

4 Deceit, Lies, and Privacy

TRUST

Without trust the news media cannot fulfill their function of conveying significant events and stories of human interest to the general public. This is especially important given that most of the information we acquire about the world is gleaned from the media. If the public do not trust the media's reports, if editors distrust the journalists, if journalists cannot trust their sources, then reliable news coverage is difficult to achieve, and, even where a report is trustworthy, the public will dismiss its veracity. We discussed earlier the case of Janet Cooke, the ambitious young journalist on *The Washington Post* who won a Pulitzer prize for her piece "Jimmy's World" about the plight of a drug-abusing 8-year-old boy on Washington's streets. It subsequently turned out that Jimmy was a fabrication. Aspects of the story—from the problems of drug abuse and poverty to the social deprivation depicted—were true. However, the central story around which these themes were highlighted was a fiction, but one represented as fact. When *The Washington Post* found out, her prize was returned and the paper commendably ran its own investigative article about the whole affair.

The point is that not only did Cooke break a bond of trust with the readers of *The Post*, she abrogated the trust placed in her by her colleagues and editors. An editor must be able to trust that journalists have done the relevant research, are quoting their sources faithfully, and, at the most fundamental level, are motivated to tell the truth. Without such trust, any newsroom would break down.

A news service that consistently falsifies information, as *Pravda* did for ideological reasons, or ignores certain kinds of stories, say because covering cancer

research would upset a channel's tobacco sponsors, will hardly be trusted by its public. Furthermore, if news sources feel unable to trust reporters regarding their anonymity or depiction, then obviously the media's ability to uncover exploitation, corruption, and fraud would be severely curtailed. For people in fear of their jobs or very lives will not trust journalists lightly. If broken promises, the endemic misuse of unattributed sources, trafficking in rumor or speculation, and intrusions into privacy in pursuit of a "good" story are perceived to be the journalistic norm, then the very people the media depend on to uncover stories will become uncooperative, and the public they are attempting to inform will be deeply skeptical. So when the news media intrude upon the grief of people caught up in human tragedies like Lockerbie or the massacre of schoolchildren in Dunblane, the fact that we remain shocked but unsurprised is a reflection of just how much our trust in the news media has been eroded.

Yet, paradoxically, journalists, editors, and producers would not be carrying out their jobs properly if they were too trusting. Investigative journalism is predicated on the assumption that all things are not as they appear to be. Although initially we should take politicians, figures of authority, and people generally at face value, it may turn out that our trust is not justified. Indeed, the fact that authority figures and social institutions wield great power entails the need for critical scrutiny. Milgram's experiments from the 1950s, where unknowing subjects were instructed to electrocute someone supposedly in the next room, show that it is all too easy to abuse positions of power and influence for corrupt ends.¹ So it is crucial that the motives and actions of those in power are scrutinized, and the media have a positive duty to do so. Without a healthy skepticism journalists would be more open to manipulation and less likely to get at the truth of the matter. Furthermore, uncovering instances of corruption may require a journalist to manipulate, lie, or intrude into someone's privacy. Similarly, there may be a strong public interest in tracking down a source whose anonymity a journalist had promised to protect. So to fulfill their function, journalists may have to break the very bonds of trust upon which they depend. Hence journalists need to think carefully about when, where, and why, if at all, it may be morally permissible for them to lie, deceive, or intrude into someone's privacy and break promises they have made.

LIES, DECEIT, AND BROKEN PROMISES

Paradoxically, we demand that journalists tell the truth and yet, to get at the truth, they may have to lie. Similarly, journalists often promise sources that remarks will remain off the record or their anonymity will be protected, yet sometimes there is a strong public interest in breaking such promises. Failure to keep promises and tell the truth supposedly gives rise to the public distrust of journalism and the media in general. Hence promises of confidentiality and truth-telling are often considered sacrosanct rules of ethical journalism. But what is the

underlying presumption here? The basic thought, as articulated by Kant, is that if we do not always abide by our word and tell the truth then the social practices of honesty and promise-keeping will inevitably break down and the media will be unable to function.² Furthermore, as Anselm and Barth would suggest, possessing moral integrity surely means that we do what is right despite the consequences. Thus the most "innocent" of lies is morally corrupt.³ To lie to expose wrongdoing involves the vice of hypocrisy; it is to perform the very thing that is being condemned.

Consider a recent *Sunday Times* investigation into whether British M.P.s were asking questions in the House of Commons for financial inducements rather than on behalf of their constituents. Although there were rumors, and various lobbying groups had been making inflated claims about their influence, there was little hard evidence to suggest that such practices were going on. *The Sunday Times* decided to blanket target a number of M.P.s from all parties, and two responded to this initial approach.

A journalist then met up with the two M.P.s—Graham Riddick and David Tredennick, both Conservatives—pretending to be the chairman of an arms company wanting information that might affect a possible arms contract. For a fee of £1,000, they initially agreed to ask questions in the House.⁴ It seems, to start with at least, that the public interest justifies the deceit and lies required to uncover the story. Yet if we look a little more closely, the obviousness of this conclusion is questionable.

It could be claimed that *The Sunday Times* investigation did not prove that the bribery of M.P.s was taking place. It only proved that, offered this financial incentive, a couple of M.P.s were prepared to ask questions in the House of Commons, and subsequently they were suspended for so doing. The real question concerns whether anyone else is going around offering such inducements. For if the answer is no, then *The Sunday Times* investigative team is creating a state of affairs for its own news scoop. The success of their investigation could thus shed little light on whether these activities were actually taking place independently of their operation. In aiming to get a news scoop, the investigative journalists used deceitful means—the very accusation laid at the feet of the M.P.s in *The Sunday Times* report—to create a news story that picked out an activity that might not otherwise be happening.

This is not to absolve the M.P.s of blame for their actions, but it is to recognize that without the deceit in the journalistic investigation such a state of affairs might never have arisen. The use of checkbook journalism to elicit testimony from those caught up in criminal trials, the deceitful setting-up of journalistic scoops or lies told in order to get confidential information under false pretences, journalists seeking to create, talk up, or distort events to create ever more newsworthy stories seems hypocritical and fosters a journalistic climate in which lies and deceit are deployed to create "news" and will naturally lead the public to distrust what is reported. The picture of the world presented to the public be-

comes a highly distorted and harmful one. To the extent that such reports are trusted, the public's opinion may be framed on a false basis; in a democracy where many public and foreign policy decisions are driven by public opinion, this is highly damaging.

