

<p>1 Monday, 16 July 2012</p> <p>2 (10.00 am)</p> <p>3 LORD JUSTICE LEVESON: On many occasions during this</p> <p>4 Inquiry, I have spoken about the public interest that</p> <p>5 drives and justifies the importance of free speech and</p> <p>6 a free press. Today the Inquiry will analyse these</p> <p>7 important concepts in some detail and will do so</p> <p>8 alongside other public interest concepts much talked</p> <p>9 about, including the public interest in individual</p> <p>10 self-determination and the protection of private</p> <p>11 interests such as privacy, confidentiality and</p> <p>12 individual freedom of expression. For the right balance</p> <p>13 to be achieved, it is important that we fully understand</p> <p>14 what is involved and what is potentially at stake.</p> <p>15 The Inquiry is occasionally criticised for</p> <p>16 considering ethical issues but it is also important to</p> <p>17 bear in mind that the terms of reference specifically</p> <p>18 refer to the culture, practices and ethics of the press,</p> <p>19 and I have always recognised that different press</p> <p>20 interests and different types of newspaper may well</p> <p>21 approach ethical considerations from different starting</p> <p>22 points.</p> <p>23 That brings into focus the role which might</p> <p>24 reasonably be expected to be played by a code of conduct</p> <p>25 in general and by the Editors' Code in particular, along</p> <p style="text-align: center;">Page 1</p>	<p>1 trying to understand how these competing interests</p> <p>2 should fit and whereas the newspaper men can speak about</p> <p>3 it from their perspective, I think it's also very</p> <p>4 important to put it in the context of the wider concepts</p> <p>5 with which you are very familiar. Thank you.</p> <p>6 MR JAY: May I ask you, first of all, shortly, please, to</p> <p>7 set out your main areas of academic interest and</p> <p>8 research? First of all, Professor Hornsby.</p> <p>9 PROFESSOR HORNSBY: My main areas are philosophy of mind and</p> <p>10 language but I teach courses relating to issues about</p> <p>11 free speech, hate speech, pornography, in connection</p> <p>12 with gender and philosophy.</p> <p>13 MR JAY: Thank you. Professor Mendus?</p> <p>14 PROFESSOR MENDUS: My main area of interest is modern</p> <p>15 political philosophy and I have specialised, over the</p> <p>16 past 25 years or so, in concepts of toleration.</p> <p>17 MR JAY: Thank you.</p> <p>18 PROFESSOR TASIIOULAS: My main areas of interest are in moral</p> <p>19 and legal philosophy and in recent years I've</p> <p>20 specialised in human rights punishment and issues about</p> <p>21 international law.</p> <p>22 Q. First of all, please, may we establish a lexicon? We've</p> <p>23 heard terms -- indeed, have used terms -- such as</p> <p>24 rights, interests, freedoms, prejudicial, in the context</p> <p>25 of freedom of expression, free speech and a right to</p> <p style="text-align: center;">Page 3</p>
<p>1 with what, if anything is necessary, could be done to</p> <p>2 improve it and make it more effective.</p> <p>3 Tomorrow I will consider evidence in relation to the</p> <p>4 data protection legislation and issues of plurality.</p> <p>5 MR JAY: Thank you. The first three witnesses today are</p> <p>6 professors Hornsby, Mendus and Tasioulas, please.</p> <p>7 LORD JUSTICE LEVESON: Thank you very much indeed.</p> <p>8 PROFESSOR JENNIFER HORNSBY (affirmed)</p> <p>9 PROFESSOR SUSAN LESLEY MENDUS (affirmed)</p> <p>10 PROFESSOR JOHN TASIIOULAS (affirmed)</p> <p>11 Questions by MR JAY</p> <p>12 MR JAY: Professor Hornsby, you are professor of philosophy</p> <p>13 at Birkbeck College University of London; Professor</p> <p>14 Mendus, professor of political philosophy at the</p> <p>15 University of York; and Professor Tasioulas, professor</p> <p>16 of jurisprudence at UCL. Each of you has put in</p> <p>17 a submission, for which the Inquiry is grateful.</p> <p>18 That submission doesn't contain any fact, although</p> <p>19 we might debate about what that means, but as far as the</p> <p>20 opinions we can see in those submissions are set out, do</p> <p>21 you sincerely believe in those opinions? Sorry, that</p> <p>22 sounded rather cack-handed.</p> <p>23 LORD JUSTICE LEVESON: It gets quite difficult. Thank you</p> <p>24 all very much for coming and for participating in this</p> <p>25 exercise. I hope you can see the value that I place on</p> <p style="text-align: center;">Page 2</p>	<p>1 each of those, but Professor Tasioulas first of all,</p> <p>2 what are rights and how and why should we be</p> <p>3 distinguishing them from the other juridical and moral</p> <p>4 concepts I've just mentioned?</p> <p>5 A. We need to distinguish them because typically in</p> <p>6 political and other forms of discourse they're supposed</p> <p>7 to carry a great deal of weight, and because they carry</p> <p>8 this great deal of weight, people are often eager</p> <p>9 rhetorically to present various arguments in terms of</p> <p>10 rights and that leads to a kind of proliferation of</p> <p>11 rights claims that threatens to debase the currency of</p> <p>12 rights language. So it's important to differentiate</p> <p>13 what a right is from other sorts of values or</p> <p>14 non-values, for example. So there may be an interest</p> <p>15 that someone may have in something and it may be quite</p> <p>16 an important interest -- maybe even, say, an interest in</p> <p>17 preserving their life -- but it doesn't follow that</p> <p>18 whatever would preserve their life is something they</p> <p>19 have the right to. They only have the right to that</p> <p>20 thing if somebody else is under a duty to deliver this</p> <p>21 thing. So a right will exist not just when I have an</p> <p>22 interest in something but when my personal interest has</p> <p>23 sufficient weight to impose a duty on others to act in</p> <p>24 certain ways and whether it imposes a duty on others</p> <p>25 will in part turn on what the costs would be to those</p> <p style="text-align: center;">Page 4</p>

<p>1 other people of imposing that duty.</p> <p>2 But I think one of the systematic problems with</p> <p>3 discourse about rights generally is people move too</p> <p>4 readily from asserting there's an interest in a certain</p> <p>5 area to the claim that it therefore follows they have</p> <p>6 a right to that interest being fulfilled.</p> <p>7 Q. So when one asserts a claim to a right, is there always</p> <p>8 a correlative duty?</p> <p>9 PROFESSOR TASIOULAS: It's possible that "rights" gets used</p> <p>10 in all sorts of different ways, but I think there's</p> <p>11 a kind of consensus, at least amongst philosophers, that</p> <p>12 the strict sense of a right is one that implies the</p> <p>13 existence of a duty and that's why the idea that</p> <p>14 violating someone's right is a moral wrong because it is</p> <p>15 a violation of a duty that bears on you, rather than</p> <p>16 simply some kind of reason that you might ...</p> <p>17 Q. The law is very familiar with the difference between</p> <p>18 absolute and qualified rights, and of course in the</p> <p>19 European Convention of Human Rights, certain rights are</p> <p>20 absolute -- Article 2, Article 3 -- and certain rights</p> <p>21 are qualified -- Article 8, Article 10. But how does</p> <p>22 one determine whether a right is, on the one hand,</p> <p>23 absolute or, on the other hand, qualified?</p> <p>24 PROFESSOR TASIOULAS: Good question. It assumes that there</p> <p>25 are absolute rights and it's not clear to me that there</p> <p style="text-align: center;">Page 5</p>	<p>1 I would want to distinguish two questions. One is</p> <p>2 whether, as a matter of morality, the right not to be</p> <p>3 tortured is absolute, and the second question is an</p> <p>4 institutional question, whether we should have absolute</p> <p>5 rights in law. There might be good reasons for the law</p> <p>6 to present these rights as absolute and then to deal</p> <p>7 with cases as they come up, because if the law says,</p> <p>8 "Look, it's not an absolute right", you have to look at</p> <p>9 the consequences of that, and amongst the consequences</p> <p>10 would be a tendency for people then to abuse that</p> <p>11 thought and then to engage in torture in cases where</p> <p>12 it's absolutely not justified in any way, assuming it's</p> <p>13 ever justified.</p> <p>14 MR JAY: Thank you. May I move on to is the first main</p> <p>15 topic: free speech in a mature democracy, as distinct</p> <p>16 from freedom of the press. Is there a right to</p> <p>17 individual free speech or freedom of expression, first</p> <p>18 of all, Professor Hornsby?</p> <p>19 PROFESSOR HORNSBY: Yes, I think there is such a right which</p> <p>20 accrues to individuals as autonomous citizens but</p> <p>21 I think that in understanding why a right to free speech</p> <p>22 should be accorded to people in a democracy, one needs</p> <p>23 to see beyond the questions of individual autonomy and</p> <p>24 to understand that in a democracy, people need to be</p> <p>25 informed, as voters whose will is supposed to be</p> <p style="text-align: center;">Page 7</p>
<p>1 are absolute rights. There might be some rights that we</p> <p>2 quite properly treat as absolute for legal purposes.</p> <p>3 So, for example, it might be that there are very</p> <p>4 compelling reasons for treating the right not to be</p> <p>5 tortured as an absolute right for legal purposes, even</p> <p>6 though morally we might concede that even that right</p> <p>7 there may be situations where it could be overridden by</p> <p>8 competing considerations but you wouldn't want that to</p> <p>9 be embodied in law. So that raises this much more sort</p> <p>10 of background issue that even getting the morality of</p> <p>11 free speech rights at an abstract level is one thing.</p> <p>12 How this gets implemented in law is another thing.</p> <p>13 But going back to your question, you distinguish the</p> <p>14 absolute rights by the question: are there some rights</p> <p>15 the duties generated by those rights can never be</p> <p>16 overridden by any competing consideration? So someone</p> <p>17 who says that the right not to be tortured is an</p> <p>18 absolute right, the duty that you have not to torture</p> <p>19 arising from that right could never, under any</p> <p>20 circumstances, be defeated by any other consideration.</p> <p>21 LORD JUSTICE LEVESON: You say that's legal. That's the</p> <p>22 famous example of the terrorist who knows where the bomb</p> <p>23 is that will destroy the railway station and 2,000</p> <p>24 people and that's the philosophical issue.</p> <p>25 PROFESSOR TASIOULAS: That's the philosophical issue.</p> <p style="text-align: center;">Page 6</p>	<p>1 implemented by governments, and they can't be informed</p> <p>2 and make up their own minds unless speech, which is</p> <p>3 communicative and thus informative, is free.</p> <p>4 Q. Thank you. Professor Mendus, do you agree with that or</p> <p>5 would you like to expand on that at all?</p> <p>6 PROFESSOR MENDUS: I certainly agree with that. It's very</p> <p>7 often said that the importance of free speech for</p> <p>8 individuals is, as has been said, for the development of</p> <p>9 autonomy, so that people shall be in a position to act</p> <p>10 in a way which they themselves believe to be correct and</p> <p>11 they can only do that if they have information.</p> <p>12 The move from the right to be informed or an</p> <p>13 interest in being informed in a democracy and an</p> <p>14 extensive free speech or free press commitment is quite</p> <p>15 a difficult one. So it doesn't follow directly from</p> <p>16 commitment to autonomy and to being informed in</p> <p>17 a democracy that there should therefore be very</p> <p>18 extensive free speech, much less that there should be no</p> <p>19 limits on free speech or free communication.</p> <p>20 Q. Thank you. It may be implicit in what's been said</p> <p>21 already but is the right to individual free speech an</p> <p>22 absolute right or a qualified right, Professor</p> <p>23 Tasioulas, first of all?</p> <p>24 PROFESSOR TASIOULAS: If you mean by "an absolute right"</p> <p>25 a right that can never be overridden by competing</p> <p style="text-align: center;">Page 8</p>

