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Exhibits TABB1-7

**IN THE LEVESON INQUIRY INTO THE CULTURE, PRACTICES AND ETHICS OF THE
PRESS**

EXHIBIT TABB5

This is the exhibit TABB5 referred to in the first witness statement of Thomas Adam Babington Bolton dated 25 April 2012.

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Greenwich University Law Faculty

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The UK Media & The Law in 2012

Public Lecture by Adam Boulton

INTRODUCTION

I am not a lawyer : I am a journalist still working in this country, and what's more one who has worked for twenty three years for an organisation, Sky News, which is ultimately managed by Rupert Murdoch and his News Corporation.

I have interviewed Presidents, Prime Ministers and Nobel prize winners but I've also interviewed Katie Price when she was still known as Jordan and Nancy Dell'Olio, Eric Cantona only yesterday. I've asked Cabinet ministers when they are going to resign and I've persuaded the freshly bereaved and terrorised to go on television. Up market / down market I'm proud of serving both ends, all ends, of the news market, since I believe this spectrum contributes to my audience's greater understanding of the world we live in. I'm from the private not the public sector of journalism but I have no quarrel with Lord Reith's mission statement for the BBC: "to educate, inform and entertain."

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At the moment the issues which have raised greatest concern about the behaviour of the media , concern only one medium – newspapers – and predominantly only one media group – News International. But it is likely that any new legal measures which are introduced (beyond reform of self-regulation), and whether they are whips or restraints, will affect all who practice journalism, as they should under common law. In practice debate on “the freedom of the press” can be taken to cover the freedom of professional journalists in any media. As I will argue later, in this age of social media and online media there are even potential issues of concern for the freedom of speech of the individual.

As far as the media are concerned there is no “perhaps” about it. Whatever decisions are taken we will be hanged together. This is only fair, since as businesses and functions, we are interdependent. Sky News would not have grown to thrive had it not been for the investment from News international. For content and employees TV and radio news would be thin indeed were it not for the input from print. And we need each other. News is a business of diminishing returns in print, and frankly in British television it has hardly ever made a profit.

However in spite of their common cause different sections of Britain's news media operate under quite separate rules and regulations. In this country written comment has been free since 1695 and requires no licence – books, magazines and newspapers can say what they like subject to the law and they sink or swim as commercial ventures, save only for the unpredictable munificence of rich proprietors.

The newer so-called electronic or broadcast media operate by official licence. Ever since the discovery of radio and the creation of the BBC – the gentlemen in Whitehall have had the ultimate say over who can broadcast.

So for example News International took the decision to close *The News of the World* (in part because of commercial pressure from advertisers) but it is the government's regulator Ofcom which will decide whether News Corporation are "fit and proper" to control BskyB's licence to broadcast.

British broadcasting has always been seen as powerful force, permitted and regulated by the government in the public interest rather than as a commercial enterprise – even when carried out, like ITV and Sky, by businesses for profit.

In the United Kingdom the government decreed first the radio and TV monopoly of the BBC, then the licensed duopoly with ITV. Commercial radio was permitted in the 1970s.

But Television only began to fragment in the early 80s with the licensing of Channel 4 and TV-am, the breakfast tv franchise (and my first professional employer in this country). Regulation continued to operate even after the arrival of satellite television in 1989 – in the form of the officially sanctioned BSB franchise (remember squarials anyone?) and the uninvited, piratical but legal, Sky.

Commercial pressures soon forced the wedding which created BSkyB but the regulatory frame work did not change. BSkyB is subject to the same jurisdictions as the BBC and ITV, the broadcasting and competition laws both of this country and of the EU. On ultimate pain of loss of licence to broadcast we are enjoined by codes of conduct on such matters as decency, political balance, fairness, and intrusion. The only difference is that the BBC regulates itself, while the rest of us are subject to Ofcom. But the enforced values are the same.

America has taken a very different approach. The Federal Communications Commission licences its broadcasters too but In the United States, the

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airwaves were seen as just another medium through which to make money.

Regulators concern themselves much more with maintaining commercial completion than directing content and editorial principles. Matters of taste, judgment and fairness are tested under the constitution and of course in the court of public opinion.