However, there was, in fact, evidence that M.P.s were abusing their position. So the journalists did have some reason to believe that the activities they were "investigating" were going on prior to their subterfuge. Moreover, the report did succeed in turning the spotlight onto an area where political procedures were, at the very least, open to abuse. Nonetheless, aspects of *The Sunday Times* report were dubious. For example, they failed to report both that the question of payment was raised by their reporters and not by the M.P.s, and that one of the M.P.s, Graham Riddick, had returned his £1,000 check prior to their exposé. Moreover, quite what was actually proved by their investigation, in terms of actual abuse, was fairly negligible.

But, must lying lead us down such a slippery slope, and does deceit necessarily compromise our moral integrity? Imagine that a journalist is secretly investigating a case of political corruption. She attends a political function to see what kind of terms certain figures, whom she suspects of corruption, are on. The central figure of her investigation jokingly enquires whether the journalist is investigating his political and financial affairs. Kant's argument apparently requires the journalist to tell him exactly what she is doing, which would be both imprudent and scupper any chances of finding out at what level, if any, corruption was taking place. Yet, under such circumstances, to the extent that the journalist's investigation concerns a matter of crucial public interest, we should consider her to have a moral duty to lie. So, at least under exceptional circumstances, lying is not only permissible but morally required.

Just think how impossible journalism would be if journalists and news programs were, under all circumstances, committed to telling the truth. No journalist would ever be told anything, and it would be nigh-on impossible to uncover stories of public interest. In cases of war or extreme national interest we are prepared to accept that information may justifiably be withheld or that we may be lied to in the interests of protecting the public or the strategy of our troops. Thus we would censure a television network such as the CBS—which broadcast a report regarding the Unabomber suspect hunted by the FBI—if their report leaked information that could hinder a police enquiry, or a newspaper that published secret military strategy plans during the Gulf War. As long as we recognize that deceit and lying are justified only under certain strict conditions, it is far from clear that the social practices of truth-telling and promise-keeping would break down.

Good journalistic judgment is required to know exactly when and where the relevant conditions apply, a matter about which we may be mistaken. But, as with truth-telling and promise-keeping in everyday life, we naturally accept that under certain circumstances lying may be permissible and, less frequently, a moral

duty. Kant's objection to lying and deceit fails to discriminate between different kinds of promises, deceptions, and manipulations. There is a vast moral difference between telling a white lie for the sake of a friend or the public, and a vicious lie designed to cover up evil, corrupt actions that should be uncovered. Morally discriminate lying has not undermined the general practices of promise-keeping and truth-telling.

Telling white lies does not inevitably lead to the dissolution of the trust required for the media to function. Of course it might be suggested "that keeping the public's trust is such an important consideration in journalism that responsible editors can validly put trust in the balance with a possible risk to human life and come out on the side of doing what is required in order to retain the public's trust."⁵ But this must be wrong if we are supposed to assume that the truth must always be paramount. The public is unlikely to trust the media if they always reveal the identity of anonymous sources, give details of rape victims, or confess to the nature of their investigations when pressed to do so. So, far from compromising their moral integrity, journalists may have a positive moral obligation to lie if, by so doing, they are able to uncover instances of public corruption, harm, or wrongdoing.

The argument so far might be thought to entail that the end justifies the means. If the end is justified, then the means required to achieve it are morally permissible if not obligatory. Consider a case like that of Robert Maxwell. Here was a man who was swindling, among other things, large amounts of money from the investment funds of pensioners who had worked for various companies that he owned. Through abusing his position and coercing others to do his bidding, he stole from large numbers of people who had entrusted their money to his companies and ultimately his stewardship. Obviously the last thing Maxwell wanted was to allow prying journalists access to accounts that would incriminate him. Perhaps the only way a journalist could get the evidence to substantiate claims of Maxwell's wrongdoing was, at the very least, through lies, deception, and possibly acting illegally. Where the public at large, or certain members of the public, are being harmed, then it seems reasonable to hold that the unfortunate means required for journalists to unearth and prove the scandal are justified.

MOTIVES AND INTENTION

Appealing though such a doctrine is, it cannot be the whole of the story. Consider again the case of R. Foster Winans, who used information acquired in his capacity as a *Wall Street Journal* reporter to profit himself privately.⁶ His motives in pursuing confidential information were impure. He sought information not just to report financial stories but to make money for himself as any insider trader might. The point is, we condemn not just his actions but his motives and intention in acting the way he did.

Consider Robert Capa's famous image from the Spanish Civil War, published by *Life* magazine on 12 July 1937 under the caption "Robert Capa's Camera Catches A Spanish Soldier The Instant He Is Dropped By A Bullet Through The Head In Front Of Cordoba" (more commonly known as "The Death of a Loyalist Soldier"). The photograph shows a soldier falling backwards, apparently from the impact of a bullet. The photograph is blurred and slightly out of focus, perhaps due to the soldier's and Capa's speed of movement. The soldier is caught on the left-hand side of the picture frame, arm thrown back, rifle in hand, suspended in the air. No one else is in the picture, and the soldier's shadow reinforces the dramatic image. There is a fair amount of controversy surrounding this photograph because, it is alleged, the shot was posed and thus constitutes a deceit. If true, this would be deeply ironic, since Capa was a cofounder of the photojournalist agency Magnum, whose reputation for integrity and authenticity is renowned the world over. True, the very allegation may constitute a scurrilous imputation of Capa's moral and journalistic integrity. Nonetheless there is some evidence to suggest that the photograph is not quite what it seems.

As the historian Phillip Knightley points out, the photograph's blurring and lack of focus is consistent with the image having been taken from the frame of a cine film, possibly shot while a platoon of Republican soldiers was on a training exercise in 1936.⁷ Far from the soldier being pictured in the moment of death as *Life's* caption would lead us to believe, the film shows the soldier falling back and then getting up again. Knightley suggests that Capa's agent sold the pictures to *Life*, possibly without Capa's knowledge, while Capa was away covering the war. Bear in mind that the invention of details and events in the Spanish civil war was not the rarity one might imagine. Arthur Koestler wrote fictional stories about it from Paris, inventing plausible events and battles on the grounds that such deceit was justified because it helped "the right side." But the morally important question here, quite apart from whether such an end is justifiable, is whether Capa intended such deceit when he took the pictures and gave them to his agent.

