

PRIVACY GOOD – FREE PRESS BETTER

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Privacy and the Press, by Joshua Rozenberg

Reviews by the Editor [Tom Welsh]

So there is overwhelming support for the introduction of a privacy law in Britain, according to a *Guardian*/ICM opinion poll. If editors don't want it, or they want a privacy law they can live with (if it must come), they ought to be brushing up their advocacy skills for use when challenged by the lynch mob to defend media intrusions.

They would do well to get hold of this book by Joshua Rozenberg, legal editor of the *Daily Telegraph*, which admirably puts the case for what his fellow journalists would regard as a sensible balance between freedom from intrusion and freedom of speech between privacy and the press.

Should public figures be able to keep their private lives, and their private faces, out of the public eye? At first sight, the author says, the answer seems obvious: why should we have any interest in still less, any right to know about the sexual conduct of a head teacher, a sports personality, a television performer, a Cabinet minister or the Prince of Wales? What they do in bed is no business of ours.

Or is it? Surely, he argues, we are entitled to know a little more about those who hold positions of authority in society if only to decide whether they are fit to remain in office. Surely we should not give young people the impression that adultery or sexual profligacy are to be admired in those they respect. Can we really trust the word of a public figure who has been deceiving a spouse or partner?

In *The Guardian's* poll, top of the list of people to be protected from media intrusion is the royal family, with 69% in support. But Rozenberg subjects them to the same test. A privacy law in Britain would undoubtedly stop reporters telling the truth, he writes. When Andrew Morton first published his book, *Diana: Her True Story*, in 1992, chronicling the Princess of Wales's estrangement from her husband, her eating disorder and her suicide attempts, he was attacked for invading her privacy.

It emerged only much later that his book was based on tape-recorded interviews with the Princess herself, checked and corrected by her before publication. Of course, her book invaded the privacy of Prince Charles and his companion Camilla Parker Bowles. "But would it really have been in the public interest for us to have been as ill-informed about the Prince of Wales's affair with a married woman as we were when just the same thing was happening in the 1930s?"

And what of Burrell, the royal butler? "Is a disloyal former royal servant such a bad thing?" the author asks. It all depends on how we regard the Royal Family. "If you think that the hereditary principle requires the accession to the throne of whoever happens to be heir apparent, then you may not worry too much about his personality and his weaknesses. On the other hand, if you consider that a constitutional monarchy depends for its survival on public support, then you will want to know everything you can about those close to the throne in order to decide whether your support is merited."

Readers of the book will not be surprised by Rozenberg's final chapter, entitled "I come clean", in which he declares that he is against both privacy legislation ("because it would inevitably lead to greater restrictions on the media than the courts are currently willing to impose") and the "activist" approach associated with leading judges such as Lord Phillips, Lord Bingham and Lord Justice Sedley ("if only because I consider that the law is restrictive enough already").

In a properly ordered society, he says, both privacy and the press deserve protection. When they conflict, a line must be drawn between these two immensely valuable human rights. "I have made very clear which side of the line I favour. The media in Britain have a great deal to answer for but, in the end, there is no contest. Privacy good; free press better."

It would be wrong to suppose from the above that this book is for journalists only. Rozenberg qualified as a solicitor before becoming a journalist and his book provides a review of the topic that is both satisfying and entertaining. He covers everything from *Prince Albert v Strange* (1849) to the 2003 cases of *Garry Flitcroft* (A v B plc), *Archer v Williams*, *Campbell v MGN* (the Court of Appeal hearing), *Douglas v Hello!*, *Peck v UK*, *Wainwright v Home Secretary*, and Mary Bell. A table of cases is included.

The author also casts his net wide, covering breach of confidence (of course), but also data protection, the European Convention, the PCC code, journalists 'sources and contempt of court. There is much about responsible journalism (*Reynolds* qualified privilege).

And he draws attention to the fact that invading a person's privacy for the purpose of sexual gratification in England and Wales is now a crime under the Sexual Offences Act 2003. The section came into effect on May 1 this year, and readers will no doubt study with particular interest the author's chapter describing the various types of voyeurism banned under the new legislation.

Privacy and the Press is published by Oxford University Press, 274 pages, price £18.99