When considering the tabloid excesses of some American TV shows – I suppose, our sister channel Fox News is most often cited these days an easy contrast is made to the staid approach of mainstream newspapers – epitomized by the Grey Lady herself, the New York Times. Indeed a popular aphorism is that the US has responsible newspapers and irresponsible electronic media, while in the UK it is the other way round, responsible TV and radio and irresponsible papers. There is some truth in this, but what is often overlooked is that the British electronic media have little option but to behave because all TV and radio in this country operate under common rules. Bluntly put British versions of Howard Stern, or Rush Limbaugh would not be legal here, nor would the so-called Foxification of Sky News (even if it made commercial sense, which it doesn't). Nor would it have been permissible for a British broadcaster to undertake the kind of sting operation with which the Telegraph captured the Business Secretary Vince Cable's declaration of war on

Rupert Murdoch. OfCom and the BBC have strict guidelines on clandestine recording and that would not have passed them. (There could soon even be a convergence of regulation between the electronic and print media. At the soft end of measures proposed to Leveson is the suggestion that OfCom should oversee the functioning of a revamped Press Complaints Council, should self-regulation be deemed in sufficient.)

THE MARKET

British people consume media more intensively than anyone else in the world. According to Enders Research, since the last recession consumption of Television and the internet has gone up, but the press has continued its decade long decline. In the past ten years regional newspapers have lost 40% of circulation, the national press is down 10%. Earnings have been even harder hit – by 2015 the internet will account for 85% of all classified advertising.

So far digital revenues are only making up for a fraction of the losses. In revenue terms only the Financial Times was up in the period 2005-2010 – an impressive 21% thanks to the success of its online subscription business. The Telegraph trod water. News International was down 2%, Associated, the Mail group, down 3% (in spite of its extremely popular free website).

The success of free sheets such as the London Evening Standard and the various Metros should be recognized but it is difficult to see how they will generate cash surpluses for investment in journalism. But it is inevitable that they will displace readers and advertisements from the paid-for press.

Prospects for future consumption of print media in particular do not look promising, extrapolating from the media consumption of the rising generation of 16 to 24 year olds: 32% television, 30% the internet, 15% voice/phone/SMS, 5% radio. What's more while the average time each day spent reading a newspaper (among those few people that still do) is forty minutes, an average individual viewing on Sky News is about 15 minute, the average read of news on the internet is two minutes twenty seconds.

Life is hard too for journalism on television. ITV has dramatically cut its commitment and budget for news and current affairs, yet the combined company still struggles for critical mass both financially and in terms of impact.

Both Channel 4 and Channel 5 have questioned whether they are viable because of the regulatory obligations placed on viewing. Both Channels have progressively squeezed their news budgets.

The BBC licence fee has been frozen. Even so the existence of BBC products free at the point of use thanks to the compulsory levy on licence fee payers destroys in practice any market for television news. If you can get the BBC News channel 'free' it is difficult to set a competitive price for Sky News. (This is a marked contrast to the United States, where all three cable news channels - Fox, CNN and MSNBC – make healthy profits thanks to the small portions received from each cable subscription.)

In Britain televised news succeeds because of the subventions received from the parent general media and entertainment company. That goes for the BBC, ITV, Channel 4, Channel 5, and Sky. Sky News has expanded revenues and grown as an operation – but this year the parent company BSKYB disclosed that it had "invested" over one billion pounds in Sky News since 1989.

In the early days of Sky News we used to meet print colleagues from Wapping on doorsteps who would jokingly ask "Can we have our money back?". Things have turned around since then. Had the merger with News Corporation gone ahead BSKyB, thanks to its sports and entertainment channels and services such as Sky + and broadband, would have been the company's biggest division, our more than a billion pounds annual profits accounting for over a

third of the total. Compare this to the late *News of the World*, which Rupert Murdoch told the Culture Media and Sport Select Committee accounted for less than 1% of his business. (At present FNC, Fox News Channel is the most profitable division of News Corp., accounting for some \$700m a year).