For the sake of the example we will assume that, though debatable, Knightley's description of Capa's photograph is the correct one. Crudely, there are two basic possibilities. Firstly, Capa could have asked Republican soldiers in training to pose for him and have shot the film to pass it off as scenes from the midst of the war. His intention in taking the film and passing it on to his agent could have been to deceive. If so, then we would rightly consider him to be guilty of lying about the context of the photograph; for he then intended to, and was successful in, passing off easily shot pictures from training maneuvers as images from the very heat of a major and important battle. Conversely, Capa may have had no such intention and filmed the training exercise for its own sake or to practice his filming. He could then have passed the photographs on to his agent without even thinking that they might be used a year later by *Life* to represent scenes from some future battle. He may not have intended or given the impres-

sion that the photographs were as captioned by *Life*. If so, Capa would bear no direct responsibility for the deceit since he had not intended the photographs to be presented as images of something they were not. In this case the deceit, if it is one, was unintentional on the part of Capa, and morally speaking he could not be held to blame.

Matters may be more complex than the two possibilities discussed. It is possible that Capa ambiguously titled the original photograph so that his agent could, if the opportunity arose, sell the image for the kind of use made of it by *Life*. But we would still think Capa bore some responsibility for the deceit then, even though he did not straightforwardly lie: the intention under which an act is performed is partly constitutive of and thus determines the nature of the action concerned. The same actions performed under different intentions may morally differ.

Now, in this light, consider the well-known case of Watergate. Woodward and Bernstein, reporters for *The Washington Post*, had been chasing a story alleging that President Nixon's chief of staff was involved in subterfuge and spying activities.⁸ The possibility was even raised that the Watergate break-in had been initiated by Nixon himself. But the reporters' primary source then denied his previous testimony. So, at a crucial stage in their investigation, it looked like there was no story after all. The pressure was on for the reporters to rescue themselves and unearth a decent story to justify their reports. As it turned out, through approaching, lying to, and pressurizing grand jurors, they found out about Nixon's attempt to corrupt the democratic process. So most people are inclined to think that this is a paradigm case of good journalism that, unfortunately, required the use of manipulation, deceit, and lying. But what they discovered was purely as a result of luck. Woodward and Bernstein had no real inkling of what was actually going on, and it was pure coincidence that they stumbled across the story. Any doctrine that renders the morality of journalistic action a matter of pure moral luck can only be hopelessly inadequate. For such a view cannot take account of one of the primary determinants of ethical action: intention.

Woodward and Bernstein were not pursuing their story because they believed the public interest was at stake. Rather, they wanted to revive their journalistic reputations and that of their paper. Given what they uncovered, we can only be glad that they stumbled across what they did. But the end result of an action does not transform it from an immoral act into an ethically admirable one. For Woodward and Bernstein had no idea of what they would find. Journalistic integrity requires that the intention behind action had better be to achieve the morally admirable end. The difference between blamelessly killing someone and murder is not the end result of an action but the intention under which the action was performed. Similarly, there is a crucial moral difference between a journalist who exposes a politician's affair merely in order to gain personal revenge, discredit the political party, create a "good" story, or for financial gain alone and

someone who does so in order to inform the public about a possible case of hypocrisy that they ought to know about. So it is important to discern not only what end was achieved by a report but also the intention under which the journalist's actions and report were formed.

Even in cases where journalists' reports are a matter of public interest, their actions are not necessarily ethical. For the intention and underlying motive in getting the story or making the report may be dubious. Certainly in the Woodward and Bernstein case the motive for lying and misleading grand jurors seemed to concern self-protection rather than any notion of the public interest. Deception and lying are not justified whenever they happen to suit the furtherance of our own careers or personal ends.

Moreover, this is not a point that merely applies at the individual level. For the news media have a public duty, as the fourth estate, to strive to report on and protect the public interest. Hence where the motive for news stories, programs, or institutions perverts the fulfillment of this goal, there is something fundamentally wrong. To the extent that a proprietor's political views or business interests dictate the kind of news coverage that a paper or channel affords, then—insofar as the paper or channel conceives of itself as a news institution—there is something wrong. Where sensationalism, business interests, or ideological commitments are given priority ahead of the duty to inform, then good journalism is perverted; for, whether at the structural level or in the case of an individual journalist, where the intention is primarily directed toward ends other than the public good, there is a vicious disjunction between the goal aimed at and what the true goal of professional journalism is. The morally respectable journalist is not one who merely, as a matter of luck, happens to stumble across a matter of great public interest, which retrospectively justifies his immoral activities and subterfuge. Rather he is someone whose motive is to uncover the harm that he has good reason to believe is being perpetrated, and his sole intention in lying is to uncover that harm. Thus deceit and lying in journalism are permissible where the matter is one of strong public interest *and* the journalist's motives and intention in lying are the right ones.

Note, however, that lying and deceit must be the only means by which the morally respectable journalist could achieve his justifiable goal. There is a general, strong *prima facie* presumption in favor of truth-telling: we need never justify ourselves in telling the truth, except in extreme circumstances; but we must always justify lying or deceit. Hence if the well-intentioned journalist could achieve his end without such devious means he should do so, even if this involves much greater time and effort. There is a useful analogy here to the taking of human life. Allowing others to live and not harming them need never be justified, but killing them always requires justification. Although we may recognize that killing someone else in self-defence is justifiable, it must always be the last resort. Hence, though more difficult, if I could have prevented an assault on

me by pinning my assailant down rather than killing him, then the act of killing remains morally unjustifiable.

It is crucial to stress that investigative journalists must have reasonable grounds for supposing that wrongdoing is going on. Moreover, good journalists should always be aware that their sources may have disreputable motives for making allegations. Perhaps the source is trying to manipulate the journalist rather than being a straight-up whistle-blower. Hence a journalist should always check what grounds there are for suspecting dubious practice before investigating further, let alone use measures involving deceit, lying, and the breaking of promises of confidentiality. The public are more likely to trust reporters who make clear what their sources are, what the basis for their conclusions is, and what the grounds were that suggested that an investigation was appropriate.