<p>1 considerations under any circumstances, which is how 2 I characterised it earlier, then I would say that it's 3 not an absolute right. But I think that's the less 4 interesting question. I think the more interesting 5 question is: how do we specify what that's a right to, 6 ie, how do we specify the duties generated by that 7 right? In order to specify those duties, we need to 8 take into account a series of considerations. 9 So I think it would be wrong -- so it's qualified in 10 this sense: my right to spree speech does not extend as 11 far as my interest in free speech. It might serve my 12 interest in free speech to get all the leading 13 philosophers to listen to my theories about free speech, 14 but they have no duty to do that so my interest goes 15 beyond any right that I have, and so I have to think 16 about, insofar as I have this interest, to what extent 17 this will impose duties on others, and taking that into 18 account -- determining that question will take into 19 account things like: well, what burden will it impose 20 upon others who have to listen to me giving my 21 philosophical views about those things. 22 LORD JUSTICE LEVESON: But quite apart from the burden on 23 others, isn't there also a question about the 24 qualification to the right to free speech? The 25 example -- I have to keep this grounded in examples</p> <p style="text-align: center;">Page 9</p>	<p>1 the European Convention says that there must be other 2 qualifications. So the Racial and Religious Hatred Act 3 in this country and the Criminal Justice and Immigration 4 Act -- it seems to me quite proper that they're in place 5 and that they do impose restrictions on free speech and 6 expression. 7 I think when one hears the term "free speech", one 8 thinks of that which is heard in the marketplace of 9 ideas, but of course it's usually thought free speech 10 and expression, so people should be allowed to sound 11 off, they're expressing their opinions, but it does seem 12 to me there are qualifications to that because of the 13 harm to groups of people, not a direct effect, as in the 14 case of a crowded theatre or the riot, but an effect on 15 individuals who are caused to feel hatred and groups who 16 are vilified by pieces of speech. 17 MR JAY: When we speak, even in this qualified way, to 18 a right to individual free speech -- and taking on board 19 the difference between rights and interest -- may it be 20 more helpful to talk not in terms of correlative duties 21 but rather in terms of the state not having a right to 22 interfere with individual rights unless there is a good 23 justification capable of being advanced? Can I ask each 24 of you to comment on that possible formulation? 25 PROFESSOR MENDUS: Could I comment on that? I wouldn't</p> <p style="text-align: center;">Page 11</p>
<p>1 otherwise you're going to lose me -- is shouting "fire" 2 in a crowded theatre. Would that be an example? 3 PROFESSOR TASIOLAS: That's right. The question is: could 4 my interest in shouting "fire" in a crowded theatre 5 generate a duty on anyone else to let me shout and not 6 to interfere with me doing that and not to punish me for 7 doing that, and the answer is: clearly not. So to 8 specify the content of the right, the duties it 9 involves, I have to think about what benefit I would get 10 and what cost it would impose upon others. 11 LORD JUSTICE LEVESON: If any of you want to come in at any 12 time, don't feel driven by the questions. The purpose 13 of having the number of you together is to encourage the 14 debate between you because you know far more about the 15 topic certainly than I do -- I won't speak for Mr Jay 16 because that would interfere with his right -- but I'm 17 very keen that I generate the discussion between you to 18 try and distill what I can from your views and the 19 slightly different windows you put upon the issue. 20 PROFESSOR HORNSBY: Can I say something about the 21 qualification of the right? This is often thought of in 22 connection with "fire" in a crowded theatre and John 23 Stuart Mill had inciting a riot against the corn dealers 24 or whatever -- so positive harm coming from a piece of 25 speech -- but it does seem to me that we know from what</p> <p style="text-align: center;">Page 10</p>	<p>1 myself phrase the debate quite so clearly in terms of 2 rights and duties. That's just a personal preference. 3 That's not the way I personally would approach it, but 4 I guess we're here, to some extent, to try to understand 5 why free speech is important and what its importance is. 6 Now, there are any number of accounts of the 7 importance of free speech. One claim -- it's been 8 alluded to already -- is the claim: well, free speech, 9 Mill seems to think, will deliver truth in the free 10 marketplace of ideas. So he seems to think the world is 11 like a huge seminar room: everybody says the thing that 12 they want to say and sooner or later, truth comes out. 13 Now, that defence of free speech strikes me as very, 14 very limited indeed, partly because there are 15 significant power interests in modern democracies, so it 16 just isn't the case that my speech is heard as well as 17 the speech of people who own vast areas of the press, 18 also because it isn't clear anyway that freedom of 19 speech will deliver truth even in a free marketplace of 20 ideas, where there's rough equality of power. 21 I cited in the evidence I gave a book by Bernard 22 Williams called "Truth and Truthfulness", in which he 23 says: if you look at those institutions which are most 24 closely associated with trying to discover truth, like 25 courts of law and universities, what you'll find is that</p> <p style="text-align: center;">Page 12</p>

<p>1 there are very considerable restrictions on freedom of 2 speech. I don't, in my seminar, allow my students to 3 heckle one another or to shout offensive remarks at one 4 another. That's not legitimate. 5 So in fact, the pursuit of truth is something which 6 calls for restriction of free speech just as much as it 7 calls for free speech. So that argument seems to me 8 slack. 9 There's an argument in terms of autonomy, which 10 we've mentioned already, and then an argument in terms 11 of democracy, which has also been touched upon, but what 12 we need to think about here, if we're arguing or trying 13 to consider the importance of free speech, is: what is 14 free speech for? Why do people want it? I think there 15 are different answers to that, depending on whether 16 you're looking at the individual or the press, press 17 freedom as opposed to individual freedom. 18 Q. May we move into the topic now of press freedom? 19 LORD JUSTICE LEVESON: Let's just then, as you're about to 20 do that, just develop that a bit more and try and 21 distinguish between the two, if you can. 22 PROFESSOR MENDUS: I don't know if this is what Jennifer was 23 referring to, but my thought is my free speech is just 24 the speech to say what I think to the world. I just 25 announce my -- I'm not really interested, necessarily,</p> <p style="text-align: center;">Page 13</p>	<p>1 extent aren't they? 2 Can I ask, first of all, Professor Hornsby to deal 3 with that conglomeration of points. 4 PROFESSOR HORNSBY: There were a considerable number and 5 I haven't written them all down. 6 It seems to me that individual freedom of expression 7 of course accrues to journalists. I don't think freedom 8 of the press could possibly be coterminous with 9 individual free expression because I think the public 10 has an interest in the freedom of the press, which has 11 nothing to do in particular with freedom of speech, and 12 if one thinks that free speech is, as it were, 13 beneficial -- that's to say, in a democracy there's 14 a positive reason to promote it -- then it may be that 15 one needs specifically to recognise the freedom of 16 speech of the press as opposed to individuals, and it 17 may even be that the press has a duty, to use John's 18 word, to ensure that individual freedom of speech is 19 promoted. 20 Q. Professor Tasioulas, what's your take on that? 21 PROFESSOR TASIOLAS: I think there's always been a tendency 22 to think of press freedom under the rubric of individual 23 freedom of expression or communication. I think that's 24 probably a mistake. The sort of reason that Professor 25 Hornsby gave the subjects are different. In the one</p> <p style="text-align: center;">Page 15</p>
<p>1 in whether anybody's listening. But if you're talking 2 about freedom of the press, the press actually are 3 trying, at least on the surface, to communicate. 4 They're not just expressing their view. They have 5 a persuasive, informative dimension to their work too, 6 and that's very different. But maybe that's not what 7 you're thinking? 8 PROFESSOR HORNSBY: Yes. I mean, speech has an expressive 9 dimension and it can when it's in print as well as when 10 it's spoken, though it more readily is expressive, for 11 instance, of hatred when it's spoken. 12 If I could just say, I was trying to distinguish 13 speech que communicative of beliefs and perhaps 14 knowledge and this expressive function and I think when 15 one thinks, as Mill did, about free speech, one thinks 16 not of its expressive functions specifically. But 17 I have to agree that I think Mill was extraordinarily 18 optimistic in thinking free speech is conducive to truth 19 all round, but I think there's a conception of speech 20 such that the hope is that via free speech, truth will 21 be reached. But there's more to speech than that. 22 Q. Can we move to the related but distinct area of press 23 freedom. Does individual freedom of expression imply 24 press freedom? If not, why not? And if so, are the two 25 concepts coterminous? If not, why not and to what</p> <p style="text-align: center;">Page 14</p>	<p>1 case, you're talking about an individual with their 2 particular sorts of interests; in the other case, you're 3 talking about institutional structures. 4 Now, of course, it may be that the individual 5 interest in expression gets fulfilled in part from 6 certain sorts of institutional structures -- the 7 press -- and that the press should be shaped 8 accordingly, but there's a lot more going on in the 9 context of freedom of the press. Think about the 10 underlying interests. The underlying interests wouldn't 11 necessarily be interests in expression only, but they 12 would be interested in things like the way in which 13 a press can help curb abuses of power by government or 14 the role that it plays in a democracy, et cetera, 15 et cetera. 16 So it's the institutional character of the press 17 that makes it the case that you can't simply go from 18 thoughts about individual interests and expression to 19 claims about freedom of the press. It's a kind of 20 different topic, although overlapping. 21 Q. Is that your view? 22 PROFESSOR MENDUS: Yes, I would agree with that entirely, 23 and I think if we don't hold onto that distinction, then 24 there is very serious danger of endorsing in two areas 25 different items which ought to be treated differently.</p> <p style="text-align: center;">Page 16</p>