My point is not to boast for one medium over another, it is to stress the interdependence of the competing means of production. Journalists continue to practice their trade thanks to the proprietors and managers who use one pot to subsidize another. In recent times the two most successful innovators of this kind have been two highly controversial and much vilified figures:

Rupert Murdoch and John Birt, who so brilliantly positioned the BBC to flourish in the digital age.

[It is worth noting too that the geniuses of the internet age – whether from Google, Apple, Amazon, Yahoo, or Intel – have not contributed themselves to what we call “content”, fresh editorial material – however many billions they have made from processing what others have made. I am not going to discuss it at length here, but it is worth noting that one of the greatest areas of legislative concern for us media content providers relates to intellectual property rights. This matter is now under consideration by the government

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with considerable concern that friends of Dave, particularly at the aggregating organisation Google, may be enjoying undue influence.]

But do a common regulatory framework and commercial interdependence of news media mean that we share the same interests, or even the same moral codes, especially on the matter of freedom?

It would certainly be ungracious for a 'high end' outlet to be squeamish about the 'low end' productions which may subsidize it. But gratitude is not the same as justification.

Few of us would want to be sustained by something which we thought was wrong.

In this talk I want to argue that this is not the time for fresh restrictions on the British media. In my view the status quo ante Leveson was working. Rather than curbs, we should, if anything, be wondering how we make the media more free so that the quality of the national discourse can be enriched.

I propose now to test this against the two most serious current challenges confronting professional journalism in Britain. Firstly, the impact of the

“unmediated” digital means of communication, blogging, Tweeting, Social Media et al. For print and the mainstream electronic media face the same commercial adversary: competition from the new means of communication online and through smart phones and other digital devices.

Then, secondly, the specific and present difficulties which gave rise to the Leveson Inquiry - an inquiry which significantly has chosen to overlook the issues raised by social media.

THE NEW MEDIA

Press, radio, television, telephone, internet these are our media, our means of communication. But they are also the names of pieces of technology. When we debate the ethics of journalism, we often disregard the fact that much of what journalists do is not dictated by a conscious moral decision. As in the rest of life, we do things because we are able to, and because technology makes them possible.

My career has been with two start-ups, broadcasters who only came into existence at the time I joined them. More significant than TV-am and Sky themselves, is that they were innovators providing services – breakfast television and 24 hour rolling news – which had never been available before in

this country. They happened when they did for two reasons – relaxation of regulation and technological innovation which made their business models viable.

Almost invariably people develop uses for technologies in ways that the inventors had not conceived. There are also unforeseen consequences, as an easier more accessible new technology edges out an older one. For example, today people here get their information and news primarily from television. Meanwhile listings, classified advertisements and reference information are accessed online.

Who wants tomorrow's papers, let alone yesterday's? Or which of you young people even get that reference to the Rolling Stones? The press is having to reinvent itself. Simply migrating editorial content to the paperless world of the internet is not the answer because hardly anyone has made that pay.

Print is having to find new functions – on screen or on paper – so that people still want to read it or pay for it. Subscriptions and pay walls are only working for publications of relatively arcane information – the Financial Times, say, or the Times Literary Supplement. General newspapers are finding it harder to

develop a product which consumers will not substitute for, at little or no cost, from other sources. A potentially viable evolution began even before the internet, as the mainstream electronic media pushed the press out of the primary job of reporting into the secondary function of analyzing, extrapolating, and commenting on the news.

This function is even more vital given the exponential increase in the flow of publicly available information from the internet and social media. On our own, few of us can make sense of this factual bombardment, we risk being stunned into the state of entropy – morally ambivalent, unable to tell right from wrong or fact from fiction - identified in the novels of Thomas Pynchon, among others. But print journalism can save us, deploying the traditional skills of the journalist to make sense of the information deluge.

It is no accident that the two biggest recent stories where print outperformed the broadcasting media – MPs expenses and Wikileaks – were both ones in which newspapers operated as super-archivists, sifting the substance from millions of pages. Doubtless to its own gratification, the press also outperformed the internet. Without the careful scrutiny of the Guardian, New York Times, Le Monde and Der Spiegel, the subsequent unmediated dumps of

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Wikileaks would have had little impact. Brilliantly nurtured and directed, the Telegraph's purloined CD roms of expenses data are a gift that goes on giving as Liam Fox and Adam Werritty know to their cost.

