Up Close and Personal: The Private Lives of Public Figures

Abstract

In a number of recent (and some not-so recent) articles Thomas Nagel has criticised the public culture of modern liberal societies and claimed that 'increased tolerance for variation in sexual life seems to have brought with it a sharp increase in prurient and censorious attention to the sexual lives of public figures'. He deplores this turn of events and argues that there are important moral and political reasons for protecting (even concealing) the private lives of politicians from the public gaze. In this paper I take issue with Nagel's understanding of modern liberal societies and also with his insistence on separating public from private. I suggest that the private lives of public figures may be more relevant than he claims and, more generally, that in a liberal society the moral character of politicians may be a subject of legitimate concern to the public. However, at the end of the paper I also caution against too enthusiastic a pursuit of political figures and give some reasons (different from Nagel's reasons) for thinking that we should guard conventions of privacy.

How much can we legitimately expect to know about the private lives of politicians? It may be thought (and it may be true) that the question is ill-formed and that there is no general answer which can sensibly be given, but in series of articles on this theme, Thomas Nagel has expressed the view that in modern liberal societies (and especially in the United States) we have come to expect altogether too much. He writes:

> Everyone knows that something has gone wrong in the United States with the conventions of privacy. Increased tolerance for variation in sexual life seems to have brought with it a sharp increase in prurient and censorious attention to the sexual lives

> of public figures and famous personalities, past and present. The culture seems to be growing more tolerant and more intolerant at the same time[1].

And again:

> What has happened in the United States is strange. On the one hand, tolerance for variation in sexual life has increased enormously since the 1960s. We have seen a true sexual revolution, and of course the publication of explicitly sexual materials in all media is part of it. On the other hand, the loosening of inhibitions has led to the collapse of protections of privacy for any figure in whose sexual life the public might take a prurient interest. What looked initially like a growth of freedom has culminated in the restitution of the public pillory[2].

And in substantiation of his claim that there has been a sharp increase in public prurience and a concomitant decrease in the protection of privacy (especially sexual privacy) of public figures, Nagel cites a number of notorious US cases including the 'affair' between President Clinton and Monica Lewinsky, and the allegations made against Judge Clarence Thomas by Anita Hill. He (Nagel) claims that these cases are symptomatic of a more general malaise which manifests itself in the decline of conventions of civility and of reticence, and he concludes that 'the restraints that protect privacy are not in good shape. They are weakest

[1] 'Concealment and Exposure' in *Concealment and Exposure and Other Essays*, Oxford, University Press, 2002, p.3.
[2] 'The Shredding of Public Privacy' in *Concealment and Exposure and Other Essays*, op.cit., p. 29.

where privacy impinges on the public domain, but the problem is broader than that. The grasp of the public sphere and public norms has come to include too much[3]'.

I take it that the general drift of Nagel's complaint is pretty clear: in modern America (perhaps in modern liberal societies generally) there is too much prurient attention to the private lives of public figures, and this is a matter for deep regret. I am not sure that Nagel is right, either in his factual claim that the conventions of privacy are not in good shape (that they have been, to use his own word, 'shredded'), or in his historical claim that things are worse in this respect than they used to be, or in his evaluative claim that this shows us that 'something has gone wrong'. It is, however, difficult to justify these suspicions in abstract and general terms, so my strategy in this paper is to take a specific case and use it to elucidate my concerns about the views Nagel expresses.

To be clear, I am not sure whether I agree with Nagel's 'broadening' point (his claim that something has gone wrong generally), but I am concerned about his attitude towards prominent political cases, and they are the cases I will focus on here though, towards the end of the paper, I hope to say something about the 'broadening' point.

[3] Op.cit. p.5.