<p>1 I think that is very, very important distinction.</p> <p>2 Q. There are certain other issues which the Inquiry has</p> <p>3 touched on over it's sort of 95 days to date. Can I ask</p> <p>4 you, please, to address those? The first is the press</p> <p>5 use of the megaphone, as we've liked to describe it, the</p> <p>6 consequence of press power, that we're not talking about</p> <p>7 one voice, and to the extent to which we are, in</p> <p>8 relation to any one organ of the press, it's an</p> <p>9 extremely loud voice of our individual voices. Do you</p> <p>10 think there's any deeper analysis one could make of the</p> <p>11 megaphone point than that which we've attempted thus</p> <p>12 far? Professor Hornsby, first of all.</p> <p>13 PROFESSOR HORNSBY: It means that publications in the press</p> <p>14 are peculiarly vulnerable to promoting stereotypes,</p> <p>15 because it's -- what's heard is widely heard. If it's</p> <p>16 assumed that a member of a group is portrayed as</p> <p>17 a typical member of that group, then attitudes at large</p> <p>18 towards the group will be affected. I'm thinking</p> <p>19 specifically of what's said in some of the evidence</p> <p>20 submitted by Equality Now, Object, Eaves, which</p> <p>21 represent -- I don't read the newspapers that they</p> <p>22 analyse but represent that stereotypical views of women</p> <p>23 are portrayed in the press, and they're certainly</p> <p>24 detrimental to women.</p> <p>25 PROFESSOR MENDUS: I wonder if it's worth noting that part</p> <p style="text-align: center;">Page 17</p>	<p>1 They must reserve the right to do it themselves and if</p> <p>2 they want to be offensive, they must reserve the right</p> <p>3 to be able to be offensive too, and that's what their</p> <p>4 free speech rights are.</p> <p>5 PROFESSOR MENDUS: Yes, absolutely, and I think there are</p> <p>6 a number of things to say there. One is that in doing</p> <p>7 that they need perhaps to think about the extent to</p> <p>8 which they report upon the news and the extent to which</p> <p>9 they make it.</p> <p>10 PROFESSOR TASIOULAS: Another thing to say is that there is</p> <p>11 an asymmetry between the individual case and the case of</p> <p>12 the press. One of the reasons we tolerate the fairly</p> <p>13 broad-ranging right of individual expression is that</p> <p>14 individual's remarks are typically limited in their</p> <p>15 impact, if it's one individual making some offensive</p> <p>16 remarks. But as has already been pointed out, this</p> <p>17 megaphone effect is a kind of culture-shaping effect, so</p> <p>18 it can't be equated with the speech of an ordinary</p> <p>19 individual. It exerts much greater influence and power</p> <p>20 on people, how they're perceived by others, creating</p> <p>21 stereotypes or creating certain assumptions in society,</p> <p>22 and for that reason this institutional consideration</p> <p>23 makes it the case of greater institution power. There</p> <p>24 might be limitations on that form of expression that</p> <p>25 don't apply in the individual case.</p> <p style="text-align: center;">Page 19</p>
<p>1 of -- one of the consequences of the megaphone effect is</p> <p>2 to take up a limited amount of space and time with</p> <p>3 a certain sort of view or position. To give an example,</p> <p>4 it seems to me that the more time that is spent, let's</p> <p>5 say, presenting a stereotypical view of women, or</p> <p>6 presenting "information" about who paid for the duck</p> <p>7 house, the less space is available for discussion of</p> <p>8 wider and more important political issues. So the</p> <p>9 megaphone effect takes up space and crowds out more</p> <p>10 important -- what seem to me to be more important</p> <p>11 issues. It's not a limitless resource.</p> <p>12 LORD JUSTICE LEVESON: That begs the question what an</p> <p>13 important issue is.</p> <p>14 PROFESSOR MENDUS: I hesitated, and that's the reason,</p> <p>15 but -- I don't have the argument now, but I put it to</p> <p>16 you that questions about the euro, about Afghanistan are</p> <p>17 more important and more deserving of space in newspapers</p> <p>18 than questions about who cleaned the duck house and for</p> <p>19 what sum of money, but I absolutely take your point that</p> <p>20 there is -- that raises the question: who decides what's</p> <p>21 more important?</p> <p>22 LORD JUSTICE LEVESON: And the press are very firmly of the</p> <p>23 view that that's exactly what they do, and the fact that</p> <p>24 some people may think it's more important to discuss one</p> <p>25 thing as opposed to another is neither here nor there.</p> <p style="text-align: center;">Page 18</p>	<p>1 LORD JUSTICE LEVESON: Yes. Once you get into talking about</p> <p>2 limitations, then all sorts of press interests will talk</p> <p>3 about muzzling their freedom.</p> <p>4 PROFESSOR TASIOULAS: But anyone who believes in free speech</p> <p>5 presumably also believes that there are limits to things</p> <p>6 like: you can't defame other people.</p> <p>7 LORD JUSTICE LEVESON: Oh yes.</p> <p>8 PROFESSOR TASIOULAS: So no one is credibly going to say any</p> <p>9 restriction on freedom of expression in itself</p> <p>10 constitutes some kind of unacceptable muzzling. So the</p> <p>11 question then becomes, in a kind of piecemeal</p> <p>12 approach -- careful piecemeal approach, when you start</p> <p>13 to identify certain forms of restriction: what case can</p> <p>14 be made for them? But the mere fact that it's</p> <p>15 a restriction doesn't of itself show that it's</p> <p>16 a mistake, because we already accept the need for</p> <p>17 a series of restrictions.</p> <p>18 PROFESSOR HORNSBY: Can I make a comment on this question of</p> <p>19 importance and whether the press is focusing on that?</p> <p>20 You suggested, I think, that it was, as it were,</p> <p>21 a subjective matter. Who is to say what's important?</p> <p>22 But I think the megaphone effect does raise a question</p> <p>23 about importance, which isn't simply one that's</p> <p>24 a subjective matter.</p> <p>25 Imagine that there's some crime that we're all</p> <p style="text-align: center;">Page 20</p>

5 (Pages 17 to 20)

<p>1 concerned with which is committed once a week but it's</p> <p>2 low level, it doesn't get an enormous amount of press</p> <p>3 attention. Then one week in five years the victim is</p> <p>4 a celebrity and we all hear about it. So we're suddenly</p> <p>5 focused on concern with this person but no interest is</p> <p>6 shown in the 500 other victims, as it were. So I think</p> <p>7 that the megaphone effect can make us think about the</p> <p>8 issue of the day and forget about issues which pervade</p> <p>9 life but don't get reported.</p> <p>10 LORD JUSTICE LEVESON: There are lots of parallels or</p> <p>11 examples of that very point in the context of what I've</p> <p>12 been considering.</p> <p>13 PROFESSOR HORNSBY: Good.</p> <p>14 LORD JUSTICE LEVESON: Well, particularly in relation to</p> <p>15 interception of communications, phone hacking.</p> <p>16 PROFESSOR HORNSBY: Mm-hm.</p> <p>17 MR JAY: One can identify clear and distinct areas where</p> <p>18 restrictions are legitimate. Defamation has been</p> <p>19 mentioned. Criminal law in relation to hate crimes,</p> <p>20 that has also been mentioned. But is it a sound working</p> <p>21 presumption that unless a good justification could be</p> <p>22 advanced for imposing a restriction, the free market in</p> <p>23 terms of the freedom of the press should otherwise</p> <p>24 exist? Professor Tasioulas, first of all.</p> <p>25 PROFESSOR TASIIOULAS: I think that's, as a presumption,</p> <p style="text-align: center;">Page 21</p>	<p>1 market the way that is most likely to deliver whatever</p> <p>2 value it is that we value in the free press?</p> <p>3 So, I mean, in true philosophical fashion, I'm not</p> <p>4 answering your question; I'm moving around it. But we</p> <p>5 do need to know: why is a free press such a good thing?</p> <p>6 LORD JUSTICE LEVESON: I'm very comfortable for you to</p> <p>7 formulate the questions that you think the answers to</p> <p>8 which will assist me.</p> <p>9 PROFESSOR MENDUS: Okay, this is the question. I always</p> <p>10 tell students they mustn't do that. I always say you</p> <p>11 must answer the question, not the question you wish</p> <p>12 you'd been asked.</p> <p>13 LORD JUSTICE LEVESON: I'm very conscious, Professor, that</p> <p>14 this takes me back 40-odd years to a jurisprudential</p> <p>15 tutorial and I'm very concerned about it because I'm</p> <p>16 bothered about only getting a beta plus. So I'd better</p> <p>17 keep myself quite quiet and allow you to develop the</p> <p>18 ideas.</p> <p>19 PROFESSOR MENDUS: Okay. That's where I think difficulty</p> <p>20 where confusion arise or can arise quite dramatically:</p> <p>21 the move from the free press to the free market. These</p> <p>22 are quite different things, so we need to think what's</p> <p>23 the value of the free press, why is it important to have</p> <p>24 a free press. Then we need to ask: is the free market</p> <p>25 the best way to deliver that?</p> <p style="text-align: center;">Page 23</p>
<p>1 probably correct. I'm not sure about using the word</p> <p>2 "free market", but in general, as a way for the state to</p> <p>3 proceed, it does seem to be correct that if it's</p> <p>4 contemplating any kind of measure that restricts</p> <p>5 people's freedom, then the question is: what justifies</p> <p>6 restricting that freedom?</p> <p>7 But there is a caveat, and that is that not all</p> <p>8 forms of freedom are valuable. Some forms of freedom</p> <p>9 are valuable in the sense they generate rights; other</p> <p>10 freedoms are valuable in the sense it's just</p> <p>11 a worthwhile thing to be able to have the freedom to do</p> <p>12 something, but not every restriction of people being</p> <p>13 able to do what they want is a restriction of something</p> <p>14 that's valuable. If you think about laws against</p> <p>15 murder, you're restricting people's freedom, but the</p> <p>16 freedom to murder is in no sense valuable to anyone.</p> <p>17 Q. Professor Mendus?</p> <p>18 A. Again, there's a very great tenancy in the world to</p> <p>19 think of freedom as an unalloyed good. So once the word</p> <p>20 "freedom" comes in, we all put our hands up and vote for</p> <p>21 it. That's a mistake for reasons that have been given</p> <p>22 more than once, but beyond that, it seems to me we need</p> <p>23 to ask why we're interested in having a free press.</p> <p>24 What's the value of a free press? Having answered that</p> <p>25 question, we then need so ask ourselves: is a free</p> <p style="text-align: center;">Page 22</p>	<p>1 Now, suppose the answer is no -- and I think it is</p> <p>2 no. It doesn't follow that we should therefore abandon</p> <p>3 the free market. The free market might be important for</p> <p>4 all sorts of other reasons, but not for the instrumental</p> <p>5 reason that it delivers the aims -- the main aims and</p> <p>6 objectives of a free press.</p> <p>7 Q. Professor Hornsby?</p> <p>8 PROFESSOR HORNSBY: I think it's extraordinarily important</p> <p>9 to distinguish between the free market, in which</p> <p>10 capitalists all believe and if it's restricted it's by</p> <p>11 competition law, and a free market and ideas, and in --</p> <p>12 I agree that the free market isn't conducive to the best</p> <p>13 sort of press and that's because it would seem that in</p> <p>14 a free market the press does not participate in a free</p> <p>15 market in ideas. I think we've seen that. Financial</p> <p>16 power ensures that one sort of idea is more likely to be</p> <p>17 promoted in the newspapers people read than another sort</p> <p>18 of idea.</p> <p>19 So it does seem to me that if one's thinking of</p> <p>20 regulating how much ownership there is of one or another</p> <p>21 portion of the press, it really shouldn't be a question</p> <p>22 just of competition law.</p> <p>23 PROFESSOR TASIIOULAS: Can I make a point about the free</p> <p>24 market point and that's that it's dangerous to think of</p> <p>25 the free market as a law of the jungle situation.</p> <p style="text-align: center;">Page 24</p>

<p>1 A free market can only exist if certain fairly stringent 2 conditions are satisfied: conditions like people having 3 roughly equivalent knowledge, the enforceability of laws 4 relating to contract and property, and even more 5 broadly, probably, a certain kind of ethos or culture, 6 a certain kind of moral understanding of the people 7 engaged in these negotiations which, if it breaks down, 8 can lead to disastrous effects.</p> <p>9 So it's not as if merely talking about the free 10 market -- and I agree there might be serious issues 11 about thinking about free speech in terms of the free 12 market. Free market itself, properly understood, 13 requires a whole lot of restrictions to be in place in 14 order to function.</p> <p>15 MR JAY: The public interest in a free press -- I'm sure we 16 can all agree that there's an interest in the press as 17 a disseminator or communicator of information -- it 18 serves as a bulwark against tyranny and holds power to 19 account -- but why isn't there a public interest in the 20 free press operating as a source of entertainment for 21 two reasons: that entertainment accords a direct 22 benefit -- it makes people happy -- and secondly, an 23 indirect benefit, that the happy people will be buying 24 more of the newspaper which supplies their happiness and 25 enables that newspaper to continue to thrive, because</p> <p style="text-align: center;">Page 25</p>	<p>1 PROFESSOR MENDUS: I have nothing against entertainment, but 2 I think we need to think quite carefully here because -- 3 about the sort of entertainment we're considering, 4 because -- and it's a second danger, it seems to me, in 5 thinking about press freedom -- where the press provide, 6 on a daily basis and in a blanket form, entertainment 7 which takes the form of exposure of details of people's 8 private lives, that could have very serious implications 9 for democracy, and I think some of it has been seen here 10 in this very room.</p> <p>11 The danger, it seems to me, is if we live in 12 a society where anybody who is a public figure or 13 politician must thereby expect to have their whole 14 private life exposed to public scrutiny, you may find 15 that the wrong kinds of people are -- only the wrong 16 kinds of people will be willing to become politicians or 17 public servants.</p> <p>18 MR JAY: Or at least some of the right types of people will 19 be warded off.</p> <p>20 PROFESSOR MENDUS: Quite a lot of the right types of people 21 will feel that if the price is that the medical records 22 of their small children are to be displayed across the 23 whole country, that's too high a price.</p> <p>24 PROFESSOR TASIOLAS: I think it's hugely important to 25 emphasise that entertainment is something in the public</p> <p style="text-align: center;">Page 27</p>
<p>1 otherwise that newspaper may go to the wall? Is it 2 possible that not sufficient weight or focus is being 3 directed to this entertainment function, if I can so 4 characterise it? First of all, Professor Hornsby.</p> <p>5 PROFESSOR HORNSBY: Oh, I'm sure it's fine that the press 6 should entertain. There's a question how it should 7 entertain and whether one has concerns which ensure that 8 certain modes of entertainment have other effects than 9 entertaining. But I do the crossword every day. It's 10 entertainment. I realise you're thinking of other 11 species of entertainment, but fine. People buy a daily 12 newspaper or look online at one.</p> <p>13 LORD JUSTICE LEVESON: But is the issue then that one has to 14 be careful about whether, in entertaining, one is 15 impacting adversely upon the legitimate rights of 16 others? Whereas your crossword example wouldn't.</p> <p>17 PROFESSOR HORNSBY: Sure, sure. No, indeed, and 18 I qualified -- of course --</p> <p>19 LORD JUSTICE LEVESON: No, no, I wasn't suggesting 20 otherwise.</p> <p>21 PROFESSOR HORNSBY: Yes, that surely is the issue. Once 22 one's acknowledged that entertainment can be a function, 23 one has to take examples and see what the effects are of 24 things which purport to entertain are doing besides 25 possibly entertaining.</p> <p style="text-align: center;">Page 26</p>	<p>1 interest, that it is a collective public good. That's 2 its importance, and you identified, I think, two aspects 3 of that. One is just the intrinsic value of people 4 being entertained, but then we have to really 5 interrogate that question and say: well, you know, what 6 are the legitimate sources of entertainment? What 7 really is something that adds value to my life by 8 getting entertained by it? We would normally think that 9 people sort of taking pleasure in the humiliation of 10 others or the privacy of others being invaded is not 11 something that enhances their lives. Whether or not 12 they think it does is a different matter, but whether 13 something makes your life better is an objective 14 question; it's not down to whether you think it does.</p> <p>15 The second argument, the instrumental argument, that 16 by entertaining people you maintain a certain industry 17 and it creates jobs and wealth -- again, we think that 18 there are limitations to what you can do to generate 19 income, to generate wealth, and amongst these 20 limitations are, very minimum, that you can't generate 21 income by taking someone else's property, for example, 22 but nor can you generate income by systematic invasions 23 of someone else's privacy.</p> <p>24 So both of those points are valid, but they're 25 compatible with the restrictions.</p> <p style="text-align: center;">Page 28</p>

