bolster the alternative view of the public interest also concerns a US President, of an older vintage. The Watergate affair, the conclusion of which is 35 years old this year, resulted in the resignation of President Richard Nixon in August 1974, after a two-year struggle to deny or downplay actions which amounted to criminal conspiracy to disrupt opponents' campaigns, illegal wiretapping, bribery and corrupt tax audits. None of this concerned Nixon's private actions (except in the sense that he sought to keep them secret): his life was free of sexual scandals. This stood as an exemplar for later generations of reporters because of its unambiguous public importance—coupled with the story of perseverance and careful detection work undertaken, above all, by the two *Washington Post* reporters, Carl Bernstein and Bob Woodward. In a presentation he gives, the investigative reporter David Leigh pinpoints Woodward and Bernstein as the key role models for his generation of journalists—a large reason why he, and others, chose

investigation as his trade. In his book *Flat Earth News*, Nick Davies writes that ‘in the year I left university, 1974, Carl Bernstein and Bob Woodward ... forced US President Nixon to resign. What an idea! ... I became wholly addicted to the idea of being a reporter ... most of all, I would change the world.’¹³⁴

It is this view of the public interest—as the exposure of issues which are unambiguously of a public nature and of public concern—which has become the officially dominant one, as against the popular one. The fact that this is the one now sanctioned by governments, regulators, the judiciary and many in the news media has tended to endow the approach which seeks to reveal sin with—partly ironically—something of a disreputable aura.

This irony was prominently on display when, in response to Dacre’s Society of Editor’s speech, Mosley wrote in the *Guardian* that

*They [editors like Dacre] like to claim, for instance, that a celeb’s sexual indiscretions should be made public because he or she is ‘a role model’: an absurd argument when publicity is likely to convince admirers to imitate, not refrain. Or that an activity is criminal: well, inform the police—at least the police would allow the person concerned to offer a defence.*¹³⁵

He went on to turn the charge of hypocrisy against Dacre, saying that

Another line is the exposure of hypocrisy—yet when the editor of the Sun, Rebekah Wade, spent a night in police cells after allegedly assaulting her husband, Dacre did not feel the need to draw his readers’ attention to the campaign the Sun was then running against domestic violence.

The investigative journalists to whom we spoke—such as Davies, Leigh and Ware—want both to inform and encourage their audience to share their sense of concern about what it reveals about the health of society.

Many were concerned—as Nick Davies reveals in the quotation from his book (above)—to ‘change the world’. Investigative reporters are more often on the left of the political spectrum—sometimes far left—than from the right: a source of conflict, as their critics accuse them of having a

¹³⁴ N. Davies, *Flat Earth News* (Chatto & Windus, 2008).

¹³⁵ M. Mosley, ‘My Sex Life is of Interest to No One But This Squalid Industry’, *Guardian*, 12 Nov. 2008: www.guardian.co.uk/commentisfree/2008/nov/12/comment-mosley-dacre-press-privacy

political, rather than a journalistic, agenda. But even those whose views might be on the right, or those who profess no political preferences, are in undertaking investigations in the public interest assuming the role of ombudsman on behalf of society as a whole—‘changing the world’ by revealing abuses in the public sphere, and thus prompting corrective action.

As we can see from the various codes, and from the legislation itself (see box), liberal societies agree with this trend in journalism. Here is another irony: investigative reporters often see themselves as operating as guerrillas against various forms of official armies: yet their actions are, at least in theory, sanctioned by years of officially expressed approval. It is of course the case that reporters often do find official obfuscation, delay, distortion and downright lies when they seek to bring to light something which political or corporate power wishes to disguise: yet it is also the case that their general thrust meets more official approval than at any time in the past. A final, and very sharp, irony: as this official approval is embodied in codes and laws, so the financial crisis in the industry increasingly limits the time and money spent on investigations, especially in newspapers.

UK media codes and guidelines give similar accounts of the public interest

1. The Press Complaints Commission Code sets out in art. 3 the individual’s right to privacy: ‘Everyone is entitled to respect for his or her private and family life, home, health and correspondence, including digital communications’—then goes on to say that

The public interest includes, but is not confined to:

- *detecting or exposing crime or serious impropriety*
- *protecting public health and safety*
- *preventing the public from being misled by an action or statement of an individual or organisation.*

The Code also reminds us of another important consideration: ‘There is a public interest in freedom of expression itself. ... Whenever the public interest is invoked, the PCC will require editors to demonstrate fully how the public interest was served.’