Judge Clarence Thomas and Anita Hill

The case I will focus on is that of Judge Clarence Thomas and Anita Hill, and the relevant facts, briefly stated, are these:

In July 1991 George Bush (Snr), then President of the United States, nominated Clarence Thomas to the Supreme Court. The nomination was a controversial one from the outset and there were many who doubted whether Thomas was qualified for the position (he had never practised law nor had he produced scholarly work on law[4]). However, the nomination moved from being merely controversial to being a *cause celebre* when a law school professor by the name of Anita Hill accused Thomas of having sexually harassed her when they worked together in the Department of Education and in the US Equal Employment Opportunity Commission. In her testimony to the Senate Judiciary Committee Hill alleged that she had been subjected to sexually lewd behaviour from Thomas. She said 'he spoke about acts that he had seen in pornographic films involving such matters as women having sex with animals and films showing group sex or rape scenes ... On several occasions, Thomas told me graphically of his own sexual prowess'. Several other women who had worked with Clarence Thomas endorsed Hill's claims that he was prone to use lewd and sexually explicit language, and although none of them formally accused him of sexual harassment, they did make damaging allegations against him including, in one case, offering sworn testimony that 'if you were young, black, female, reasonably attractive and worked directly for Clarence Thomas, you knew full well you were being inspected and auditioned as a female'.

[4] Check this and give reference.

The allegations made by Anita Hill and endorsed by some others were certainly damaging to Clarence Thomas's case and the Judiciary Committee eventually sent a nomination without recommendation to the full Senate, which confirmed Thomas's appointment to the Supreme Court by a margin of just 4 votes, the narrowest for over a century. In October 1991 Clarence Thomas finally took his seat in the Supreme Court.

In the years since 1991 there has been an avalanche of commentary on the Clarence Thomas-Anita Hill case[5]. Some of that commentary has focused on the legacy of the case and, in particular, on the role of Anita Hill in raising public awareness of sexual harassment; some has focused on the highly politicized character of Thomas's nomination and ultimate appointment; some has focused on the racial dimension of the case and on the ways in which Thomas's blackness became a matter of great significance both for his critics and his supporters. All these are important areas of debate, but what I want to discuss here is whether it was appropriate to take Clarence Thomas's personal vices into account when considering his appointment to public office. To return to the question that stands at the centre of this paper, I want to ask 'how much are we entitled to know about the private lives of public figures?', and I want to use the Clarence Thomas case as a lens through which to view that question and to query Nagel's claim that in modern liberal societies like the United States 'something has gone wrong' with the conventions of privacy.

The structure of the paper, then, is as follows: first, I will say something about the public-private distinction in general and about the particular way in which it informed the Clarence Thomas-Anita Hill affair. Then, I will turn to the concept of character and to the question of

[5] Insert references in support of this.

whether the character of public figures (that is to say, their moral character) is an appropriate object of public scrutiny. In both these sections of the paper I will take issue with Nagel's claims and, in particular, with his insistence that private vice and moral character are irrelevant to suitability for office and inappropriate objects of public scrutiny. In the final section, however, I will concur with Nagel's view that 'something has gone wrong' with conventions of privacy, but I will suggest – very tentatively - some different reasons for thinking that that is so.

First, then, the Clarence Thomas case and the public –private distinction.

The Clarence Thomas Case and the Public-Private Distinction

In 'Concealment and Exposure', and again in 'The Shredding of Public Privacy', Nagel insists that, in considering Clarence Thomas's suitability for the Supreme Court no account should have been taken of his alleged behaviour towards Anita Hill. This, Nagel says, was a private matter and as such was (or should have been) irrelevant to the question of Thomas's suitability for public office. Nagel writes:

> This sort of bad personal conduct [the conduct Thomas allegedly engaged in] is completely irrelevant to the occupation of a position of public trust, and if the press hadn't made an issue of it, the Senate Judiciary Committee might have been able to ignore the rumours. There was no evidence that Thomas didn't believe in the equal rights of women. It is true that Hill was his professional subordinate, but his essential

> fault was being personally crude and offensive. It was no more relevant than would have been a true charge of serious maltreatment from his ex-wife. (Nagel, 2002, p.23)

For Nagel, then, Thomas's behaviour (as alleged) was a private matter and not something that should have been taken into account by those considering him for public office.