<p>1 Q. Is it possible to say that the public interest in a free 2 press is stronger when one's dealing with issues such as 3 bulwark against tyranny than it is when one is dealing 4 with issues such as entertainment? In other words, in 5 relation to the latter, it'll be easier to find other 6 private interests which will be violated or capable of 7 being violated, but more difficult to find those in 8 relation to our bulwark against tyranny justification? 9 Is that a useful analysis or is it hopeless?</p> <p>10 PROFESSOR MENDUS: I think it is a useful analysis. It goes 11 back to the question: why do we think it important to 12 have a free press? We think it important to have a free 13 press because a free press will, in many contexts, be 14 our, the people's, bulwark against tyranny. The press 15 will inform us of those things which government might 16 not wish us to know about, and that's very important if 17 we are to be fully informed, democratic citizens of 18 a democratic society.</p> <p>19 Of course, it doesn't follow that that's the only 20 thing that the press should do, nor does it follow, 21 actually, that if the press only did that, it would be 22 as effective a bulwark against tyranny as it is if it 23 also provides entertainment. People might buy 24 newspapers for crosswords, for Sudoku, for news about 25 what's on television and become informed about important</p> <p style="text-align: center;">Page 29</p>	<p>1 that one first, please.</p> <p>2 PROFESSOR TASIOULAS: I'm not sure that I buy into the 3 contrast that you're drawing --</p> <p>4 Q. Okay.</p> <p>5 PROFESSOR TASIOULAS: -- that's assumed there, because it 6 seems to me that the law in many ways tries to shape 7 people to have at least morally decent characters. For 8 example, through the education system, through the 9 various sorts of rules and requirements about public 10 interaction and offensive behaviour and so forth. So 11 I think one thing might be you might have laws that, in 12 effect, enforce a certain kind of behaviour, but there 13 may also be laws the rationale of which is to create 14 certain kinds of attitudes, to foster a certain kind of 15 ethos, and I think you already have that outside of the 16 press context.</p> <p>17 So it wouldn't be some sort of thought that: well, 18 this doesn't exist in the press context; should we 19 introduce this in the press context? I think this is 20 a kind of legitimate function of law, to shape people to 21 be certain kinds of decent, law-abiding individuals who 22 have the virtue of civility, we can broadly call it. 23 That's a legitimate purpose of law, one that law 24 constantly, I think, engages in with respect to 25 individuals and there could be a parallel argument about</p> <p style="text-align: center;">Page 31</p>
<p>1 government matters in the meantime. So actually the 2 provision of entertainment is itself very important as 3 part of a route to informing citizens.</p> <p>4 Q. Anything you want to add to that?</p> <p>5 PROFESSOR TASIOULAS: I think I agree with that, but the 6 question is: how do you operationalise the idea of 7 bulwark against tyranny? I mean, you could be claiming 8 to be operating as a bulwark against tyranny. I think 9 the most you can say is: well, when the press is dealing 10 with certain types of issues, there might be a greater 11 case for non-interference -- for example, political 12 issues -- than issues to do with celebrity and popular 13 culture in some ways. But it's not clear to me.</p> <p>14 Q. I move on to the concept of an ethical press and try and 15 approach it from this angle: that the law imposes 16 constraints on free speech, both as regards individual 17 and press organisations but within the law, private 18 individuals exercising freedom of expression are at 19 liberty to speak ethically or to apply no ethical code 20 to themselves whatsoever. It's a matter of personal 21 choice. So the law creates considerable space for 22 individuals to define their own morality or lack of it. 23 But should the position be the same for the press, 24 which, after all, is not an individual but a commercial 25 person? Can I ask maybe Professor Tasioulas to address</p> <p style="text-align: center;">Page 30</p>	<p>1 the particular issue of regulation of the press.</p> <p>2 LORD JUSTICE LEVESON: Is there a point here about the 3 extent to which it's noticed? If most people are merely 4 exercising their right of free speech in the pub or 5 elsewhere, that's one thing, but -- and it's not 6 noticed. Therefore nobody does anything about it and 7 one could take your education in an attempt to improve 8 the thing as a matter of generality rather than 9 specifically. But if you do it -- well, there's 10 a present case going through the Divisional Court at the 11 moment on Twitter, about the gentleman who said that he 12 would blow up an airport, or if you do it on a football 13 field, which is another very recent example, it is 14 noticed and therefore more likely to generate concern or 15 interest. Is that a fair point?</p> <p>16 PROFESSOR TASIOULAS: I think it is a fair point. That's 17 right. The impact of a certain kind of speech is 18 relevant both in the individual case and the 19 institutional case. Whether something's liable to be 20 noticed, what effects it's liable to have on other 21 people's perceptions must be very relevant.</p> <p>22 MR JAY: Professor Mendus?</p> <p>23 PROFESSOR MENDUS: The question of impact I think is also -- 24 the case you mention is not simply a matter of a wider 25 audience and impact but also of the sort of esteem in</p> <p style="text-align: center;">Page 32</p>

<p>1 which certain people are held. So if Fred in the pub 2 makes a comment, nobody will notice, but nobody probably 3 pays a lot of attention to Fred's opinions anyway. If 4 someone in a position of moral or political authority 5 makes a statement about race or about gender, it isn't 6 simply that there will be a wider audience for that but 7 also that the opinion comes with a greater degree of -- 8 with an imprimatur, or seems to, and that itself is 9 problematic. That's why positions of responsibility in 10 society are very difficult, because you have to take 11 a lot of care about what you say because people pay 12 attention to it.</p> <p>13 PROFESSOR HORNSBY: Can I just say something about your 14 question?</p> <p>15 Q. Yes.</p> <p>16 PROFESSOR HORNSBY: You wanted to know whether we would 17 distinguish between press ethics and individual ethics, 18 and when you spoke of the individual, you talked about 19 morality and people can define their own morality. It 20 does seem to me important to make a distinction between 21 morality and ethics, and in the case of the press, one 22 might ask individual journalists what their moral 23 opinions are but if one is to see the press as an 24 institution with a role in civil life, then questions of 25 its ethics and its culture aren't questions of morality</p> <p style="text-align: center;">Page 33</p>	<p>1 "responsibility". Professor Tasioulas?</p> <p>2 LORD JUSTICE LEVESON: They may be different questions, 3 duties and responsibilities.</p> <p>4 PROFESSOR TASIOLAS: Right. There are interesting 5 questions about what the difference might be, but I'm 6 happy to go with duties. Duties I take to be 7 particularly sort of compelling reasons which, if you 8 violate, either you should certainly feel guilty about 9 and others should be legitimate in blaming you or 10 sanctioning you in some way.</p> <p>11 I think that pretty much all the duties that 12 ordinary human beings have apply to the press, and then, 13 in addition to that, extra duties arising from the 14 special institutional role, in particular the power that 15 they possess. So they have extra duties to be careful 16 about images they portray of people and so forth, 17 precisely because, one, the point about it gets noticed, 18 but two, as Sue said, it has a certain kind of 19 imprimatur, because it is a certain kind of position in 20 society to be the press. It comes with a certain kind 21 of authority.</p> <p>22 So I think the idea that somehow there's this notion 23 of legal regulation and then ethical sorts of 24 considerations are somehow optional or foreign just 25 seems extra, Inc. to me. The way we should think about</p> <p style="text-align: center;">Page 35</p>
<p>1 narrowly construed.</p> <p>2 Q. Well, that's an important distinction, but can I just 3 ask you to elaborate on that? What precisely is the 4 difference between minority and ethics?</p> <p>5 PROFESSOR HORNSBY: Well, there's a view which I think in 6 this country has been held since 1960 that what people 7 do in private is up to them. That's a question of their 8 morality; it's not a question for the law. And that 9 could be true, but that doesn't mean that if 10 a consideration is ethical, it's up to an individual.</p> <p>11 So I'm suggesting that when one introduces the idea 12 of morality, one is thinking of people on their own, but 13 when one turns to questions of ethics -- and in 14 particular ethics of the press, which is an 15 institution -- one is actually just not concerned with 16 bits of individual behaviour and what someone might do 17 in private; one is concerned with questions of culture, 18 which the press surely influence.</p> <p>19 So I'm talking now not about the culture of the 20 press but the culture in which the press participates 21 and the kind of culture which it might be that organs of 22 the press promote.</p> <p>23 Q. Thank you. That's helpful. Can I ask you, please: what 24 are the ethical duties on the press, if any? If you 25 don't like the term "duty", we can substitute for it</p> <p style="text-align: center;">Page 34</p>	<p>1 the law is trying to implement a certain kind of 2 minimum, at least, of ethical standards, and we may have 3 then further reasons to implement even higher ethical 4 standards, although the law, being a blunt instrument, 5 might not necessarily be the best way of going about it 6 but might try to help to do that sort of thing.</p> <p>7 But there is this kind of squeamishness about words 8 like "morality" and "ethics" which I think we should 9 resist. Morality, as I understand it, is basically 10 about the fact that we have reasons to care about and 11 respect other people. They're quite fundamental reasons 12 that extend from reasons not to torture them to reasons 13 that help them out and assist them when they're in dire 14 need, for example. That's what morality's about.</p> <p>15 The way we should understand the law is trying to 16 give some kind of institutional force to at least some 17 of these moral requirements.</p> <p>18 Q. Professor Mendus?</p> <p>19 PROFESSOR MENDUS: It seems to me that I don't mind in this 20 context whether we use the word "duties" or the word 21 "responsibilities", but it seems that the duties or 22 responsibilities of the press follow straightforwardly 23 from the reasons that we have for wanting a free press. 24 So if one of the main reasons for wanting a free press 25 is that we be fully informed as citizens, then there are</p> <p style="text-align: center;">Page 36</p>