Cases of journalists lying, deceiving, and promise-breaking are, *prima facie*, wrong. But where there are no other means of investigating a matter that a journalist has good grounds to believe is one of great public interest, then such typically dubious means are justifiable. Indeed, where these are the only means open, the journalist has a moral duty to adopt them where the public interest is strong enough to trump the harm done in its name—the significance of the story must outweigh the *prima facie* presumption against lying and promise-breaking and the potential side-effects on journalistic practice and the public's trust in the media. For example, lying to or deceiving Robert Maxwell to substantiate allegations about thousands of pensioners being stolen from is justified, whereas doing so merely to find out about the theft of an office pencil would not be. We must recognize that matters in which there may be a public interest are not automatically strong enough to warrant such behavior.

For example, *The Guardian* newspaper thought it had good reason to believe that a then British government minister, Jonathan Aitken, had stayed at the Ritz Hotel in Paris and had this and various other "gifts" paid for without having declared them as such to the House of Commons.⁹ Given the possible bribery of a government minister there was obviously a strong public interest in discovering whether these allegations were true. However, to substantiate the allegations the *Guardian* journalists needed proof not only that Mr. Aitken had stayed in the relevant hotel but how much his bill was and by whom it had been paid. Obviously the hotel would not give them details if requested on the grounds that they were investigating Mr. Aitken's possibly improper conduct. So the journalists sent a fax on House of Commons notepaper requesting a copy of the relevant bill, which they duly received. Such deception appears to be the only way they could possibly have substantiated their claims impartially.

In a similar light, consider remarks that Jesse Jackson confidentially made off the record to Milton Coleman of *The Washington Post* during the 1984 presidential campaign. He referred to New York as "hymie town" because he believed that New York was basically run by Jews. Precisely because the public has a

crucial interest in understanding the nature of Jesse Jackson's character, as he was running for the presidential nomination, the *prima facie* presumption in favor of confidentiality is outweighed, for such comments not only reflect an aspect of his character but one that had, thus far at least, been kept well-hidden. It is crucial that the public see the attitudes that are part and parcel of a man seeking to become president, who could potentially wield immense power and influence in their name; so, in reporting these confidential remarks, *The Post* fulfilled its moral obligation, as did Milton Coleman.¹⁰

THE NATURE OF PRIVACY

Our conclusions concerning deceit and lying naturally lead us into the matter of privacy. For if the *prima facie* presumption against lying can be overridden in the name of the public interest, then perhaps the same applies to our right to privacy. But it is crucial that, first of all, we develop some sort of understanding of just what privacy is and why it is important. Of course, most people naturally value their privacy and think it important that certain areas, activities, and information about their lives should remain private. Hence we naturally think that one of the great evils of a totalitarian state is that it does not consider individual citizens to have any sphere of privacy that ought to remain outside its jurisdiction. Similarly we tend to presume that invasions of privacy, without the subject's consent, by journalists, newspapers, and media programs are morally wrong. The burden of justification stands in favor of those who wish to have their privacy respected. For intrusions into the private areas of our lives constitute a harm or failure to respect our rights as individuals. Thus the law tends to protect us from intrusions into our home, private papers, the public disclosure of embarrassing private facts, or publicity placing us in a false light. But quite why we have a right to privacy needs to be articulated.

One thing we commonly recognize is that revelations about ourselves are a matter within our gift: not just anyone has a right to know anything about us. Hence friendship is partly a matter of how much we are prepared to reveal about our private selves to another, as opposed to what we are indiscriminately prepared for everyone to know about us. This already tells us something about privacy. It is partly constituted, as Parent puts it, by "the condition of not having undocumented personal knowledge about one possessed by others. A person's privacy is diminished exactly to the degree that others possess this kind of information about him."¹¹

In other words, the kind of information about ourselves that we choose not to reveal to others—as distinct from information that is publicly available—is private. The value of privacy, according to Parent, is that it prevents anyone else acquiring power over us to our disadvantage. Such a bulwark against the state is required if we are to be free from threats of manipulation and coercion regarding our behavior. As rational, free agents we have a right to consider areas of our

lives to be closed to others, and so doing reduces the possibility of our being manipulated or coerced into behaving in a way that we would not otherwise choose. So, for example, our sex lives ought to be considered private, since shielded from the social pressures of prurience, blame, and condemnation we are much freer to pursue our sexual desires as we would choose.

However, what Parent fails to notice is that it is the *areas* where we typically choose not to reveal information about ourselves, or do so only very discriminately, that mark off the private aspect of our lives. It is not merely particular information about our lives that is private but those areas of our lives that the information concerns. Hence an intrusion into privacy is not merely where someone has obtained, without our consent, information about us. Just as a burglar can break into our house and fail to get any goods or information about us, so a journalist may intrude into our privacy, without our consent, and yet fail to find out anything about us. For what is intruded into are certain areas of our lives which are intrinsically private. That is, relationships, activities, and concerns that we consider not to be the business or concern of anyone else except ourselves and those with whom we choose to share these aspects of our lives.

Furthermore, we do not consider the value of privacy to lie solely in the way that it protects us from manipulation by others. Rather we consider privacy to be intrinsically valuable since it allows for intimacy and thus the space within which certain personal activities, relationships, and goods can flourish. First, a realm of privacy enables us to consider, test out, and develop interests, activities, and beliefs that we would not be prepared, at least initially, to commit ourselves to or pursue in public. Thus the protection offered by the private sphere enables us to test and develop our identity and character as a person.¹² Secondly, and interlinked with the first consideration, a realm of privacy enables us to cultivate and pursue meaningful familial relationships, friendships, and loves. After all, if we indiscriminately told everyone everything about ourselves or acted the same way with strangers, colleagues, friends, and lovers, then the symbolic significance of many acts and confessions we normally consider private would evaporate. We choose to reveal intimate aspects of our selves, and so trust in others, and through so doing cultivate particular, intimate relationships without which our lives would be much impoverished.