Others think differently. In their discussion of the Clarence Thomas case, Amy Gutmann and Denis Thompson argue that:

> The boundaries between public and private activities are not as sharp for officials as they should be for ordinary citizens. Some kinds of otherwise private immorality may indirectly affect an official's capacity to do a job. When an attorney general belongs to a private club that discriminates against blacks and women, when the president's "drugs czar" is addicted to cigarettes, when the enforcement chief of the Securities and Exchange Commission is accused of wife beating, the public rightly takes notice. The officials in these cases recognized, or were forced to recognize, that their private conduct had too close a relation to their public role to remain private' (p.111).

And a large part of their case rests on the contention that public figures cannot expect to enjoy the same degree of privacy as the rest of us. The sacrifice of a certain amount of privacy is simply the price one pays for being a public figure and, in particular, for occupying a position of public trust. So say Gutmann and Thompson. Of course, we can accept this

general distinction without accepting that it was legitimate to expose the precise information that was exposed about Clarence Thomas, because the general point simply is that, in considering appointment to positions of public trust, the line between the public and the private may be drawn differently and more stringently than it is for all the rest of us. I will return to this point late in the paper when I discuss moral character. For now, though, I simply want to note that Nagel's insistence that Thomas's bad behaviour was simply a private matter is controversial.

But Nagel does not only insist that Thomas's behaviour was a private matter and, as such, irrelevant to the question of his suitability for public office; he also says that cases of this sort (cases in which allegedly private matters become the subject of public attention) indicate that 'something has gone wrong' in societies like the United States. To recall, he urges that 'the culture seems to be growing more tolerant and intolerant at the same time' and that 'what looked initially like a growth of freedom has culminated in the restitution of the public pillory'. For what it is worth, I rather share his distaste for the events surrounding the appointment of Clarence Thomas, which were at some points close to a circus – and a damaging and distracting circus at that - but Nagel's concern about this particular case grows out of a wider concern that something has gone wrong with the protection of privacy in America. So what has gone wrong? It is not always clear what Nagel's answer is: sometimes, and as indicated earlier, he seems to think that we are now drawing the line between the public and the private in the wrong place, and he speaks with regret of the public arena having 'come to include too much'[6].

[6] 'Concealment and Exposure' p.5.

But if early feminism taught us anything, it taught us that the line between the public and the private is a controversial one, and that insistence on the private character of sexual matters can be, and historically has been, very damaging to women. In a report for the British Academy entitled 'Happy Families' Pat Thane points out that it was not until 1978, 170 years after they were legally prevented from beating their cattle that men were fully restrained from beating their wives. And the reason, of course, was that marital matters were deemed to be private. I don't want to labour this point, which is a familiar one, but I do want to note that when the conventions of privacy were in what Nagel takes to be 'good shape', they were also in the kind of shape that was very costly for women. 'And this', as the Marxists used to say 'is no accident'.

This point suggests a further one: Nagel's concern is that 'something has gone wrong' with the conventions of privacy in modern America, but it may be that nothing has gone wrong, and that the tensions he identifies are in fact inherent in liberalism itself. It may be that liberal commitment to privacy just is in tension with liberal commitment to transparency, so that there will be no permanent and agreed resting point - no ideal place at which the two values are uncontroversially reconciled. The possibility has been expressed very articulately by Jeremy Waldron who writes:

> The problem is that privacy here [in liberal societies] is not usually the privacy of solitude, but rather the privacy of the family and (in classical but not in modern liberalism) the privacy of the workplace. But these are areas in which, on any realistic understanding, important issues of power and hence legitimacy arise. That leads to a genuine dilemma. Some liberals may be happy with the panopticism of a Bentham ...

> but others will view this with alarm. Freedom from the public gaze, they will argue, is an indispensable condition for the nurture of moral agency: people need space and intimacy in order to develop their liberty. To the extent that these lines of thought are taken seriously, liberals leave themselves open to the charge of being less than wholehearted about the legitimation of *all* structures of power in modern society. (Waldron, 1993, 58-9)

The possibility which Waldron canvasses here is that liberal commitment to publicity and transparency, when taken to their logical conclusion, simply will generate a demand for greater exposure of traditionally private matters than is acceptable to many of us. But this is not necessarily a sign that something has gone wrong; it is a tension borne of liberal commitment to two values which are not easily reconcilable one with another[7].