<p>1 responsibilities on the press to be accurate, honest, 2 open and accountable. 3 I think there are also responsibilities -- and this 4 is something on which Onora O'Neill has written very 5 eloquently -- to make declarations of their own 6 financial and other interests so that we are not left, 7 as a citizenry, under any doubt about the financial 8 interests which lie behind the reporting -- financial or 9 other interests which lie behind the reporting of any 10 particular story. 11 PROFESSOR HORNSBY: Yes, I want to mention the press' 12 special responsibility or duty in respect of 13 legislation, all of it relatively recent, which 14 enshrines a right to equal treatment. So it's 15 legislation under the broad head of anti-discrimination. 16 It seems to me that the press -- given there's such 17 legislation, the press must have a special role in 18 ensuring equal treatment, so that, for instance, it has 19 an obligation when reporting a story not to make 20 needlessly pejorative reference to a group. Where it's 21 irrelevant to the story, the fact that someone's 22 a member of a certain group shouldn't be mentioned, and 23 so on. So that's a case where I think the press has 24 a special responsibility, whereas if one is telling 25 one's mate about the story, it doesn't matter nearly so</p> <p style="text-align: center;">Page 37</p>	<p>1 than to those who are responsible only for what emanates 2 from their own mouth or their own pen? 3 PROFESSOR HORNSBY: Yes. Yes. I mean, there are so many 4 contexts in which speech is used. Professor Mendus has 5 referred to the seminar room, and there I take it that 6 an academic will ensure that no student is vilified by 7 virtue of their being a member of a group and they have 8 a responsibility so to do. But the press, I take it, in 9 general -- their words appear in print -- has a special 10 responsibility. 11 MR JAY: Can I try and pick up -- 12 PROFESSOR MENDUS: I would agree with that. I have nothing 13 to add. That seems right. 14 Q. Can I try to pick up one theme which has run through 15 this Inquiry, that's the rights to privacy and the 16 relevance of personal morality as opposed to personal 17 ethics. Some people would say that it is relevant, if 18 we have a politician, to know whether he or she is 19 indulging in personal immorality, by which I mean 20 usually adultery. Some would say it's not relevant 21 because matters of that sort, either in practice or in 22 theory, can't impinge on the way that person carry out 23 their public functions. What is the correct ethical 24 approach to that question? And perhaps as a follow-up 25 question: if there is room for two competing views, why</p> <p style="text-align: center;">Page 39</p>
<p>1 much that one should offend against the principle of 2 non-pejorative reference. 3 Q. I think it may matter, but not to the same extent in an 4 individual context? 5 PROFESSOR HORNSBY: Not matter so much, yes. 6 PROFESSOR MENDUS: And presumably in that case it reflects 7 on one's own character, so to speak, but it has very 8 little wider -- I mean, it tells me that certain people 9 aren't the kind of people I'd like to have dinner with, 10 but it has very little wider influence, whereas if we're 11 thinking about the press, then it would have a much 12 wider impact. 13 PROFESSOR HORNSBY: Yes, I'm thinking that the legislation 14 would certainly not prevent someone saying to his mate 15 something which ensured that pejorative reference was 16 made to a group, and it would -- we'd be extraordinarily 17 restricted if there was legislation which prevented 18 that. Nonetheless, when the press is reporting a story, 19 it should not make pejorative references. That's the 20 distinction I'm trying to make. And that's by verdict 21 of -- I mean, one can justify that by reference to the 22 legislation. 23 LORD JUSTICE LEVESON: So there are different rules, if 24 I can use that word with some caution, that should apply 25 to those that are responsible for publishing newspapers</p> <p style="text-align: center;">Page 38</p>	<p>1 should an ethical code differentiate between them or 2 rather judge between them? Why shouldn't it be left to 3 the individual discretion of the editor? Maybe 4 Professor Tasioulas first on that question. 5 PROFESSOR TASIOULAS: It's a difficult question. I think 6 you could come to certain questions -- we think both 7 answers are legitimate answers. You could have 8 a situation where -- when one society would say, "The 9 way we're going to understand privacy is pretty deep 10 going and it excludes people prying into things like 11 politicians having affairs." Other societies may say, 12 "But look, there are these other countervailing reasons. 13 What about someone who is a moral crusading politician, 14 who's built his reputation on certain kinds of ideas 15 about personal morality? Shouldn't we be able to expose 16 him as a hypocrite?" 17 I'm not saying this is one such case, but this might 18 be such a case where you think that the abstract right 19 to privacy doesn't actually dictate an answer, and in 20 a way we have two, in principle, eligible alternatives, 21 and what we might then do is say that but we need to 22 have something to operate on. It's not clear that we 23 want to leave this to the discretion of editors. We 24 need to have some kind of understanding of where the 25 right to privacy goes to, how far it extends, but we</p> <p style="text-align: center;">Page 40</p>

<p>1 recognise that we make that decision now in the light of 2 certain wider public interest sorts of issues, as 3 opposed to the basis on which an editor presumably might 4 be inclined make the decision, which is about issues 5 about profitability and so forth. 6 So what are the wider issues? Issues like: well, if 7 we did have -- if we didn't protect the privacy of 8 politicians in this regard, would this have a chilling 9 effect on the sort of people who go into politics, for 10 example? Would it encourage a certain kind of prurient 11 interest more generally that we want to discourage? 12 Those are the sorts of consequential effects one would 13 have to look at. But it would be premised on the 14 thought that either way -- I mean, I feel this about 15 American free speech. American free speech is often far 16 more expansive, the rights that it confers, than rights 17 in most European legal systems, but that's okay; there 18 might be legitimate reasons for having this variation. 19 Q. Professor Mendus? 20 PROFESSOR MENDUS: I used to think that personal immorality 21 mattered a lot, and now I think it doesn't matter so 22 much, or that it's dangerous to let it matter, and the 23 reasons have been alluded to already. 24 It depends in some part, I think, how much we 25 believe a person's character is of a piece, and how much</p> <p style="text-align: center;">Page 41</p>	<p>1 all, and that can't be right. So I now feel that we 2 should try to retain a distance between personal 3 morality and public duty. 4 Though there are specific cases where I think this 5 is a problematic position, and I think particularly of 6 the Clarence Thomas/Anita Hill case, where there were 7 questions about whether it was appropriate that a man 8 who apparently was a sexual harasser should hold 9 a position of great authority in which he was called 10 upon to exercise extensive judgment, and I think that is 11 a very, very tough call. 12 PROFESSOR HORNSBY: Yes, I'm inclined to think that people's 13 morality, whoever they are, whether public officials or 14 not, is a private matter and protected as private. But 15 I also think that there are things individuals can do 16 which put their right to privacy in jeopardy, so for 17 instance by ensuring that one is much exposed to the 18 press and one's life is laid open, perhaps for the 19 entertainment of others. One shouldn't then be at 20 liberty to conceal such aspects of one's life as one 21 suddenly cares to. Suddenly this is private. 22 Again -- and this connects with questions about 23 public officials -- it seems that if someone is 24 a representative because they've been voted for by the 25 electorate and they've stated certain views, then if</p> <p style="text-align: center;">Page 43</p>
<p>1 we think that the kind of job you do in the office is 2 separated from your personality more widely. In some 3 cases, it's been -- in what's called virtue ethics, the 4 thought has been that a person's character is of 5 a piece, so if a person is morally disreputable in 6 private life, then there's every chance that he or she 7 will be disreputable more widely. So the question 8 that's often put is: if this politician cheats on his 9 wife, why would we think that he's not going to cheat on 10 us, the public? 11 I used to be quite persuaded by that argument but 12 I'm not persuaded by that argument so much any more. 13 I'm not persuaded for two reasons. One is just the 14 historical evidence, which is that there are huge 15 numbers -- possibly the majority -- of very, very good 16 statesmen, politicians, who were philanderers of one 17 sort or another and they were, as a matter of fact, 18 extremely good at their job but not terribly good to 19 their partner. So there's that evidence. 20 But the second and more powerful philosophical 21 consideration is that to the extent that we start to 22 investigate the private lives of politicians or public 23 figures more generally, we may find that we are creating 24 a world in which only the most brazen and shameless are 25 prepared to go into politics at all, or public life at</p> <p style="text-align: center;">Page 42</p>	<p>1 their personal morality is contrary to those views, 2 people deserve to know, and it may be that what would 3 otherwise be a private matter then needs to be exposed. 4 So I think privacy is important even for public 5 officials, but public officials and others can put their 6 right to privacy in jeopardy. 7 LORD JUSTICE LEVESON: But simple exposure to the press may 8 not be sufficient, may it? If I take the example of 9 a famous person who is famous only because of what he or 10 she does, be it as an actor or a writer or a football 11 player, without in any sense seeking to obtain benefit 12 from image rights. Why shouldn't such a person say, 13 "Well, simply because I've made money writing a book or 14 acting in a film or playing football well should not be 15 sufficient to expose any aspect of my private life"? 16 PROFESSOR HORNSBY: Yes. I think one's private life is put 17 in jeopardy only by voluntary acts which ensure that 18 one's in the public gaze in ways that one otherwise 19 wouldn't be. People who earn large sums of money, 20 whether because they play football are not, are likely 21 to be in the public gaze, but so long as they haven't 22 voluntarily done anything which ensures that they should 23 be, they've done nothing to ensure -- 24 LORD JUSTICE LEVESON: But they have voluntarily, because 25 they've joined the football club. Do you mean they've</p> <p style="text-align: center;">Page 44</p>

<p>1 not voluntarily done something to put their private 2 lives into the public domain or do you mean rather more 3 than that? 4 PROFESSOR HORNSBY: I mean that they haven't tried to bring 5 it about, for instance, that they earn money by virtue 6 of public exposure. They haven't stated opinions 7 which -- 8 LORD JUSTICE LEVESON: But simply being of interest to the 9 public because you've made a lot of money, whatever 10 you've done, is not sufficient in your view? Am 11 I understanding it? 12 PROFESSOR HORNSBY: In my view, it's not sufficient. 13 PROFESSOR MENDUS: Personally I agree. I don't think it's 14 sufficient, but I think people who do earn a lot of 15 money and are in the public view have to recognise that 16 that is a danger. I don't think it's legitimate. 17 I very much agree. I don't think it's legitimate to 18 intrude in that way, but I think it goes with the 19 territory, as they say. 20 LORD JUSTICE LEVESON: Well, yes. The question then 21 arises -- and I don't want to take Mr Jay out of 22 order -- as to how one tries to moderate or mediate into 23 that situation and whether it's simply a question for 24 the editor or whether it is appropriate in our society 25 that somebody else should be able to say, "Hang on,</p> <p style="text-align: center;">Page 45</p>	<p>1 example of adultery would be one example. It's not the 2 law's business to concern itself with discouraging that 3 sort of behaviour, even if it is immoral. Another 4 reason is that it could just be tremendously 5 counter-productive for the law to do this because it's 6 a certain kind of blunt instrument. 7 So there's always a very complicated question. Once 8 we've identified the ethical ideals we want to affirm, 9 including the ethical duties, to what extent are any of 10 them properly pursued through law and in what way? It's 11 very, very difficult. 12 And then the further consequence of that is it's 13 never enough then to say, "Oh, well, I'm complying with 14 the law, therefore ethically I'm impeccable", because 15 the law only embodies some of these considerations and 16 there may be other very compelling reasons that apply to 17 you. That's why I think it's important to talk about 18 this notion of a culture, because a culture embodies 19 norms that go way beyond and law and beyond legal forms 20 of enforcement. There can be forms of enforcement where 21 you lose the esteem of your colleagues which in some 22 ways can be more potent than getting a slap on the wrist 23 from the law. 24 Q. Do you have a take on that? 25 PROFESSOR HORNSBY: Can I agree with that? I think it</p> <p style="text-align: center;">Page 47</p>
<p>1 I think that's a line that you've just gone beyond 2 unnecessarily." But Mr Jay, you take that in whatever 3 way you want. I don't want to jump ahead of you. That 4 turns over two pages, so don't do that. 5 MR JAY: Mm. I come back to a point that came from 6 Professor Tasioulas: the possible difference between 7 legal duties and ethical duties. I think what you were 8 hinting at or perhaps saying is that ethical duties may, 9 as it were, impose higher obligations than legal duties 10 and it's insufficient merely to concentrate, say, on 11 legal risk; one should be moving on to the issue of 12 ethical risk. Is that a useful analysis in your view? 13 PROFESSOR TASIOULAS: That's right. I think we have to 14 understand law as not a kind of self-enclosed system. 15 It's a set of norms. It's trying to achieve some 16 valuable purposes and these purposes are appropriately 17 described as ethical purposes, generally, on a suitably 18 broad understanding of what the ethical is, which is 19 the pursuit of whatever is of human value. But law's 20 a particular kind of mechanism and -- in particular, 21 enforceable law is a particular kind of mechanism and it 22 might not be at all appropriate to pursue all ethical 23 considerations through law for two main reasons. One is 24 that some of these considerations might properly fall 25 within a sphere of kind of private domain, and the</p> <p style="text-align: center;">Page 46</p>	<p>1 connects with how one thinks about a right to free 2 speech. Because it's much discussed in connection with 3 the First Amendment of the US constitution, one tends to 4 think of the right to free speech in legal terms, and 5 given recent legislation in this country, again, one 6 thinks the law is ensuring that people have had this 7 right and that it's taken away from them in certain 8 cases. 9 But I take it that one can think that a principle of 10 free speech should be in place in many contexts not 11 because there's a danger that anyone might be 12 criminalised by virtue of what they say but because 13 a principle of free speech is a correct ethical 14 principle. 15 I think when one thinks about the freedom of the 16 press, one should recognise that if we think we have 17 a right to free speech, that's not only because some 18 constitutions say that we have but because we should be 19 free to communicate with one another. That's a good 20 thing. 21 PROFESSOR MENDUS: Crucially what's underlying all of this 22 is the very clear and simple claim that rights don't 23 exhaust the realm of the morally good and bad, or, as 24 one of my colleagues used to say, there are rights but 25 the good man doesn't always stand on his rights, so</p> <p style="text-align: center;">Page 48</p>