Privacy involves not so much the right to be left alone, since we can be harassed in many ways that do not intrude into our privacy, but delineates a sphere within which we are free to be intimate with others and pursue goals and interests we have without being subject to the public gaze. As James Rachels articulates it: "If we cannot control who has access to us, sometimes including and sometimes excluding various people, then we cannot control the patterns of behavior we need to adopt . . . or the kinds of relations with other people that we will have."¹³ Indeed, gossip and slander can be harmful precisely because they feed on, and may damage, a person's ability to pursue valued private goals and friendships. Moreover, the very act of publicly revealing private peccadilloes,

relationships, or activities can even harm someone's ability to pursue his or her public goals. For example, a doctor revealed without his or her consent to be homosexual may find it much harder to work with many patients due to their reactive prejudices. So privacy is also required to protect us from the irrelevant and slanderous judgments of others that may prevent us from pursuing and attaining public goods. Individuals require privacy to grow and develop as autonomous individuals with meaningful personal relationships, which is why we condemn societies that fail to respect people's privacy.

A right to privacy is based both on the recognition of ourselves as rational free agents and on the psychological importance of a sphere of privacy for certain fundamental human needs, desires, goals, and relationships to flourish. It is important to note that the right to privacy, so construed, is not merely an extension of property rights, as it is so often assumed to be.¹⁴ It is odd to talk of intimate exchanges and activities being owned or possessed by particular individuals. Moreover, private conversations and exchanges often take place in public areas, from parks to restaurants and bars. Yet we may still rightfully object to someone eavesdropping on an essentially private conversation in a public bar. We can imagine a person attempting to take his life in a public place being filmed by close-circuit television cameras, and the resultant film being broadcast on some "real life" crime show or documentary to an audience of millions. The cameras themselves might not constitute an invasion of privacy, and may lead to the man's life being saved, but broadcasting the film would constitute a gross invasion of privacy.

However, although we do have a right to privacy, it can be overridden where information or activities that an individual would choose to keep private should be placed in the public sphere. Where what is being carried on in private is a matter of central public interest, then the individual's right to privacy dissolves away. As Belsey puts it: "Where some information about an individual that he or she would prefer to keep private *should* be in the public domain, then putting it there is not overriding that individual's right to privacy because no such right ever existed concerning this aspect of the person's life . . . all invasions of privacy are unjustifiable."¹⁵

To put it in more concrete terms, a politician's right to privacy has not, strictly speaking, been invaded if a journalist investigates instances of corruption in the politician's political affairs, even though he or she may have sought to keep them private. Indeed, if a right to privacy were considered absolute, then this would provide the conditions under which corruption and vicious hypocrisy can flourish since many people's public facade, behavior, and roles could not be held to account. Thus a journalist's delving into a politician's private papers, which details his or her corruption, does not constitute an intrusion into privacy but a justified investigation into an essentially public matter. For political corruption is not something that is or should be considered an essentially private matter.

Given that the *prima facie* right to privacy can be outweighed by considerations of the public interest, we need to clarify when, where, and under what conditions the right is trumped. A different way of putting it is to ask where the right to privacy, based on recognizing its contribution to our well-being, outweighs apparent public interest in a particular story. The relevant considerations ultimately depend on the status and role of the person at the centre of the news story.

DISTINCT RIGHTS TO PRIVACY

The first and easiest category to consider is that of politicians, businessmen, and those who occupy positions of power and influence in society. Politicians are elected to represent their constituents in a democratic process; therefore, any actions of theirs that give us good reason to believe that they are involved in a corruption of that process justifies investigating their private matters where these touch on the possible area of corruption. So where it is suspected that a congressman or congresswoman is taking money in exchange for the use of his or her political powers, say to push a government grant toward a particular firm, then the media are justified in investigating the relationship between possible payments, "gifts," and the member's political actions.

The public need to know if their representatives are representing their interests fairly and well. Similarly, where civil servants, businessmen, doctors, and teachers are not acting in the best interests of their government, shareholders, patients, or students but abusing their position for personal gain in some way, then they have no right to privacy concerning such matters. The public needs to know if their investments are being defrauded, if their government functionaries are corrupt, if doctors are going against their code of practice, or teachers are abusing the welfare of their pupils. Indeed, as the fourth estate, the media have a moral duty to investigate such matters. Because such figures exercise power on our behalf and significantly shape our lives, the media, on our behalf, has a duty to examine their conduct where it is relevant to their exercise of power.

But even here things are not quite as straightforward as they may appear, for although the inability of politicians to perform their job—due to private vices such as alcoholism or corruption—should clearly be exposed, a much more difficult matter concerns the gap that sometimes emerges between the private character and public persona of a powerful public figure. It is perfectly possible to say one thing that we genuinely believe to be right and yet act in another way that we genuinely believe to be wrong. For example, a politician who sincerely espouses family values may fail, in a particular instance, to live up to them; through weakness of will he lapses into a brief adulterous affair, and yet he still genuinely wishes he could have controlled himself more, because he considers his actions deeply wrong.

We are all fallible, and it is not clear that the public good is served in unearthing such cases where the person concerned is truly penitent in his private life and consistently carries on espousing family values in public. Perhaps the person best qualified to warn us of the dangers of excessive drinking may be a deeply regretful alcoholic; similarly, the politician who moves to outlaw prostitution and yet visits prostitutes may be consistent—he wants to outlaw prostitution because the mere possibility offers a temptation to which people such as himself may, wrongly, succumb. Of course, such lapses may show flaws in a politician's moral character which could go on to manifest themselves in public life. If a man cannot resist temptation in his private life, in the face of what he knows to be wrong, then perhaps he is more likely to be as corruptible when pursuing public business. If as a public figure he is prepared to be duplicitous in his private life then he may be prepared to be duplicitous in his public life. Hence, of course, public figures place much store on presenting their private lives in as admirable and stable a light as possible. But this suggests that we ought to be very careful to distinguish a truly momentary lapse, which the individual is deeply repentant about, from consistent failure to fulfill publicly articulated ideals in ways that do suggest a general weakness of character.

There is a typical journalistic presumption that where there is a gap between the ideals that a public figure espouses and his private conduct, the public interest overrides his right to privacy; however, this presumption is flawed. Such hypocrisy, if it is such, is not clearly wrong, and it would constitute a far greater social ill to reveal it as hypocrisy in the way that the media undoubtedly would: exposure may only serve to undermine the argument being made, say concerning family values, which should be assessed on its merits rather than being presented as false because of a gap between ideals espoused and human failure to live up to them fully.