Of course in these cases, the data was stolen, money was paid and, in the case of Wikileaks, at least one person has been imprisoned. The information disclosed by the papers was of great interest to the public and the consequences of the MPs' expenses revelations was certainly in the public interest – but was the violation of the official sources which the stories were based on indisputably a good thing?

But when the line is blurred between data protection and freedom of information – print journalists help to make sense of it all. Skilled, professional aggregation of the digital information available extends journalists' traditional activities into a new realm. Rather than regulate the internet or journalists, legislators should note that monitoring by journalists contributes to informal policing of the web. Try making a controversial assertion on TV and just wait for it to be chewed over online, on Twitter and on YouTube.

We allow journalists to mediate what we consume on the web because we trust them, or at any rate, trust their judgment. That relationship of trust – a word and concept closely related to “truth” - is vital to professional journalism in all media; as the editor of Private Eye Ian Hislop tartly observed to a recent parliamentary Committee Hearing: “the reason why you don’t sell newspapers is because nobody believes you”.

There is a lot more information out there to harvest, much of it put out by private individuals of their own free will, much else gathered mechanically. It seems that wanting to “show and tell” is a basic human instinct. However now web and phone cams and social networks make it infinitely easier to communicate. As elsewhere technology is now transforming our own mores – our views of what is acceptable or not.

Mark Zuckerberg, the creator of Facebook has even suggested that young people are abandoning the idea of privacy as a “social norm”. “People have really gotten comfortable not only sharing more information and different kinds,” he informed last year’s Crunchies Awards Ceremony, “that social norm is just something that has evolved over time.”

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More recently Google, Facebook's great rival, changed their privacy code, to allow greater use of your data between services for their own commercial purposes. IT makes this easy and seemingly innocent, but it is shifting age old assumptions about the ownership of our "space".

For reasons we can all understand, British Broadcasting has always banned the ultimate violation of privacy, the showing of the moment of death. That's why there's always a media houhah whenever a documentary maker gets special permission to film euthanasia. Yet we all saw Gaddafi's final moments. If you wanted you could go online and see them over and over again, all probably backed by music.

Yet I know of no newsroom where there was not earnest consideration of what should and should not be shown, when and how many times. The same applied to the footage of New York's twin towers going down. You won't always agree with what we do, but I hope you trust us to behave reasonably and responsibly.

You know who we are and you can hold us to account. You can do that with professional media organisations but you can't do it with the overwhelmingly

anonymous and pseudonymous contributions to the blogosphere and Twittersphere. Rightly we are not expected to get angry, partisan or unfair – the very opposite of the tone which characterizes citizen posts.

Journalists working for the mainstream media have come to understand what the new media can do and to use them to find both new sources of information and new consumers for our work. After an initial period of anarchy, when a number of journalists tweeted or blogged before they thought, major news organisations are attempting to impose codes on their employees which insist that they should apply the same standards of judgment and attribution to informal social media as they do to their mainstream work.

From the Arab Spring to this summer's English riots SMS and particularly BBM, the cheap and individually directable BlackBerry Messenger system were central to mobilizing street demonstrations, and, in BBM's case, so-called flash mobs. They may breakdown but in practice it is impossible for the authorities to pull the plug on such networks because too many other groups, including security services, are using them as well.

Innovative Sky News staff used the new communications networks to extend our journalism. For us messaging services were a paramount information source. We digested what was being said so we could tell our viewers what was going on. As a result this August registered the highest ever audiences for our channel. Meanwhile our reporter Mark Stone used his iPhone to film interviews with rioters near his home in a way that would not have been possible with a traditional camera crew. And we made full use of our non-television platforms – iPad, website and chat rooms – to both inform and extend our coverage. For example, Tom Parmenter not only interviewed rioters, via web chat he entered into a lengthy discussion with other viewers of what the rioters (and he) had done.

In the digital era not all journalists produce considered reports, edited and sub-edited after the events described have taken place. Many of us are reporting and analyzing the news live as it is happening. When you work live you have no script, and only a relationship of trust with your employer for editorial guidance. In turn your audience have to trust you and to trust you to try and get it right. Most of the time we do but we have to constantly remind our viewers that we are not omniscient and to attribute our sources, ie tell them where we are getting our information from.