<p>1 although you have a right to certain things, sometimes 2 it's not appropriate and not morally good to exercise 3 that right. You won't be breaking the law, but you 4 won't really be showing yourself up as a particularly 5 good person either, and that's just straightforward and 6 simple, I think. 7 LORD JUSTICE LEVESON: It becomes rather more difficult when 8 one seeks to apply it away from the individual -- 9 PROFESSOR MENDUS: It does, absolutely. 10 LORD JUSTICE LEVESON: -- to an organ such as the press. 11 PROFESSOR MENDUS: Absolutely, and it becomes more difficult 12 also, of course, if one wants to codify that, because 13 that doesn't allow a great deal of room for judgment and 14 nuance and all this kind -- that is very, very 15 problematic. 16 So the moral philosopher stays within the realm of 17 the individual in part, but political philosophy does 18 need to extend more in the direction of the law where 19 there are questions about where it's appropriate for the 20 law to intervene. Now, whether the law then -- it's 21 John Stuart Mill. Whether the law then should intervene 22 in all those cases is a different matter. 23 LORD JUSTICE LEVESON: Is this a fair analogy -- and correct 24 me if it isn't. I'll be getting myself into trouble. 25 It's not black and white. There is an enormous area of</p> <p style="text-align: center;">Page 49</p>	<p>1 LORD JUSTICE LEVESON: Or as grey. 2 PROFESSOR MENDUS: As grey. 3 PROFESSOR HORNSBY: It connects directly with the megaphone 4 effect. It would be intolerable that individual speech 5 should constantly be monitored in case they were 6 offending in any way but that's not the only reason why 7 one cares more about press speech than individual 8 speech. It's also because a million people are hearing 9 what's said in the printed words of the press, rather 10 than the two or three who might hear an individual. If 11 there was a small wrong, it's a million fold wrong in 12 the press context. 13 PROFESSOR TASIOULAS: Can I just add something? There are 14 sort of two points at which you might think the 15 institutional extra power of the press -- institutional 16 (inaudible) extra power -- creates more limited space. 17 One is in the right itself, so individuals may have 18 a right to express certain things that the press doesn't 19 precisely because of the effects of the press expressing 20 them being so much greater. 21 Then there's the second point that I think that you 22 were raising, about: even if it's within their right to 23 do certain things, they may be subject to further 24 restrictions because we want to discourage them or 25 certain further considerations we want them to be</p> <p style="text-align: center;">Page 51</p>
<p>1 grey in the middle which covers the ground where it's 2 not appropriate to stand on your rights, this point that 3 you've just made, and whereas for individuals that can 4 be left grey for all time, there is at least an argument 5 that for an institutions as significant and as 6 potentially powerful as the press, that band of grey 7 should be narrowed -- so as still to leave an area of 8 discretion, because that's also extremely important -- 9 but within a narrower bandwidth than one could allow an 10 individual? 11 PROFESSOR MENDUS: Yes. 12 LORD JUSTICE LEVESON: I may not have expressed that very 13 well. 14 PROFESSOR MENDUS: If I understand you, then I think that 15 that's right and I take it that it's part of what was -- 16 what Jen was saying earlier about the difference between 17 somebody in a private context, the individual who makes 18 a -- I don't know, a racist remark or a sexist remark, 19 and that may be left in the grey area. We don't think 20 terribly well of such people, but we aren't going to go 21 to a court of law for all sorts of reasons. It's 22 a different matter with the institution of the press, 23 where there has to be -- where there is more authority, 24 more impact. If that's what you're saying, then I would 25 agree with that, that that can't be left grey.</p> <p style="text-align: center;">Page 50</p>	<p>1 subject to because you want them to use their right in 2 a certain kind of way. 3 But I certainly think the case of the racist 4 expression -- I wouldn't think that if individuals have 5 a right to make some sort of offensive remarks in 6 a private context, you should say the press also has 7 this right but we impose extra restrictions. I think 8 the press wouldn't have that right, precisely because 9 the power of the press and the significance of its 10 speech as against the sort of private speech of 11 individuals. 12 LORD JUSTICE LEVESON: So it may be that this is merely 13 a manifestation of the consequence of the megaphone, 14 that the bandwidth should be narrower. 15 PROFESSOR TASIOULAS: Correct. 16 LORD JUSTICE LEVESON: The problem then becomes -- and again 17 I'm moving ahead, but just keeping an eye on the overall 18 goal -- how one monitors not the available bandwidth but 19 the bit of bandwidth that we've just said that goes too 20 far. 21 PROFESSOR HORNSBY: There's not just the megaphone effect 22 but the cumulative effect. 23 PROFESSOR MENDUS: Yes. 24 PROFESSOR HORNSBY: I mean, if one takes a particular piece 25 of vocabulary. Imagine that a word which now we know</p> <p style="text-align: center;">Page 52</p>

<p>1 no one uses had continued to be used and with the same 2 force, and that had been done through the press, 3 cumulatively, to all. The consequences would be 4 terrible.</p> <p>5 MR JAY: Can I go back to the privacy example and our 6 celebrity footballer or whoever -- it matters not. 7 We're referring to a discretion with a narrow bandwidth. 8 It might be said that there's room for reasonable people 9 to disagree as to where the notional mid-point of the 10 bandwidth might be, and we've heard some slight 11 disagreement as to that. But should one be setting the 12 notional centre of the bandwidth at a point which 13 favours freedom of expression or at a point which 14 favours privacy, given that I think we said before that 15 unless there's a clear justification for interfering 16 with freedom of expression, then that right, as it were, 17 to the extent to which it is a right, wins out? Do you 18 see the point?</p> <p>19 PROFESSOR TASIOULAS: I don't think I'd want to concede to 20 that particular point. So I think it might be the case 21 that you really are confronted with a situation where 22 there are just two alternative ways of specifying 23 a legal requirement or a right and that require you to 24 balance issues of privacy versus issues of freedom. 25 Now, one of the first things to say there is that</p> <p style="text-align: center;">Page 53</p>	<p>1 well, the balance goes slightly in favour of freedom of 2 expression over privacy in cases of that kind.</p> <p>3 PROFESSOR HORNSBY: I think I'm not clear what kinds of 4 cases we're thinking of as being weighed in the balance, 5 but it seems to me it would misdescribe certain cases to 6 think that it's freedom of expression that we're 7 weighing against privacy. If a journalist reports 8 a story which some individual has a right to protest 9 against by virtue of their right to privacy, then it 10 isn't the motive of the journalist to exercise their 11 right to freedom of expression. Nothing which justifies 12 a right to freedom of expression has any particular 13 bearing on their publishing this particular story.</p> <p>14 So it raises the question what the motive is of 15 publishing the story in a case where privacy would seem 16 to have been violated, and there's a question about 17 whether a right to privacy wins out.</p> <p>18 Q. I understand. I raise one final question in this way: 19 if -- but only if -- the culture, practices and ethics 20 of the press or a section of it are demonstrated to be 21 deficient, is the correct ethical response either: one, 22 to simply enforce the law better, on the basis that the 23 law should cover all aspects of comportment in this 24 domain; two, make new and more stringent laws; or three, 25 attempt to promote culture change through a range of</p> <p style="text-align: center;">Page 55</p>
<p>1 a lot of people think that the value of privacy just is 2 the value of freedom. So it's not as if you're bringing 3 in some other consideration; the idea of people being 4 autonomous individuals is under threat if they can't 5 have a domain of privacy. So it might then just be 6 a freedom versus freedom kind of debate, but even if we 7 leave that aside, I don't think there's any reason to 8 regard freedom as a kind of privileged value that in any 9 conflict has to win out. I just -- that just seems to 10 be a piece of dogma.</p> <p>11 Q. Okay. Professor Mendus?</p> <p>12 PROFESSOR MENDUS: I feel less clear about that. I'd like 13 to introduce something that we haven't specifically 14 alluded to here, and that is the importance of freedom 15 of speech/freedom of expression in a society such as 16 ours, which is multicultural and where many faiths are 17 adhered to. So -- there's a bit of disagreement here, 18 but of course there will be a lot of disagreement 19 outside about religious matters, cultural matters, 20 ethical matters, about the role of women in society, and 21 it seems to me that in a liberal democratic state which 22 is characterised by diversity and conflict, then there 23 is an argument for -- I think freedom weighs quite 24 heavily there.</p> <p>25 So I think I'd be more inclined than John is to say:</p> <p style="text-align: center;">Page 54</p>	<p>1 measures, which would include better ethical guidelines, 2 a better regulatory system and overall an endeavour to 3 enhance the culture, practice and ethics of the press? 4 Or is it none of those three things or a combination of 5 two and three? What do you think, Professor Tasioulas? 6 It may be implicit in what you've said already what the 7 answer may be.</p> <p>8 LORD JUSTICE LEVESON: Just be warned that if you choose the 9 last, I'm going to ask you how.</p> <p>10 PROFESSOR TASIOULAS: I think the initial answer is one and 11 three. Of course, you should always enforce the law. 12 If the law's not being enforced, it should be enforced, 13 and of course you should be doing things to promote the 14 culture that realises values beyond those necessarily 15 that can be in any way enforced by the law. And then 16 you visit two if you realise that doing one and three by 17 themselves aren't producing the desired effect. You 18 then can contemplate new legislation. But if it is the 19 case that the law as it exists hasn't been properly 20 enforced, then that would be the first step, and to do 21 the third thing as well. You should always be doing 22 that.</p> <p>23 LORD JUSTICE LEVESON: It's not necessarily easy to do that 24 because, for reasons which I'm sure you'll understand, 25 for the law to be enforced requires somebody to</p> <p style="text-align: center;">Page 56</p>

14 (Pages 53 to 56)