2. The Ofcom broadcasting code in s. 8.1 states:

where broadcasters wish to justify an infringement of privacy . . . they should be able to demonstrate why in the particular circumstances of the case . . . it is in the public interest . . . Examples of public interest would include revealing or detecting crime, protecting public health or safety, exposing misleading claims made by individuals or organisations or disclosing incompetence that affects the public.

3. The BBC's Editorial Guidelines state that

The BBC seeks to balance the public interest in freedom of expression with the legitimate expectation of privacy by individuals . . . there is no single definition of public interest, it includes but is not confined to: exposing or detecting crime, exposing significantly anti-social behaviour . . . preventing people from being misled by some statement or action of an individual or organisation . . . disclosing information that allows people to make a significantly more informed decision about matters of public importance.

4. The Information Commissioner, in March 2007, published suggestions on the public interest*

- *Informing debate on key issues*
- *Promoting accountability and transparency for decisions and public spending*
- *Tackling fraud and corruption*
- *Promoting probity, competition and value for money*
- *Helping people understand and challenge decisions affecting them*

5. The law—as in the Freedom of Information Act, and the Data Protection Act ss. 32 and 55)—also recognises a public interest defence and a journalistic exception where there is ‘reasonable belief of acting in the public interest’.

Clearly, these attempts at definition show a good deal of consensus. Clearly too, there is room for a good deal of argument as to what the interest really is, and how far one should trespass on private space to pursue that interest.

*Freedom of Information Act Awareness Guidance No. 3: www/ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/awareness_guidance_3_public_interest_test.pdf

The public interest: a definition

Our own definition of the public interest is unambiguously on the side of those who see it as residing in the arena in which men and women conduct their public business. We believe this to be right for the following reasons.

- In the first place, there is a great public interest in the protection of private life. Everyone, whether public figure or private, needs some private space to withdraw from others in order to develop themselves. It is crucial to our integrity as human beings through preserving a mental and physical balance, maintaining and developing personal relationships, pursuing private interests and nurturing personality. It is in itself a public good. We have seen how much that is now under

pressure, even under threat. We have seen how public persons, especially politicians, are now regarded by many journalists—especially the ‘new’ or ‘citizen’ journalists—as fair game for any kind of exposure. We have seen how easy it has become to put information, true or false, into common currency, and how hard it is to erase such false information. All of this leads to an experience of privacy, on the part of public people, which is fractured and fragile.

- The malign consequences are threefold. First, some close to the political process suggest that men and women of ability are not presenting themselves for public service because they want to protect aspects of their privacy. Second, that those who come to and remain in public life will take ever greater care to protect what privacy they can—and/or use elements of their private life to bolster their popularity, attract sympathy or slide out of a jam. Third, a media culture which pounces on slips, second thoughts and indiscretions enforces blandness and political correctness—the opposite of what a robust democracy needs.
- Any approach which recognises that the private space is to be, in principle, protected will run the risk of missing concealed scandals which bear on public life. For example, David Blunkett’s actions when Home Secretary of covertly seeking to fast track a visa application for the nanny of his lover, was discovered because of the revelation of a private sexual affair. The instance illuminates an obvious tendency— that those in public life, especially in high public office, engaged in such affairs are often tempted to misuse their position and power to conceal the matter, or (as in this case) to assist its continuation. But to argue from this that all potentially compromising private relationships must therefore be investigated for what public misdemeanours they may prompt is not a reasonable posture, if private life is seen as worth defending.
- The public interest in this definition assumes that citizens in a democratic state have an interest in having access to information about the workings of that state, of its institutions and its officials, both elected and appointed. However, the public interest is not confined to the state’s institutions, but also to private corporations and to voluntary organisations which—as nearly all do—require the public’s trust.
- When an individual holds an office, whether in a public institution (as government) or a private company or voluntary organisation which seeks the public’s trust for the statements of intent made, the policies pursued, the actions taken, the services and commodities offered or the campaigns undertaken, it is in the public interest that that

individual's public actions in pursuit of these goals be open for inspection, analysis and investigation by the news media.

- But such an individual is to be judged for his/her public acts, not private ones. In this case, 'private' should be taken to mean all issues to do with personal relations, personal communications, beliefs of all kinds, past affiliations—always assuming these are within the law. However much these should appear to others, even to an overwhelming majority, to be deviant, or immoral, or bizarre, the test is always the public statements, policies and above all actions.
- It is recognised that the division between private and public is rarely absolute: the person who believes in flying saucers or is conducting a sado-masochistic relationship may be a council officer or a department store manager. But the first set of beliefs or actions cannot be presumed to inform their behaviours in their job. If, in an investigation, links are shown to exist between the public and the private, then the latter is a legitimate area of inquiry by the news media. But there is no *prima facie* public interest in ET believers, or in sado-masochists.