However, cases of human failure and genuine repentance should be clearly distinguished from forms of vicious hypocrisy, where public figures cynically use their publicly declared aspirations as camouflage for actions that do not even truly aim at their professed goal. The mismatch here is vicious because people in positions of privilege, influence, or power are not even attempting to live up to their publicly professed goals and political or business mandate but, rather, are seeking to corrupt it. Thus they abuse the trust placed in them by others and very often harm particular individuals, constituents, or shareholders. Such forms of vicious hypocrisy are clearly a matter of public interest and distinctly newsworthy, and thus they are strong enough to outweigh any *prima facie* right to privacy. One has only to look at figures such as Kennedy, Nixon, or Robert Maxwell to see how a public persona can mask deep, vicious inconsistencies that are clearly contrary to their publicly professed goals and, even, what is legal.

Consider the case of the once highly promising congressman Mel Reynolds, who at the time was one of America's fastest-rising black politicians. It emerged that he was clearly involved in soliciting child pornography and was eventually

charged with seducing a 16-year-old campaign worker, Beverly Heard, and obstructing the course of justice by possibly trying to bribe her.¹⁶ Similarly, consider the media coverage of the sexual life of Gary Hart when he was running for the Democratic presidential nomination in 1988. Not only were the stories about his promiscuous womanizing taken as legitimate targets of investigative journalism, but Hart himself effectively challenged the media: "Follow me around. I don't care . . . about the womanizing question. I'm serious. If anybody wants to put a tail on me, go ahead. They'd be very bored."¹⁷ Quite apart from the naively bad judgment shown by Hart in issuing this challenge, such sexual excesses and the drive to pursue them, even at the cost of harming others—and, in the Reynolds case, perverting the course of justice—betrays a character flaw that is deeply worrying in anyone wielding political power. Stories concerning church figures abusing children or conducting affairs, police corruption, state deception, and political shenanigans are all a matter of immense public importance and thus outweigh any right to privacy: in their different ways, all involve a vicious and harmful betrayal by particular individuals of the public trust placed in them. Hence journalists may intrude into their privacy in order to investigate and expose the harmful contradictions, negligence, and hypocrisy of those in positions of power and influence.

It must still be stressed that apparently similar kinds of cases may, morally speaking, have to be treated differently; in part, the harm and possible public interest involved depends on the nature of the publicly professed goals. For example, imagine two politicians from different parties, both of whom are homosexual and live with their lovers. One of the politicians is a spokesman for his party, and it condemns homosexuality as a vice and would seek to outlaw it. The other politician is also a spokesman, but his party deems sexuality an essentially private matter unless harm of some significant kind is involved without meaningful consent. Only in the first case would the media be justified in intruding into the politician's privacy in seeking to root out, prove, and report on the politician's sexuality, because the disjunction between what he professes as a matter of public policy and what he does suggests a form of vicious hypocrisy: he is trying to enact measures that will deny to the public the very choice he wishes to exercise. Thus the public should know about such an anomaly and the politician asked to account for such an apparent inconsistency. But in the second case the politician's private conduct has no direct bearing on what his publicly professed goals are or the measures he is attempting to bring about on behalf of the public. Hence, in the latter case, any journalistic intrusion into privacy would not be justified.

The second relevant category of persons we should consider are those, such as public celebrities, who do not straightforwardly exercise positions of power and influence but whose lives are, by their very nature, much lived in the public eye. Film stars, television celebrities, society figures, and sometimes journalists themselves come into this category to varying degrees. In essence such figures and

their careers are, to a large extent, created by their public persona and often involve the exposure of many intimate details concerning their lives. Hence the media often cover scandals or stories concerning the love lives of such people, from Cindy Crawford to Hugh Grant. It is important to recognize that such stories involve normally private affairs and should properly remain so if we were talking about the love life of an ordinary person. But we should appropriately draw the boundary between the public and the private in a different place when we are considering people whose career and success are dependent on the publicity that to a large extent they seek.

In some ways we should think of the trade-off in terms akin to a Faustian pact. It is hard to see how many of these celebrities would have the career they have without publicity concerning their private lives, which is often cultivated or played to by the person concerned. If, for example, Pamela Anderson or Heather Locklear make much of their sexual nature and talk freely in public about their love lives, then they have placed that aspect of themselves in the public domain. Effectively they have given tacit consent to the media to be interested in and cover these aspects of their lives. So though they may be right to complain about media intrusion in particular cases, they certainly cannot justifiably complain about the media attention devoted to their sexual affairs, and this cannot, as such, constitute an invasion of privacy. By pursuing the very profession they have chosen, they are in a significant sense public property. Similarly, if Sarah Ferguson or Diana Spencer pose for *Hello* magazine and talk about intimate aspects of their lives for the public, then they cannot justifiably complain when the media seek to examine critically, reveal, or chase up these aspects of their lives: they have, in effect, invited the audience in and declared that these parts of their lives are public. They sought to create the public demand or interest in them and use it for their own advantage. The need for and use of the media by such figures entitles the media to cover normally private aspects, whether they actually consent or not, in ways that could not be justified regarding an ordinary, private figure.

Furthermore, we should recognize that the category of public figures does not merely include "media personalities" but those who become public figures by virtue of the extreme, immoral, or antisocial actions that they perform. Someone who commits an act of terrorism, is a serial killer, or traverses society's legal and social norms in an extreme way is a perfectly legitimate focus of public interest. The nature of certain crimes—Jeffrey Dahmer's,¹⁸ for example—are such that the perpetrators effectively forfeit all rights to consultation and privacy. The public interest here obviously lies in obtaining some insight into how such dark deeds can come about: what motivations, upbringing, social conditions, and even biological factors may affect people in such a way as to cultivate their delight in the depraved infliction of violence on other adults and children. Moreover, where the parents or friends of such people may appear to be partly culpable, then their rights to privacy are partially forfeited and certainly not as strong as they would otherwise be.