<p>1 complain, it requires the investigative tools to be 2 available, it requires the resource to be directed 3 towards it, and it would be a poor society, would it 4 not, where we said, "Well, everything's all right unless 5 the police catch you." 6 PROFESSOR TASIOULAS: No, absolutely, and that's why three 7 has a kind of priority, because the law really should 8 operate as a backstop measure where things go dreadfully 9 wrong, and ideally what you want is to have a situation 10 where people have been habituated to complying with 11 certain standards that make it the case that just in 12 virtue of their professional ethos, they won't be in 13 danger of violating the law. So one and three are 14 actually intimately related. 15 PROFESSOR MENDUS: Well, I agree that ideally the law is 16 a backstop, but I suppose one reason you're here is 17 because it's not an ideal world and the backstop hasn't 18 really been as effective as it might. 19 LORD JUSTICE LEVESON: But it may never. 20 PROFESSOR MENDUS: It may never. 21 LORD JUSTICE LEVESON: And I'm not sure that an ideal would 22 have it different because the idea that you have the 23 authorities looking over everything to pick up every 24 breach suggests a society which I'm not sure that we 25 would necessarily enjoy.</p> <p style="text-align: center;">Page 57</p>	<p>1 PROFESSOR MENDUS: Yes. 2 LORD JUSTICE LEVESON: I'd be very interested -- if I take 3 something away, removed from this -- to know to what 4 extent the law in relation to exceeding the speed limit 5 has been -- the enforcement has been changed by the 6 abandonment of those police officers with speed guns 7 that could catch you whatever you were and the creation 8 of speed cameras, where everybody can see as soon as the 9 lines appear on the road that they'd better slow down, 10 and one visibly sees brakes go on and then people speed 11 up past it. So there are real questions about law 12 enforcement and that affects people's view of speeding. 13 PROFESSOR MENDUS: Of course, of course. But insofar as the 14 question is how do we effect a culture change, it could 15 be that part of the answer to that question is 16 by changes in the law. The decriminalisation of 17 homosexuality served, over the medium to long-term, to 18 change the culture. If you ask why the culture changed, 19 the change in the law is a very significant feature 20 there. It wouldn't always be the case, but there are 21 instances that can be cited. 22 LORD JUSTICE LEVESON: So if I now move on to the question 23 that I said you'd be asked if any of you chose the 24 last -- that is the third. Do you have a view, from 25 a philosophical perspective, of the way in which one can</p> <p style="text-align: center;">Page 59</p>
<p>1 PROFESSOR MENDUS: Okay, that's the sort of Benthamite world 2 where everything is exposed to the public gaze and 3 nobody can want that. I suppose my compromise, in 4 a way, perhaps, is to go for three, but to say: well, 5 surely guidelines, codes of ethics, changes to the 6 regulatory system, these are -- it's not exactly more 7 stringent law but it is moving in that direction. It's 8 moving away from just self-regulation. 9 PROFESSOR HORNSBY: In answer to the question I think I'm 10 inclined to say "all of the above", as it were, but -- 11 well, one should have more enforcement of whatever codes 12 or laws are in place, and it does seem as though 13 a culture change is needed and that more stringency in 14 the code or more definition in the code in certain areas 15 would help that. But I'm afraid there are practical 16 questions which I just can't answer. I just don't know 17 how it could have come about that there wasn't 18 enforcement in a case where very obviously there should 19 have been, and it's not only the press as an institution 20 which I take is to be blamed for that. 21 PROFESSOR MENDUS: And the law itself is a very powerful 22 means of changing culture, or can be. Has been in the 23 past. 24 LORD JUSTICE LEVESON: Only if it is enforced or capable of 25 being enforced.</p> <p style="text-align: center;">Page 58</p>	<p>1 narrow the grey matter, as I've put it, in a way that 2 satisfies the public but doesn't harm the rights that 3 we've been talking about all morning unduly or 4 inappropriately and so preserves the right of the press 5 to be offensive, for people to be offended by what the 6 press does but their ability to hold us to account? How 7 can one best achieve that end? I appreciate I'm not 8 asking you to give me the answer to my Inquiry in the 9 back of the book, but for those who have thought about 10 it from your perspective, I'd be interested if you have 11 anything to offer on the subject. 12 PROFESSOR TASIOULAS: I don't know. I think, you know, we 13 can almost only speak as amateurs, but what I would say 14 is: in a way, it's problematic to talk about someone 15 trying to achieve this effect. The sort of culture 16 we're talking about is one for which we're all 17 responsible. It's not just legislators or people in the 18 media; it's also individuals as consumers of what's in 19 the media. It's how people talk to their children, it's 20 what they get them interested in. It's how they set 21 certain ethical boundaries in their own lives and so 22 forth. 23 So we're talking about how you create a culture 24 where people spontaneously act in accordance with 25 certain standards, and it's hugely important because,</p> <p style="text-align: center;">Page 60</p>

<p>1 you know, there is a law against murder but I would hope 2 that most people -- the reason they don't murder is not 3 because of the law but because of inculcated certain 4 standards, and you want that to be the case in other 5 areas as well.</p> <p>6 In the case of the media, there are powerful 7 countervailing forces with respect to profit-making 8 which create powerful incentives to go against and 9 undermine the sorts of values ideally we would like to 10 see this culture manifesting, and I simply have an 11 amateur-ish view, which follows the view of others, that 12 self-regulation by the media doesn't seem to be working. 13 It's been something that's been attempted over recent 14 decades and it's continuously seen to fail, and that 15 some sort of statutory basis is probably going to be 16 necessary, but what that is I would leave to experts.</p> <p>17 PROFESSOR MENDUS: I think in the most general terms, it 18 seems to me that the incentive structure has to be 19 changed so that -- at the moment, as John said, one of 20 the problems is that there are serious, serious 21 profit-making incentives for the press which act against 22 what it seems to me is the main purpose of a free press 23 from our point of view, which is to provide information. 24 So the provision of information is why you want a free 25 press but that's not the motivation that the press</p> <p style="text-align: center;">Page 61</p>	<p>1 That's -- so of course, it's their judgment whether 2 a story is published, but it also ought to be under 3 their control how information which leads to a story is 4 garnered, and they, it seems to me, have responsibility 5 for ensuring that not they alone know what codes the 6 press is governed by but also that the journalists 7 should know them and that it should be assumed that 8 there's some oversight from the editor.</p> <p>9 MR JAY: I think that was extremely helpful. Thank you very 10 much.</p> <p>11 LORD JUSTICE LEVESON: Thank you very much. I'm very 12 conscious that the three of you have put a lot into 13 writing and have come along as well. I repeat my thanks 14 to you. I'm equally conscious that this sort of 15 dialogue is not necessarily the best way to get the 16 nuanced views that you wish to express, which is why 17 we've done them in the way that we have, but we have 18 your written views.</p> <p>19 If, in the light of the discussion we've had, there 20 is anything you want to add to what you've said or 21 express differently -- the transcript will be available 22 online so you'll be able to see it, but if there is, 23 please do not hesitate in just dropping a note. That's 24 not a requirement; it's only if you want to in the light 25 of your reflective thoughts. Thank you all very much</p> <p style="text-align: center;">Page 63</p>
<p>1 necessarily has. There's motivation there to make 2 profit, which is fine, but if the making of profit is 3 something which actually cuts against, conflicts with 4 the provision of appropriate information, then there are 5 ways -- through guidelines, regulatory systems and so 6 on -- of dealing with that which are such as to change 7 the incentive structure to ensure that those vast 8 profits cannot be made in that way, so there would be 9 monitoring of those areas. But I'm really out of my 10 depth now.</p> <p>11 LORD JUSTICE LEVESON: It may be unfair.</p> <p>12 PROFESSOR MENDUS: To be honest, you're just getting my view 13 now.</p> <p>14 LORD JUSTICE LEVESON: But actually, it's not -- two of you 15 have said that, and I understand that, but you are 16 looking at the problem through a very different window 17 from the background of your experience.</p> <p>18 PROFESSOR MENDUS: Yes.</p> <p>19 LORD JUSTICE LEVESON: So nobody will hold you to task for 20 anything you say. They will all hold me to task for 21 whatever I say. I take your views precisely with the 22 caveat that you've expressed them.</p> <p>23 PROFESSOR HORNSBY: Another comment, if I'm allowed to, from 24 an amateur: it does seem to me that it's important that 25 editors should be seen as in charge, ethically speaking.</p> <p style="text-align: center;">Page 62</p>	<p>1 for coming.</p> <p>2 We'll take a break. 3 (11.41 am) 4 (A short break) 5 (11.47 am)</p> <p>6 MR JAY: The next witness is Dr Rowan Cruft, please. 7 DR ROWAN CRUFT (affirmed) 8 Questions by MR JAY</p> <p>9 MR JAY: Thank you, Dr Cruft. The starting point for your 10 evidence is the 9-page submission that you kindly 11 provided us. It's under tab 47 of the bundle.</p> <p>12 LORD JUSTICE LEVESON: Thank you very much and thank you 13 very much for the effort that you've put into preparing 14 this submission.</p> <p>15 A. Thank you.</p> <p>16 Q. You're a senior lecturer in philosophy at the University 17 of Stirling. Can you tell us first of all what your 18 main research and philosophical interests are?</p> <p>19 A. Yes. My main interests are in the nature of rights and 20 duties and the justification of rights and duties, 21 thinking about the relationship between different sorts 22 of rights and duties, so property rights or human rights 23 or contractual rights.</p> <p>24 Q. Thank you. With the first three witnesses we looked at 25 a number of concepts: the difference between freedom of</p> <p style="text-align: center;">Page 64</p>

16 (Pages 61 to 64)

1 expression and the public interest in a free press.
 2 **A. Yes.**
 3 **Q.** From your perspective, what are the equivalences between
 4 and differences in freedom of expression on the one hand
 5 and freedom of the press on the other?
 6 **A. Okay. I think, as I said in the written statement, I'm**
 7 **attracted to the view that freedom of the press is one**
 8 **very important aspect of freedom of thought and**
 9 **expression in general, and there's an important value to**
 10 **a society with freedom of thought and expression.**
 11 **I think it helps constitute a public realm to which --**
 12 **in which we all have roughly equal status, so it's**
 13 **a realm in which anyone can have their say about public**
 14 **matters. And I suppose the thought underlying this is**
 15 **if you try to imagine a society where we all have**
 16 **freedom of thought and expression but there's no free**
 17 **press -- the press is very constrained -- I think we'd**
 18 **think: well, that isn't really a society with full**
 19 **freedom of individual thought and expression.**
 20 **I can say more about this if you like?**
 21 **Q.** Yes.
 22 **A.** A related issue, I think, is if we do see freedom of the
 23 press as important -- if we think, for example, that
 24 newspapers have a right to freedom of expression, it's
 25 not going to be grounded in the same way as individual

Page 65

1 **rights to freedom of expression. So an individual right**
 2 **to freedom of expression, in my view, is justified by**
 3 **the individual's interest in being able to take part in**
 4 **the public sphere and newspaper's interests, insofar as**
 5 **they have them, or corporate entities like that, those**
 6 **don't have the same moral status; they have a derivative**
 7 **status.**
 8 **So even if -- I'm open about this -- even if the**
 9 **press does have a very important right to freedom of**
 10 **expression, you have to remember that it's justified by**
 11 **what it does for individuals by constituting a public**
 12 **sphere in which all individuals can take part.**
 13 **Q.** You mentioned earlier a relationship between rights and
 14 duties. We can debate that theoretically -- I doubt
 15 that's going to be helpful, though. Do you see the
 16 press having any ethical duties in their public role and
 17 if so, why and what?
 18 **A. Yes, I certainly do. I think before I go on to talk**
 19 **about that, I'd like to add that even though they have**
 20 **ethical duties, it doesn't follow that regulation must**
 21 **enforce those duties. It might do in some cases, it**
 22 **might not. But I think we need to remember that in**
 23 **a liberal society -- one of the things that makes us**
 24 **a liberal society is the view that ethical duties don't**
 25 **always have to be enforced. So I have a duty not to**