When we make mistakes, we admit them and correct them immediately – as for example most recently when we (and almost all of the British media) muddled the guilty and not guilty verdicts announced late at night in Perugia in the trial of Amanda Knox. The slogan “never wrong for long” was jokingly coined by Sky News’ first head, although the inference that we are often wrong is unfair.

These attitudes are antithetical to those of bloggers and tweeters, who feel free to vent their spite, prejudices and whims. When trawling social and internet sources, we have to be ever vigilant to hoaxers and liars. Amina Abdallah Araf al Omari the much praised Syrian Lesbian activist and blogger who turned out to be Tom MacMaster, a 40 year old mature student at Edinburgh University is just one recent example of the lengths people can now go to mislead the public.

LEVESON

In all media, whether press, electronic or digital the unique selling point of mainstream organizations is that they want to tell the truth and attempt to verify all they are reporting.

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But the individual means of communication are in desperate competition with each other. Individual mediums need to define what they do best. In an era of mass availability of digital recording, broadcast television has rediscovered that its unique selling point is the live event – be it sport, talent competitions, reality TV or, indeed, Prime Ministerial debates.

To have played a rôle in bringing about the televised Leaders debates during the last 2010 election, and then to have moderated the second debate make up my proudest achievement as a TV journalist. Live, mass audience events are the USP of television in the digital age, what your telly does best. But never before have we had 4 and a half hours of policy discussion watched by millions in prime time, energizing in particular notoriously alienated young voters. (All the independent academic analysis of the debates bears this out.)

Newspapers are understandably reluctant to surrender their former role breaking news, even though the electronic media do it better. And desperate competition, or at any rate desperation seems to me to be the best explanation of what appears to have happened at the News of the World.

Some at Wapping were prepared to take enormous and illegal risks for very small gain. Just ask yourself what sort of stories were likely to be gained from

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hacking the phone messages of a missing school girl? Nothing of primary importance I would argue, just some original colour that the telly didn't already have.

Such behaviour was madness. But the essential point about the alleged misconduct at News International, centered on the News of the World is that the system is working without the need for further regulation of the press.

[Don't forget that the scandal itself only came to its dramatic climax because of the freedom of the press, notably The Guardian, to report and challenge the official versions of the case. And also the freedom of the press to get it wrong – as in the allegation that the News of the World erased messages left on Milly Dowler's phone.]

Investigations of course are still underway but an informal coalition of police, lawyers, parliamentarians and journalists from rival news organizations have ensured that there have already been severe consequences for the people and organisations implicated in a culture which benefited from illegal phone-hacking and payments to police.

As a result of the first round of investigations two people – a journalist and a private investigator were sent to prisoner. The editor of the News of the World lost his job and subsequently lost his new employment as the Prime Minister's Director of Communications.

Vastly more serious consequences followed the revelations at the end of the Milly Dowler murder trial. Rupert Murdoch was humbled. The News of the World itself was shut down, meaning redundancy for all staff from the editor down. The multi-billion dollar merger of News Corporation and BSkyB was blocked. The current and previous chief executives of News International lost their jobs, so did the Wapping legal team. The Commissioner of the Metropolitan Police resigned. At last count there had been 45 arrests, but as yet no charges, in the course of Operation Weeting (phone hacking), Operation Elvedon (police payments) and Operation Tuleta (computer hacking). Two million pounds was paid to the Dowler family plus a further million personally from Rupert Murdoch – for both personal compensation and payments to charity. Compensation payments to more than 200 people run to millions already, and, according to Operation Weeting, 5,800 people could have had their phone messages hacked and be in line for financial redress.

The law has been broken and those responsible are facing the consequences – both legally and more widely. The police and parliament are investigating. Quis custodiet ipsos custodes? Durham Constabulary is also investigating the conduct of the Met.

So why do we need the Leveson Inquiry? The glib answer would be to hide the Prime Minister's embarrassment at his close links to Andy Coulson, and friendship with others prominent in News International. While MPs and Peers recently so acutely and painfully under media scrutiny for their own misbehaviour could not resist the chance to get back at their tormentors.

