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Privacy laws are just image control for celebs

Only the powerful benefit from a muzzled media. A free, sometimes scurrilous press is what keeps the spirit of inquiry alive

Ken Macdonald

After Richard Desmond's cruel and inexcusable campaign against Kate and Gerry McCann, most people were probably delighted to see him forced by law to dig deep into his pockets for damages. But it would be more than a shame if the ghastly behaviour of his Express Newspapers tricked us into losing sight of a greater principle - that the freer the flow of information, the freer the society receiving it.

And this is the real problem with our developing privacy law. No one disputes that newspapers can be guilty of very ugly excesses or that self-regulation has not always been effective. But the question is whether the application of an essentially shifting and uncertain legal principle is the best response. What would we be giving up in return? To answer this we don't have to look very far.

In some European countries, it has long been taken as read that the private lives of the political and senior bureaucratic classes are not suitable fodder for newsprint. Successive French presidents were able to exist in parallel worlds, even to father parallel families, without the public ever knowing the reality of their lives. Whether this was right in principle is not the point. What really matters is the effect that an essentially deferential, even demeaning approach towards authority had on French reporting.

The answer can hardly be in doubt. Privacy-bound newspapers are certainly more respectful to power than their boisterous British counterparts, but they are also a good deal more boring. And as a consequence they are less read. Indeed, they are so poorly read that in France they have to be subsidised by the same Government whose ministers' privacy they protect. This hardly inspires confidence in their commitment to the chase.

It is equally clear that papers in countries with developed privacy laws are less likely to mount investigations or to uncover scandals. It is rare for them to launch campaigns or to stir up popular feeling. A privacy law does not simply protect the secrets of the rich and famous. It can go much farther: it can teach the press not to inquire.

Of course, in Britain it is mainly celebrities, living and sometimes dying by the amount of coverage they receive, that are paradoxically the main beneficiaries of the burgeoning law. In many cases it is difficult to avoid the conclusion that what is really at stake in these cases is image management. Among a thousand, it's the odd photo that the celeb doesn't like that suddenly becomes actionable. And newspapers, often juggling the risk of huge costs against the publication of what may be essentially trivial information, are increasingly likely to give way.

Worryingly, a similar defeatism now infects their approach to libel, where much more may be at stake.

But if privacy protection were ever to chill our press as it has frozen irascible comment in other parts of the world, we would pay a very high price indeed for underscoring the marketability of film stars and footballers. This is because, like libel, privacy protection is expensive. It is not equally available and it does not belong to everyone. It is almost entirely driven by power and wealth. The rich man may be as free as any tramp to sleep on a bench, but he is rather more likely to be found at the Dorchester - and indeed in the law courts. In contrast the poor, living cheek by jowl, have never been able to put a price on their secrets. A law inhibiting comment to which only the famous have real access is a poor mechanism for protecting human dignity.

It doesn't matter that much of the press's response to privacy protection is self-serving and hypocritical, or that examples of abuse at least match those of principle. There is more at stake here for the rest of us than commercial interest. At the Index on Censorship awards last week, David Hare, the distinguished playwright, pointed out that the existence of free speech alone does not make a society

free. Of course this is true. On the other hand there is no example anywhere in the world of a free country that lacks open expression. Obviously this has to include openness to things that are grossly offensive, even to the tabloids.

We have a rich tradition of scurrilous, even scabrous, journalism in this country. From 18th-century pamphleteers mocking and abusing greedy and licentious monarchs, to Private Eye happily taking on libel lawyers with occasionally juvenile gusto. Sometimes the effect of this is merely crude. On other more important occasions it can represent a critical strand of popular control over the governing process. It is sometimes quite difficult to have one consequence without the other. And because the possibility of exposure is such an important aspect of accountability in a functioning democracy, our conclusion should be to sacrifice neither.

In modern Britain it is not just politics that lies within the reach of popular response. The practitioners of art, fashion, sport and everything in between are similarly liable to praise and derision in equal measure.

Sometimes this is all very unkind - but so what? It is a part of what makes our society vivid and we should not see it as a problem to be cured by speech control. Britain is a better place today than it was at a time when the common people were not to be told that their king was sleeping with a divorcée.

Of course, the public interest is not necessarily the same thing as what the public are interested in. But, as Lord Woolf, the former Lord Chief Justice, once sagely observed, if newspapers are routinely prevented from publishing stories that interest the public, fewer people will buy them - and that is certainly not in the public interest.

- Ken Macdonald is a QC practising from Matrix Chambers and is a trustee of Index on Censorship. He will be appearing at the Times/Matrix debate, "Is the new law of privacy strangling a free press?" at Gray's Inn, London, tonight at 6.15pm.

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