The last category we should look at are those people who are thrust into the limelight of media attention for no reason other than their accidental involvement in a particular tragedy or news story. An ordinary person's right to privacy should be considered to be very strong indeed here, unless they freely consent to publicity about a private aspect of their lives or seek to use the resultant publicity for their own advantage in a way that brings them into the category of public figures. True, in the United Kingdom the right to privacy is not enshrined in law, and, in the United States, "People who are catapulted into the public eye by events are generally classified with elected officials under privacy law . . . the courts have ruled material as newsworthy because a newspaper or station carries the story."¹⁹ The mere fact that people are interested in something, and thus can be dressed up as newsworthy, is presumed to override the ordinary individual's right to privacy.²⁰

But the underlying rationale is inadequate because it fails to recognize the possibility of being mistaken and thus does not match up to what our moral rights are. The media and the public at large have no interest in and thus no right to know about personal aspects of an ordinary citizen's life, except where these bear on significant public harm or relate directly to how a tragedy came about. The mere fact that a private citizen becomes caught up in a road accident, earthquake, terrorist bombing, or protest march does not, of itself, bear in any way on the media's obligation to respect their privacy. If a teenager dies of a drugs overdose it is clearly relevant to ask where and when she took the drugs, whether she had a habit, and what her parents' attitudes and advice had been. But it is completely irrelevant, and of no public interest, to pry into the teenager's love life in the way the media might regarding a public celebrity. The fact that intruding into the private life of someone caught up in a news story may make for more entertaining or compelling news bears no ethical weight at all.

Let us return to the news media coverage of the bombing of Pan American Flight 103 over Lockerbie, Scotland, in 1988. As we saw, one particular couple arrived at the airport not knowing about the tragedy and approached a Pan Am official to ask what had happened to the flight. The woman was told that the flight had gone down and that all on board had been killed. Her immediate response was one of hysteria, and she collapsed in a public exhibition of grief, rage, panic, and despair. The instantaneous reaction of all the journalists and camera crews present was to crowd round her while she was writhing on the floor; the footage was relayed to various news stations and was broadcast fairly quickly on CNN.²¹

Obviously such images make for compelling news broadcasts. Yet capturing her hysterical, essentially private grief on film and displaying it for all to see constitutes the grossest violation of her privacy. The fact that this occurred in a public place is beside the point, for, as Sissela Bok points out, what is private is not necessarily secret and what is secret may not be properly considered private at all.²² Private lives are rarely secret but mark out a sphere in which our most

so choose—the business of others to know, see, display, comment on, or judge. The horrific grief and loss of self-control concerns a deeply intimate, private relationship, and loss that is nobody's business but her own and that of those nearest and dearest to her. The only appropriate public reaction is one of comfort, kindness, and efforts to find her a private space in which to come to terms initially with what has happened. Broadcasting the images of her grief serves no public interest and tells us nothing new about the nature of such tragedies and the loss of a loved one. For the public interest, what we need to know to function in a democratic, civil society should not be confused with whatever the public may be interested in.

The mere fact that we may be interested in knowing or seeing something does not give us any right to see or hear about it. The only form of interest in such images can be the prurient gaze of someone compelled by others' horror and misfortune. Such a voyeuristic form of interest can never justify such gross intrusions into privacy. This is significant because many dramatic reconstructions, documentaries, and news images broadcast in the name of the public interest amount to no more than a predatory feeding of our more voyeuristic interests in the horror and misfortunes of ordinary people's private lives,²³ something that the media—at least without due consultation and consent—have no right to do. Indeed, the exploitation of the misery of others for public consumption and pleasure is, irrespective of whether consent has been given, itself morally dubious. Moreover, where the media's primary interest lies in pandering to such interests, as opposed to what the public need to know, they are, appropriately, open to the charge of media hypocrisy themselves.

A report that condemns a murder as inhuman and yet dwells salaciously over the intricate minutiae of the killings betrays a vicious form of hypocrisy: the form of interest taken is one that delights in the very thing that is supposedly being abhorred. The rhetorical mask of "the public interest" slips to reveal the real interest, which, when we look at the ways in which such stories are often covered, involves a prurient delight in the misfortune of others. The use of "the public interest" to justify that which is clearly designed to pander to our baser lower pleasures is itself hypocritical and constitutes an abuse of the media's power, influence, and moral duties.²⁴

Indeed, it is of the first importance that we know about instances where the news media are themselves guilty of sleazy journalism, and this is especially true where issues of justice are involved. The soliciting by the media of witnesses' testimony for large sums of money inherently lends itself toward a corruption of the impartiality and fairness of the judicial process. Witnesses may be tempted to talk up their testimony, emphasize sensationalistic aspects, and even present speculation as fact where so doing may greatly enhance the amount of money and media attention that they are likely to receive during and after the trial. Indeed, as we saw from the O. J. Simpson trial, the level of television punditry, from lawyers to psychologists, the dramatization of witnesses into media celebrities,

and the kinds of interests in the case often pandered to may undermine the public's faith both in the judicial process itself and in the impartiality of the media's reporting of it. The last thing the public need is for the news media's coverage or practices such as checkbook journalism, which is endemic in the United Kingdom, to intrude on and effectively distort the course of justice and the political process.

Thus the media have an enormous moral responsibility arising from their privileged function and role in a democratic society, and the dangers suggest that we should play close attention to the procedures under which justifiable intrusions into privacy may take place. For an intrusion to be a justifiable one, we must already have good reason to believe that what is being kept secret concerns a matter of public harm, abuse, or interest. This links to the requirements outlined earlier concerning commitments to telling the truth, checking putative facts, the trustworthiness of sources, and so on, because the very act of investigation itself is based on the premise that there is, at least, a *prima facie* charge to be answered. Furthermore, the intention in pursuing an investigation must be laudable and not marred by the pursuit of false self-promotion or pandering to gratuitous public interests. Only then may we consider the journalist who intrudes into a figure's privacy to be justified in so doing: unlike *The Sunday Times* story about Michael Foot (see Chapter 2), the journalist should not be open to the accusation that appropriate safeguards and interests were not followed.

Moreover, we should also recognize that even when all the constraints have been followed sometimes journalists can be, perhaps through no fault of their own, genuinely mistaken. It may turn out that though evidence pointed to possible corruption, and thus a journalist felt justified in intruding into a figure's privacy, there turned out to be nothing of significance going on. In such a case it is crucial that we recognize that such an invasion of privacy turned out to be unjustified, and the media should apologize appropriately.