Certainly there was some spite – as the former chairman of the PCC Sir Christopher Meyer has eloquently explained the facts of more complaints than ever being satisfactorily settled certainly do not support the cross-party and near universal assertion that the Press Complaints Commission has “failed”.

In spite of the grave consequences already in the News International affair, there is a mood abroad that the press and media have become too powerful, too intrusive, and too unaccountable and that new controls need to be asserted over us. Mark Thomson, the outgoing Director General of the BBC agrees that, quote, “this is a dangerous period for British journalism”. After setting-up the Leveson Inquiry David Cameron may have reassured the group

of reporters he was addressing that he had no intention of neutering the press, but there are others who would like to. We can all agree that over close relations between proprietors and politicians are undesirable and need to be closely monitored. We can mostly agree that super-injunctions are a bad idea, even if judges beg to differ. But what really divides us from those who want greater regulation is the question of privacy.

This argument, it seems to me cuts to the heart of what journalism is all about. The comparatively new proprietor of the Evening Standard, The Independent and I, Evgeny Lebedev, defines the functions of a vigilant press as: "to comfort the afflicted and afflict the comfortable" is alluring but I fear that it may claim too much moral high ground. Not all journalism can be unambiguously virtuous: sometimes revelation might discomfort the afflicted – revelations about benefit fraud might be just one example of this.

Facts are morally neutral and they are the commodity we trade in. Our business is revelation, telling you something that you don't know, and, quite often something that somebody somewhere doesn't want you to know because it might empower you.

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History and common sense tells us that the personal relationships and appetites of influential people are inherent to what they do, and we should be wary of any new obstacles which prevent them from being disclosed.

I speak as someone whose own marital problems have been exposed on the pages 1,2,3, 6,7 of the Mail on Sunday with accompanying coverage in most other papers. Children, aged relatives, even local restaurateurs were pursued for comment. It's not pleasant but if it reflects what is happening with reasonable accuracy, then the personal issues themselves should be of greater concern to the subjects than any coverage of them.

My purpose is to point out what journalists have in common, not to single out any particular publications. But many people in public life have their Mail moment. Tony Blair admitted that he didn't name the Mail in his "feral beasts" attack on the media because he was afraid the papers would go after his family. But it seems to me that the Mail's activities perform three healthy functions. First to cheer up any readers who feel down trodden that anyone who they might envy, fear or look-up to has feet of clay – be it a weight problem, a dispute with tradesmen, problems with relatives, or any other mundane trial. Secondly the paper's attacks are modern day versions of the

slaves employed at Roman triumphs to whisper in the victorious general's ear "remember you are only a man". Thirdly, and most importantly, the Mail, along with the rest of the press, is a self-appointed watchdog on those who might seek to abuse their position.

Politicians, the rich, the powerful, Film and TV stars should not have their phone messages hacked. It's against the law. If Hugh Grant phones the police to say he's been a victim of crime or mishap, the first responder to arrive should not be a tabloid hack (an unfortunate nickname in this context). Paying the police for tips is illegal too (although I would argue that in many circumstances the police should be obliged tell reporters what they are up to for free rather than as a favour, since justice should be seen to be done.)

But the Hacked Off campaign, and its supporters including Hugh Grant, Steve Coogan and Max Mosley, seem to want to extend their right to protection under the law into something quite different: a right to be presented by the media to the public only in the way in which they want to be seen – unless they break the law (and even then friends of Grant and Dominic Strauss Khan grumble about the public "perp walk" they were subjected to in the US.) This is an insidious attempt by the rich and powerful to have their cake and eat it.

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They want to be richly awarded for their work, to give interviews, to endorse causes, to influence opinion, to raise funds but only on their own terms and without criticism or investigation. Such aspirations are undemocratic, almost fascist.

The less individuals play a part in public life then surely the more they are entitled to privacy. Any sensible privacy code protects the private citizen from disproportionate intrusion exposure. But those who seek public reward and influence surely have few rights to privacy beyond protections against intrusion into private spaces. This is an argument well understood in the US but not here – as the costly injunctions secured almost exclusively by the wealthy and well known clearly demonstrate.