So, Nagel's concern that the Clarence Thomas case shows us that 'something has gone wrong with conventions of privacy' is questionable in at least three ways: first it is questionable whether the behaviour he cites as private is properly thought of as private (this is the point that emerged from early feminism); second it is questionable whether it is properly thought of as private *when engaged in by someone who seeks (or holds) a position of public trust* (this is the point made by Gutmann and Thompson); third, it is questionable whether the logic of liberalism permits the delineation of a clear and uncontroversial area of privacy at all. The exposure of traditionally private matters to the public gaze is, we might say, an occupational

[7] This general point is made very forcefully by Nagel himself in his article 'Rawls and Liberalism'. He writes 'however much is required of the state in a positive direction to curb the development of deep institutional and structural inequalities, it may not violate the rights to liberty of individual citizens when carrying out this charge. Putting these impulses together in a coherent theory is not always easy' p. 65.

hazard of liberalism just because and insofar as liberalism is committed to transparency (this is the point made by Waldron).

On Moral Character

So much, then, for Nagel's concerns about 'the shredding of privacy'. What, now, of his insistence on excluding questions of moral character from consideration in cases like that of Clarence Thomas? I have already alluded to this indirectly via my questioning of the public-private distinction: part of the point of that discussion was to suggest that, *pace* Nagel, crudeness or rudeness in dealings with others (in this case, women) might properly be thought to be a matter of legitimate public concern rather than a merely private matter. That is not all, however, for questions of moral character may enter into the discussion at more than one point – that is to say, they may enter in ways that are not captured by the public-private distinction, and it is to that possibility that I now turn. My discussion here has both a general and a specific dimension: in general, I want to raise some questions about the significance of character in politicians; more specifically, I want to raise questions about the significance of character in the Clarence Thomas case.

Moral Character: Some General Considerations

Even if Nagel is right about the status of Clarence Thomas's alleged behaviour towards Anita Hill – that is to say, even if he is right to insist that this was fundamentally a matter of

personal rudeness, it may still be appropriate to ask whether it is relevant to Thomas's suitability for a seat on the Supreme Court[8], and in suggesting that it is not, Nagel is implicitly rejecting a long tradition in political thought, where questions of character have long been thought to be important. Thus, Machiavelli tells us that the prince must cultivate the qualities of both the wolf and the lion; and similarly Weber emphasises the fact that the politician must be a 'mature man' – a man who is willing to say 'here I stand, I can do no other'; and more recently Bernard Williams has taken as central the question 'what sorts of people do we want and need to be politicians?'. Of course, questions of character are not, in and of themselves, questions about private matters, but they are closely related issues and it is hard to see how any assessment of character could remain entirely silent about traditionally private matters. So, in objecting to intrusions into the private lives of public figures, Nagel is also (by implication) objecting to assessment of personal and moral character. But it is not clear that we either can or should refrain from assessing character when we consider who is best fitted to be a political leader or holder of public office.

To see what is at stake here, consider two points: one initially made by Bernard Williams and the other by Michael Walzer. In 'Politics and Moral Character' Williams raises what might be called the 'schizophrenia' point in relation to the moral character of politicians. He assumes that we have a legitimate interest in the character of our political leaders, and goes on to note that, even if we restrict our attention to their character as shown in and through their political actions, we 'should not forget the platitude' that the psychological distance between politically dubious acts and dubious acts *simpliciter* 'may be very small indeed'. And he continues 'not every politically ruthless or devious ruler is disposed to enrich himself

[8] So far, I have queried the claim that the behaviour is properly construed as private; now I am suggesting that, even if it is private (a matter of personal rudeness), it might nonetheless be properly considered. Questions of personal character may be significant.

or improperly advance his friends .... but the two sorts of tendency go together often enough and cries for "clean government" are usually demands for the suppression of both'[9]. The language in which Williams couches his argument is the language of character and of dispositions, and his point is that it is unrealistic to suppose that certain character traits or virtues (or indeed vices) can be corralled into a separate area of life (professional life) without ever infecting private life and personal character more generally[10]. We possess character traits as whole persons and our virtues and vices will manifest themselves in whatever contexts we find ourselves in (see John Le Carre – Smiley novels).