The three primary categories we have discussed, and the relative weight of their right to privacy, are not exhaustive. But what they do illustrate is the need to recognize that the right to privacy is not absolute and does not apply uniformly across cases. Rather, we should think in terms of a sliding scale that seeks to weigh up news figures' political, economic, and public power and influence, their celebrity status, or their rights as an ordinary citizen against whatever public interest and considerations of harm might speak in favor of intruding into their privacy. Especially in the case of political and public figures, where private hypocrisy may manifest character flaws with potentially disastrous results in public life, the right to privacy is extremely weak indeed. Conversely, for an ordinary, private citizen the right to privacy is so strong as hardly ever to justify intrusion except where the public interest is very great indeed.

The need to recognize the sliding scale of our right to privacy also indicates that different treatment by the media is appropriate to figures who fall into different places along the scale. At one extreme, that of the ordinary citizen, the

right to privacy is so strong that if any program, documentary, or news report is being made about them, then their rights of consultation are very strong indeed, and consent is required if the program is to possess moral integrity. Moreover, where an ordinary citizen's rights to privacy have been invaded, there are grounds for presuming that they ought to be compensated by the offending paper, channel, or, more substantially, by a media self-regulatory body funded by the industry for just such a purpose. At the other end of the scale, where the politician entrusted by the public is furtively attempting to cover up his wrongdoing, the rights of consultation are far weaker—though he should be consulted and given an opportunity to rebut the charges made—and the need to obtain consent does not apply at all.

NOTES

1. Most subjects were prepared, under the authority of the instructing experimenter, to electrocute the person supposedly in the chair next-door to well past fatal levels. See Stanley Milgram, *Obedience to Authority: An Experimental View* (New York: Harper & Row, 1974), and Eddy Van Avermaet, "Social Influence in Small Groups," in *Social Psychology*, ed. Miles Hewstone, Wolfgang Stroebe, Jean-Paul Codol, and Geoffrey M. Stephenson (Oxford: Basil Blackwell, 1988), pp. 372–380.
2. Immanuel Kant, *The Philosophy of Immanuel Kant*, trans. L. W. Beck (Chicago, IL: University of Chicago Press, 1949), pp. 346–349.
3. See Anselm's *De Veritate*, included in *Truth, Freedom and Evil: Three Philosophical Dialogues*, trans. and ed. Jasper Hopkins and Herbert Richardson (New York: Harper & Row, 1967), p. 110, and Karl Barth, *Church Dogmatics*, Vol. IV, Part 3, ed. G. W. Bromiley and T. F. Torrance (Edinburgh: T. and T. Clark, 1961), Section 70, "The Falsehood of Man," pp. 451–453.
4. "M.P.s, Cheques and Honey Tea on the Terrace," *The Sunday Times*, 10 July 1994, p. 1.
5. Stephen Klaidman and Tom L. Beauchamp, *The Virtuous Journalist* (New York: Oxford University Press, 1987), p. 157.
6. Howard Kurtz, *Media Circus* (New York: Random House, 1994), p. 126.
7. See Phillip Knightley, *The First Casualty* (New York: Harcourt, Brace, Jovanovich, 1975), pp. 209–212. It is interesting to note that though he talks about many of his other photographs, Robert Capa never mentions this one in his autobiography, *Slightly Out of Focus* (New York: H. Holt, 1947).
8. See Carl Bernstein and Bob Woodward, *All The President's Men* (New York: Secker and Warburg, 1974).
9. See *The Guardian*, Thursday, 3 November 1994, p. 1.
10. See Milton Coleman, "18 Words, Seven Weeks Later," *The Washington Post*, 8 April 1984, C8, detailing the ins and outs of the case. It is also discussed by Klaidman and Beauchamp, *The Virtuous Journalist*, pp. 167–168.
11. W. A. Parent, "Privacy, Morality, and the Law," in *Philosophical Issues in Journalism*, ed. Elliot D. Cohen (New York: Oxford University Press), p. 92.
12. See Andrew Belsey, "Privacy, Publicity and Politics," in *Ethical Issues in Journalism and the Media*, ed. Andrew Belsey and Ruth Chadwick (New York: Routledge, 1992), pp. 77–92.
13. James Rachels, "Why Privacy is Important," in *Philosophical Dimensions of Privacy*, ed. Ferdinand D. Schoeman (New York: Cambridge University Press, 1984), p. 206.

14. See, for example, Samuel Warren and Louis Brandeis, "The Right to Privacy," in *The Journalist's Moral Compass*, ed. Steven R. Knowlton and Patrick R. Parsons (Westport, CT: Praeger, 1995), pp. 84–87.
15. Belsey, "Privacy, Publicity and Politics," p. 77.
16. Although Heard admitted that their sexual relationship was consensual, sex with a 16-year-old is illegal in the state of Illinois.
17. See Jeffrey B. Abramson, "Four Criticisms of Press Ethics," in *Democracy and the Mass Media*, ed. Judith Lichtenberg (New York: Cambridge University Press, 1990), p. 234.
18. See Clifford G. Christians, Mark Fackler, and Kim B. Rotzoll, *Media Ethics: Cases and Moral Reasoning*, 4th edition (New York: Longman, 1995), p. 116.
19. Jeffrey Dahmer was discovered by police in 1991 to have dismembered body parts in his apartment, including a head stored in his icebox, and in 1992 he was convicted of cannibalism, necrophilia, and fifteen counts of murder.
20. See Brian Winston, "Tradition of the Victim," in *Image Ethics*, ed. Larry Gross, John Stuart Katz, and Jay Ruby (Oxford: New York, 1988), pp. 46–48.
21. See Joan Deppa, *The Media and Disasters: Pan Am 103* (London: David Fulton, 1993), and Saul E. Wisnia, "Private Grief, Public Exposure," in *Impact of Mass Media*, ed. Ray Eldon Hiebert, 3rd edition (New York: Longman, 1995), pp. 113–118.
22. Sissela Bok, *Secrets* (New York: Pantheon, 1982), pp. 10–14, 249–264.
23. See Plato, *The Republic*, trans. D. Lee, 2nd edition (Harmondsworth: Penguin, 1974), Book IV, 439e–440a, pp. 215–216, where Plato describes Leontion's base delight in dwelling on the spectacle of maimed corpses.
24. See Plato, *Gorgias*, trans. D. J. Zeyl (Indianapolis, IN: Hackett, 1987), 491e–497a, pp. 64–71, where Socrates shows that the cultivation of our baser appetites can only lead to an impoverished life and is to be distinguished from a truly good life.