We acknowledge that morally driven coverage, and the argument that it is only by doing such exposés that we can sustain a mass popular press, is a serious challenge to this approach to the public interest and private lives. That argument locates one of the central tasks of public issue journalism in the duty to reveal the private squalor under the public magnificence, and appeals to a very old tradition—much older than the 'public matters' approach—of exposing our leaders' feet of clay. Further, it links in to moral and implicitly religious categories which exert powerful, even if often unconscious, feelings of what is right and what is not. It also has the pleasure of enjoying what it professes to abhor.

For this approach is itself rarely wholly free of hypocrisy. The *News of the World* is not a Methodist tract: its revelations are largely skewed towards the doings of the celebrity circuit—whose lives are constructed by press agents, and whose misdemeanours are often part of that construction. The evidence we have gathered from those who work this seam—such as Mark Frith, formerly of *heat* magazine, and Camilla Wright of *Popbitch*—reveal a world in which an elaborate game is played out between the media and the celebrities—not wholly under the control of either, but with broadly defined rules and ceremonies. But, as Dacre put it in his Society of Editors' speech, 'the opinions of its (*NoW*) readers carry, in a democracy, no less weight than the infinitely smaller readerships of papers like the *Guardian*'.

However, there are also a series of disabling arguments to the moral police approach.

- It is hard to prove a connection between most private behaviour and most public actions. We accept, many times a day, that the public figures we encounter or who have some control over our lives will separate public from private, and we are usually justified in this trust. To hold what some—even most—would regard as sleazy private behaviour as a *prima facie* reason for investigation and exposure is to fly in the face both of common experience and common sense.
- There is no longer a consensus on what constitutes ‘immoral’ behaviour, where it is private and legal. Until recently, and even occasionally now, much of the press regarded homosexual relationships of any kind as deviant, and would expose them (much male homosexual behaviour was, to be sure, illegal until the passing of the 1967 Sexual Offences Act: but the pursuit and exposure of homosexuals continued long after that). Since the late 1960s, and in part because of the debates about and resolutions on homosexuality, a wider and more generous view has been taken by most, including most democratic governments, of sexual morals and activity. As we noted, the view of most Americans (even in a country in which religious observance is much higher than in the UK) was that President Clinton’s sexual business was his own.

The point is well made by reference to the argument which Lord Devlin, the distinguished jurist, had with Lord Wolfenden on the latter’s (permissive) report on homosexual law reform, in 1957. Devlin believed that societies needed shared moral values, which were greater than individual, private judgements. Since, in his view, homosexual acts were outside the pale of shared moral values, the law had to intervene to punish them in order to maintain social cohesion. He argued that ‘limits of toleration’ were reached when this or that act (including homosexuality) excited popular feelings of ‘intolerance, indignation and disgust’. If, for example, the majority believes that homosexuality is ‘a vice so abominable that its mere presence is an offence’, then the law should aim to end it. This approach, rejected by parliament in 1967, is that to which the ‘moral police’ side appeals. It is no longer available.

- The role model argument is a thin one. Max Mosley is right to point out that if celebrities and others really are role models, revelation of their behaviour is more likely to stir emulation than distaste—since most such ‘role models’ are known not to have strict sexual and other models before they become such (indeed, that will often be a reason for them being so). Further, holders of posts like the presidency of Formula One do not function as role models in any moral sense: they make no normative pronouncements outside of their professional duties, and are not held up as people who show others how their lives should be lived.
- Journalists are ill-equipped to be moral police. This is not just because there is little evidence to show that their private behaviour is of a higher quality, in any sense, than those in other professions—though that is one consideration. It is also because they have no training in moral discrimination, nor does the profession have a governing philosophy of moral behaviour to which they can appeal when deciding to ‘out’ an adulterer, or a homosexual, or one whose sexual tastes may be defined as perverted. Such judgements can indeed be made—most obviously, by the clergy, who rely on religious codes and commandments, which variously both describe and prescribe adultery, homosexuality and sexual perversion. Journalists have no such recourse.
- Hypocrisy is the strongest ground for this argument where a defence can be mounted in terms which the ‘public matters’ side would understand, and with which it might agree. However, how far a public figure’s hypocrisy justifies an intrusion into his or her private life is not something which can be decided in principle—but can only be determined by the intense focus exercised by the courts. We shall return to this in the conclusion of the next and final chapter.