My advice to anybody in public life, and that includes people who appear on television by profession, is if you are not willing for it to come out in public, don't do it.

We may wish to live in a world of liberal tolerance in which peoples sexual behaviour is disregarded. I for one am happy that politicians no longer have to leave office automatically if they are revealed to have had have affairs (Paddy

Ashdown was probably the first example), and that they and other prominent people can be openly gay. (Indeed these days it's staying in the closet which seems to throw up the most problems). Sado-masochistic orgies are legal, but surely the other people involved in these activities have rights to talk about them if they want to as well. And there is no right not to be ashamed or shamed, indeed both experiences can be a true tonic.

THE LAW

This is not to say that journalists should have the total freedom to intrude into private life. "Everyone has the right to respect for his private life, his home and his correspondence" in the European Convention of Human Rights - a right which is enforced in law by prohibitions on trespass, intrusion and data protection. In addition media organisations are accountable to their consumers if they behave wrongly. The PCC, BBC and Ofcom all have detailed codes on privacy.

But would a privacy law enshrining such codes help? In my view a law imposing prior restraint through injunctions or prohibition of investigative techniques which are not already banned would be repressive and against the public interest since it would protect those who might be abusing others.

The Human Rights Lawyer Geoffrey Robertson QC opposes prior restraint but proposes a civil tort of privacy, so that plaintiffs could seek redress in the courts in the same way that they do for libel. He would base such a law on the existing codes and balance it against the public interest.

A reasonable proposal in theory, this idea faces major practical problems. It would certainly create lots more lucrative work for lawyers but it would almost certainly become rich man's justice, like the Libel laws, especially given the cuts and limitations placed on legal aid and no win no fee arrangements.

A more fundamental objection is that the British judicial system has never been enthusiastic about converting limited notions of that vexed concept "public interest" into our own version of the American Bill of Rights.

Both the American and the British/European legal systems can trace themselves back to the principles laid out in the Enlightenment. Or even before. In Britain debate on the rights of the press can be dated back to 1644 and the English revolution (as it happens my sister's favourite period as a historian). In *Areopagitica – A speech of Mr John Milton for the liberty of*

unlicensed printing to the parliament of England, the great puritan talked of “the wars of truth”, he was most exercised by the threat of a possible reduction of the liberty of printing arguing that “truth will prevail” provided that it is not confined, “a fugitive and cloistered virtue, unexercised and unbreathed”.

Milton argued that the freedom of the printed word is an extension of the individual’s right to free speech under the law. The First Amendment of the US Constitution shares this analysis and explicitly links the two: “Congress shall make no law... abridging the freedom of the speech, or of the press...”.

But Article 10 of the ECHR extends no such protection to the media. It concerns the right of the individual, not the institution of the press, to “freedom of expression... without interference by public authority” and, I doubt Milton would have liked this much, it states explicitly “this article shall not prevent states from requiring the licensing of broadcasting, television or cinema enterprises.”

The contrasting approaches of 18th century America and modern Europe could not be clearer. America sees the rights of individuals and the press and

synonymous and to be defended together, but Europe portrays the media as a threat to the citizen.

In this country a Privacy Law would not be balanced by equally strong protection of freedom of the press and the public interest. We meddle at our peril.

(It is a boon to my argument that today's report by the parliamentary Joint Committee on Privacy and Injunctions has reached similar conclusions that statutory definitions of privacy and public interest would not clarify the law, and opposes a new privacy law. But the committee is but one advisory voice in an impassioned argument.)

Britain's political evolution has been extra constitutional. Like most of the rest of the body politic, Freedom of the Press exists not as a right but as an understanding produced from an informal nexus of assumptions, prejudices and common law. The Fourth Estate, which may now be taken to include all mainstream media, is recognized, informally, as a power in the land but in this country it has no formal rights or responsibilities.

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Instead rights are asserted and responsibilities lived up to through a code of self-regulation enforced by the market – the reader, listener or viewer's absolute right to consume or not to consume and to use freedom of speech to criticize. We are nothing unless they empathize with us, want to hear from us, trust us.

Trust cannot be legislated but it should be what matters.