But if Williams assumes that we have a legitimate interest in the character of politicians, Walzer suggests why that is so. In a very influential article entitled 'Political Action: The Problem of Dirty Hands' he discusses the case of the would-be politician who prides himself on his honesty and who vows that, if elected, he will never be duplicitous, and never do deals behind closed doors. However, early on in his campaign, it becomes clear that he has no chance of being elected unless he does a deal with a dishonest ward boss, involving the granting of contracts for school construction. Should he do the deal? If he does, then he has reneged on his principles even before he has been elected; if he does not, then a less good person will be elected and 'our man' will never have the chance to do good at all. Walzer reflects:

> Because he has scruples, we know him to be a good man. But we view the campaign in a certain light, estimate its importance in a certain way, and hope that he will

[9] 'Politics and Moral Character' in Hampshire (ed) *Public and Private Morality*, p.57.
[10] It is maybe worth noting that John Le Carre's *Smiley* books are an extended analysis of this claim. *Add in if time.*

> overcome his scruples and make the deal. It is important to stress that we don't want *anyone* to make the deal; we want *him* to make it, precisely because he has scruples about it[11].

In other words, we don't want a deal to be struck – we want it to be struck only of it is struck by a certain sort of person, a person of general integrity and decency. In other words, by a person of a certain character.

Both Williams and Walzer draw our attention to the significance of character in general, and of moral character in particular for questions of suitability for public office. Their arguments suggest that we have a legitimate interest in the character of a man who seeks a position of public trust, and that that interest cannot be confined to 'political' character but will also extend to personal and moral character generally.

All this, though, is at a very general level. What now of the particular case of Clarence Thomas? How do these considerations play out there?

Moral Character: The Case of Clarence Thomas

At the beginning of the paper I said that the central question ('how much can we legitimately expect to know about the private lives of politicians?') might not admit of a general answer, and I also said that, for that very reason, my discussion of the question would focus on a

[11] 'Political Action: The Problem of Dirty Hands' p.68.

specific case - the case of Clarence Thomas. So, having put forward some general considerations about the public-private distinction and about the significance of character for public office let me now turn, very briefly, to this case (by which I mean both the case of appointment to the Supreme Court and the case of Clarence Thomas's appointment to the Supreme Court) before drawing some tentative conclusions.

The Supreme Court

The case of Clarence Thomas was not, by any means, the first case in which controversy had surrounded nomination to the Supreme Court. On the contrary, American Law journals are replete with scholarly articles tracing the many and various ways in which, over the years, nominations and appointments have caused scandal and outrage. One commentator has gone so far as to claim that 'Constitutional theory is one of the great disasters in contemporary legal thought' and that 'the ever messier business of nominating and confirming Justices to serve on the Supreme Court is contributing to the chaos'[12]. Why might this be so? At risk of rushing in where angels fear to tread, let me make a few brief suggestions: appointment to the Supreme Court is, effectively, appointment for life. Only death, resignation, or conviction on impeachment can serve to remove a Justice from the Supreme Court. So it is very important indeed to 'get the right person', since he or she is likely to be there for a very long time. Moreover, once appointed, Justices in the Supreme Court are expected to rise above day-to-day politics and to offer legal judgements and constitutional interpretations which 'give voice to the deepest values and aspirations of the American people'[13] . In very brief and crude

[12] 'The Confirmation Mess' Stephen Carter *Harvard Law Review* 101, No, 6, April 1988, p. 1185.
[13] Op.cit. p. 1198.

terms, then, those appointed to the Supreme Court have extensive freedom and, for better or worse, are largely invulnerable to external threat or pressure. This may or may not be justifiable; it may or may not be desirable. I am no constitutional lawyer, much less am I an expert on American politics, so my point is a general one, and it is that the more a post offers untrammelled power, and the more it calls for discretion and the exercise of judgement, the more appropriate it is to take account of the moral character of the incumbent. So even though there may be no general answer to the question 'how much can we legitimately expect to know about the private lives of politicians?', what can be said is that the more power they have, the more we can legitimately expect to know about their moral character. Stephen Carter puts the point very provocatively when he writes:

> The political task in the real world of real interpretive problems is to people the bench not with Justices holding the right constitutional theories but with Justices possessing the right moral instincts. In this sense, it is far less useful to know that a nominee has ruled that private clubs violate no constitutional provisions when they discriminate against non-whites than to know whether the nominee herself has belonged to a club with such policies, and for how long ... the issue, finally, is not what sort of theory the nominee happens to indulge, but what sort of person the nominee happens to be[14].

All these arguments, then, pull against Nagel's concern about the increasing prurience of American society and his insistence that something has gone wrong with important conventions of privacy. They all tell in favour of the relevance of moral character to public office in general, and they all speak for the increasing importance of moral character in the

[14] Stephen Carter, op. cit., p.1199.

specific case of appointment to the Supreme Court. And yet.... And yet, I share Nagel's concern that 'something has gone wrong', or at any rate that 'something is not quite right' and that the conventions protecting privacy are not in good shape. I cannot fully articulate these thoughts, so I will just enumerate them and then stop.

Defending Nagel

There are really just two thoughts I want to offer here: the first is a kind of Groucho Marx thought, and the second takes us back to a comment made by Clarence Thomas as part of his testimony to the hearing.

The Groucho Marx Thought

Famously, or notoriously, Groucho Marx is supposed to have declared that he did not wish to be a member of any club that was willing to have him. My thought about any proposal (such as Carter's) to investigate the moral character of politicians (to understand their 'whole moral universe' as he puts it) is that people of good character would be unwilling to submit to such an invasion of private life and that therefore the best (and by this criterion the best qualified) people would simply rule themselves out. As a society, therefore, we would run the risk of being left with the second rate and the shameless. No decent person would want to be a member of a club that had those admission rules. That is the danger.

The Clarence Thomas Thought

In his testimony to the hearing, Clarence Thomas said: 'This [this hearing] is not an opportunity to talk about difficult matters privately or in a closed environment. This is a circus. It's a national disgrace. And from my standpoint, as a black American, it is a high-tech lynching for uppity blacks who in any way deign to think for themselves, to do for themselves, to have different ideas, and it is a message that unless you kowtow to an old order, this is what will happen to you. You will be lynched, destroyed, caricatured by a committee of the U.S. Senate rather than hung from a tree'.

Earlier in the paper I noted the extent to which the question of race came to dominate the Clarence Thomas hearings, and this quotation offers ample evidence that race was at the forefront of Thomas's own mind, as well as that of his opponents. In the United States the language of 'lynching' is of course highly-charged racially. But that is not the point I wish to make through the use of this quotation. Rather, I want to suggest that, even if it is legitimate to question the moral character of people in Thomas's position, and even if the public has a right to know about these things, there can also be unfortunate and unforeseen consequences of standing on one's rights. Here, I draw attention to Thomas's use of the word 'circus': it seems to me that in the hands of the American media questions of character gained a life of their own and became the main show, obliterating more important political matters and creating a centre stage that was sensational and sensationalist. Again, the point is a general one and it is that, even if we have a right to know these things, it is not always wise to stand on one's rights. Nagel worries that the public sphere has come to contain too much that should be confined to the private realm, but my worry is a slightly different one: it is that space – even public space - is limited and the more of it that is taken up by questions of moral

character and sexual impropriety, the less room there will be for questions of political importance and principle. (For what it is worth, I think this is what happened in the recent UK elections when concern about duck houses and moats drove out responsible public discussion of our role in Afghanistan and in Europe).

So, I began by asking 'how much can we legitimately expect to know about the private lives of public figures?' I end by suggesting that in the case of nomination to the Supreme Court, and in Clarence Thomas case, we can legitimately expect to know quite a lot, but I end also by cautioning that perhaps it is better not to know everything we can legitimately expect to know. Discretion can sometimes be the better part of valour.

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