

Keep up with the Douglasses

Joshua Rozenberg's book looks at the legal web surrounding privacy versus freedom of the press, writes **Geoffrey Bindman**

PRIVACY AND THE PRESS
by Joshua Rozenberg
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THE title of this book verges on paradox. It is surely the duty of the press to shed light on dark places. But can this role be reconciled with the reasonable desire of most people to protect their private lives from intrusion? Privacy and press freedom are, at their extremes, incompatible. But a balance must be struck. Where is the line to be drawn? Who decides when it has been overstepped? And what should we do with those who overstep it?

Joshua Rozenberg's credentials as lawyer and journalist fit him ideally to tease out the subtleties of these highly topical questions. At the same time he makes his own bias clear. It follows his professional interest. He pithily sums it up: "privacy good; free press better".

The dilemma is neatly encapsulated in the European Human Rights Convention, which British judges have to interpret and implement directly in our courts since the Human Rights Act came into force nearly three years ago. On the one hand, article eight of the Convention declares the right of everyone to respect for private and family life, home and correspondence. On the other, article 10 enshrines the right to freedom of expression. This is a classic case of Isaiah Berlin's plurality of values, the clash of

which does not mean that one is true and the other false. The only practical solution to the conflict is to strike a balance in which both rights are restricted as little as possible.

Media obsession with sporting and show business celebrities – not to mention the royal family – has been highlighted recently in a series of court battles.

Michael Douglas and Catherine Zeta-Jones sued when Hello! magazine gatecrashed their wedding and published the pictures they took. Since the Douglasses had already sold the right to publish pictures to OK!, they could hardly claim they wanted to keep the event private. But they won their compensation claim because the judge relied on the old law protecting confidentiality, dating from 1848 when Prince Albert sued to stop publication of family etchings obtained surreptitiously from Queen Victoria's Windsor printer.

Judges have valiantly developed a series of principles from this slender precedent. Some think we already have a common law of privacy which satisfies the Human Rights Act.

Lord Justice Sedley said in the Douglas case that the law "no longer needs to construct an artificial relationship of confidentiality between intruder and victim: it can recognise privacy itself as a legal principle drawn from the fundamental principle of personal autonomy."

Lord Woolf agrees that the law of confidence is now wide enough but other judges have said it is up to Parliament to decide where the lines should be drawn.

Disagreements between judges may be ironed out in appeals now pending. Naomi

Campbell was awarded damages for breach of confidence when the Daily Mirror reported details of drug therapy with Narcotics Anonymous. The Court of Appeal reversed the ruling but a pending appeal to the House of Lords could change it back again.

Do we need the courts at all? The Press Complaints Commission (PCC) was set up to maintain high professional and ethical standards and demands respect for privacy in similar terms to the Human Rights Convention. The PCC has a role to play but it lacks teeth and, as a body composed largely of journalists, public confidence.

Joshua Rozenberg explains the tangled legal complexities with clarity and in a lively style.

In the end, he comes out against those who call on Parliament to bring order into a confused situation by legislating. He rightly points out that legislation will not bring certainty; the judges will still have to interpret it. And he is not impressed by privacy laws elsewhere in Europe, where the threat of damages and fines may indeed make the press a less effective watchdog than in Britain.

The arguments are finely balanced, but leaving it all to the judges without the framework of a statute is not viable in the longer term. They can only develop the law if the right cases come along. And those who suffer most from media intrusion are often least able to challenge it. That may explain why a recent Guardian poll showed a strong preference for Parliament to intervene.

The debate will continue and be better informed as a result of this book.