Page 66

1 **cheat on my partner, not to lie to my friends.**
 2 **A liberal society doesn't enforce those duties through**
 3 **law or in other ways.**
 4 **I think some of the ethical duties of the press**
 5 **might be like this and others might not be, but the bare**
 6 **fact that they have ethical duties to readers, to**
 7 **subjects of stories and to a range of other actors, it**
 8 **doesn't immediately follow that regulation is**
 9 **appropriate, though I think some regulation is.**
 10 **Q.** How do we differentiate between --
 11 **A. Indeed.**
 12 **Q.** -- the circumstances? I owe an ethical duty not to lie
 13 to my friend, but the press may owe an ethical duty to
 14 propound accurate stories.
 15 **A. Yes.**
 16 **Q.** It owes a duty to its readers not to be inaccurate.
 17 **A. Yes.**
 18 **Q.** If there's a duty to the readers not to be inaccurate,
 19 that may or may not carry with it a duty in the state,
 20 through a regulator, to ensure that accuracy is
 21 maintained and inaccuracy is stamped out. How does one
 22 go about --
 23 LORD JUSTICE LEVESON: Or put it another way, how are you
 24 going to draw the line?
 25 **A. Indeed.**

Page 67

1 LORD JUSTICE LEVESON: You've created the line; now how are
 2 you going to draw it?
 3 **A. Indeed. I think it's very hard to draw, I'm afraid.**
 4 **I think there are some things -- which is perhaps why**
 5 **we're here. There are some things I can say about this.**
 6 **One is that the distinction between the public and the**
 7 **private might be one useful way to draw it, and I think**
 8 **I said in my written submission that I think there's**
 9 **room for a lot more work, philosophical work, on when**
 10 **something's an appropriately public matter and when it's**
 11 **a private matter. But I have quite clear intuitions**
 12 **about some cases. I don't know quite what line**
 13 **underlies them but here's an example.**
 14 **Say interest in the health of a politician's child.**
 15 **In many contexts, I think that might be considered**
 16 **a private matter that shouldn't be a matter for --**
 17 **shouldn't enter the public sphere. Perhaps not in every**
 18 **context, but in many contexts it should be. Contexts**
 19 **where it could enter the public sphere might be cases**
 20 **where revealing this health issue would reveal hypocrisy**
 21 **on the part of a politician or is relevant to particular**
 22 **policies a politician is pursuing, but perhaps**
 23 **unhelpfully for you, I think it's rather hard to draw**
 24 **a clear line.**
 25 LORD JUSTICE LEVESON: Yes.

Page 68

<p>1 MR JAY: It may be hard to do so, but what are the 2 principles which might draw one to finding where the 3 line is? Carry on with the example you've given or 4 choose a different example, if you're more comfortable 5 with that.</p> <p>6 A. Let me think. I think in terms of principle, I think 7 the three things I mentioned towards the start of the 8 written submission seem to me the -- well, helpful 9 guiding principles, even though I don't think they draw 10 us a very definite line.</p> <p>11 So one in idea is that a liberal public sphere, 12 one in which every member -- everyone in the community 13 can take a part is just a very good thing in itself. 14 It's useful partly for the results it creates but it's 15 also a good in itself that we all have the status of 16 being able to take part in the liberal public sphere and 17 it seems the press plays a role in that. People who are 18 insufficiently articulate or insufficiently confident to 19 take place in the public speech, the press can give them 20 a voice. But there are also some very well-known 21 instrumental benefits of the press. So it's a very 22 important check on political power and other forms of 23 power. It's an importance also of education and an 24 important means of enabling democratic decision-making.</p> <p>25 I suppose I think these principles give us some --</p> <p style="text-align: center;">Page 69</p>	<p>1 could have lay juries or you could have lay judges or 2 magistrates or other ways of doing of doing it, and 3 I think it's very difficult to determine -- a lot will 4 depend on the context and the history and what we 5 consider most symbolically important in our society to 6 work out which way of doing it is most important and is 7 going to work best.</p> <p>8 Q. Thank you. The public interest in a free press, it is 9 clear, in your view, should be balanced or limited by 10 other rights and other interests.</p> <p>11 A. Yes.</p> <p>12 Q. But what is the algorithm for doing that?</p> <p>13 A. There is none, I'm afraid. That's -- I think, in a way, 14 that's the point I was trying to make a minute ago. 15 There isn't algorithm for getting from principles to 16 particular institutions.</p> <p>17 I think something we could bear in mind is the 18 particular symbolic importance of particular principles 19 that we already have. So take the principle that 20 journalists shouldn't be compelled to reveal their 21 sources. I'm tentative for the reason I mentioned 22 before, but speaking tentatively, it seems to me that we 23 might think: well, in the UK, this is a principle that 24 we all think of as very central to our liberal society 25 and perhaps if we lived in a different society, we</p> <p style="text-align: center;">Page 71</p>
<p>1 they point towards some policies. They point towards 2 having a diverse press and they also point towards, 3 I think, not having too much of a limit on press 4 freedom.</p> <p>5 I'm wary of saying more, I have to say. Can I say 6 more about why I'm being tentative? I'd quite like to.</p> <p>7 Q. Yes.</p> <p>8 A. It's partly just personal -- my own research is on the 9 philosophical foundations of the principles not the 10 institutions, but I think there is also an interesting 11 philosophical point here, which is that I think the 12 route from a foundational principle to a particular 13 institutional way of realising that principle is not at 14 all direct. I think there will be different ways of 15 realising different underlying principles and a lot will 16 depend on the context.</p> <p>17 An example from a different area might be something 18 like lay participation in criminal trials. So 19 I think -- and here I've been influence by my colleague 20 Anthony Duff's work, and his view is that the criminal 21 trials should be seen as a situation where you hold the 22 defendant answerable to the public at large. I like 23 that view of a trial, and then the thought is: how do we 24 make the institutions of trial represent the public at 25 large? And there are various ways of doing it. You</p> <p style="text-align: center;">Page 70</p>	<p>1 should be more willing to limit that principle than we 2 should in the UK because of its historic importance. So 3 that might be one of the contextual factors that would 4 make a difference to where and how we decide to 5 implement the underlying principles.</p> <p>6 Q. May I take that one example?</p> <p>7 A. Sure.</p> <p>8 Q. Under clause 14 of the existing Editors' Code practice, 9 it says:</p> <p>10 "Journalists have a moral obligation to protect 11 confidential sources of information."</p> <p>12 A. Yes.</p> <p>13 Q. Is that helpful language without more? By reference to 14 a moral obligation, is that an absolute moral 15 obligation? Is it a qualified moral obligation? How 16 would we begin to analyse that?</p> <p>17 A. That's a good question. I think -- two things strike me 18 about it immediately. One is that if it's a moral 19 obligation, as I said earlier, it doesn't follow that 20 it's therefore a legal obligation, or even that it 21 should be a legal obligation, although for the reasons I 22 was saying about the symbolic important of that 23 particular provision, I think maybe it should be.</p> <p>24 LORD JUSTICE LEVESON: Well, there are exceptions.</p> <p>25 A. Yes, of course. Of course, sorry. That was the second</p> <p style="text-align: center;">Page 72</p>

<p>1 thing that I was going to say, which is that saying 2 something is a moral obligation and that it should be 3 restricted in law doesn't imply it's exceptionless, and 4 I think there are very, very few moral obligations that 5 are exceptionless. Possibly the obligation not to 6 torture. Very few indeed, actually, though the cases 7 for exceptions will depend on the importance of the 8 particular obligation.</p> <p>9 And I think it's also important to really that if 10 you do see in as an exception case where a violation of 11 an obligation is justified -- if you see it as genuinely 12 like that, rather than a case where the obligation has 13 just vanished, then you're still going to need to 14 redress an explanation and things like this to the 15 person whose obligation you're violating.</p> <p>16 MR JAY: Couched in those terms, the moral obligation to 17 protect confidential sources, one may be forgiven for 18 thinking: well, that is an absolute obligation. Maybe 19 not? It's not made expressly subject to any other 20 competing rights, privileges or --</p> <p>21 A. No, that's right.</p> <p>22 LORD JUSTICE LEVESON: But as a matter of law, there are 23 circumstances in which the law will require a journalist 24 to reveal a source. The journalist then, of course, 25 always has a choice: either to reveal the source in</p> <p style="text-align: center;">Page 73</p>	<p>1 enforcing, at least encouraging compliance on the other.</p> <p>2 A. Yes.</p> <p>3 LORD JUSTICE LEVESON: But can you assist me in relation to 4 the issues that are likely to have to be considered when 5 making that journey, and also as to the type of 6 structure that is best placed to making the appropriate 7 balance, having regard to all those considerations?</p> <p>8 A. Yes. Yes. I can say a little. I have to confess 9 I don't know if it will assist you very much, I'm 10 afraid, but I can say a little.</p> <p>11 LORD JUSTICE LEVESON: Don't worry about that. It's not 12 stopped anyone else in the last nine months.</p> <p>13 A. The little I can say is that my own view is that because 14 of the importance of a free press and the cultural 15 importance of thinking we live in a nation with a free 16 press, moving too quickly to something that looks like 17 legal enforcement of these duties would be worrying, and 18 it seems to me that -- I've seen some of the proposals 19 around, so things like have self-regulation with 20 a statutory backstop. I've seen some of these 21 proposals. I mean, I think things like that could 22 strike the right balance and to do so -- I think the 23 thing I'd want to stress would be the importance of 24 making it clear that this kind of regulation involves 25 answerability to the public. It seems to me that's</p> <p style="text-align: center;">Page 75</p>
<p>1 accordance with the law or not to, but then face the 2 consequences of failing to comply with the order of the 3 court.</p> <p>4 A. Yes. There might sometimes be cases where the morally 5 appropriate thing to do is not to reveal and then to be 6 punished for it. I think that could be right sometimes 7 but not always. I suspect with that one, it will depend 8 on the powerful interests at stake. The kind of 9 examples philosophers tend to get drawn into are things 10 like: suppose the existence of an entire city is at 11 stake and it's going to be destroyed. I'm wary of being 12 drawn into those kind of examples. I think they can 13 mislead us.</p> <p>14 LORD JUSTICE LEVESON: That's the torture example.</p> <p>15 A. Indeed. I think they can be misleading and can be 16 misused and people can too readily think: well, we're in 17 one of these extreme circumstances so let's not worry 18 about violating the right. I think we have to be very, 19 very careful about thinking of those sorts of cases.</p> <p>20 LORD JUSTICE LEVESON: You said a few moments ago that the 21 link is not direct.</p> <p>22 A. Yes.</p> <p>23 LORD JUSTICE LEVESON: I understand that, because there is 24 no direct correlation between the right or duty on the 25 one hand and the potential mechanism for if not</p> <p style="text-align: center;">Page 74</p>	<p>1 perhaps the thing that struck me as following most 2 directly from the principles I outlined, that the press 3 plays this very important role in constituting a public 4 sphere and because of that, it should be answerable to 5 the public for that role.</p> <p>6 So if you're going for something like the statutory 7 backstop to self-regulation idea --</p> <p>8 LORD JUSTICE LEVESON: Or underpinning, rather than --</p> <p>9 A. Sorry, yes.</p> <p>10 LORD JUSTICE LEVESON: If that's what you meant.</p> <p>11 A. Yes. I assume it is. I think you need to make it clear 12 that it's answerability here to the public. So in my 13 view, that involves lay involvement at some level, 14 either in the body that assesses self-regulatory 15 mechanisms or somewhere else.</p> <p>16 LORD JUSTICE LEVESON: Or it may be inimical to the concept 17 of the word "self", that it is actually to be by the 18 public.</p> <p>19 A. Yes. Though I suppose -- something I'd add is it 20 shouldn't only be by the public. I would be suspicious 21 of something that was too adversarial, in the sense that 22 you have the regulators by the public and then you have 23 the press and the two were separate. I think one of the 24 problems with that model is it can lead the press to 25 think: "Well, they set the moral limits, that is a sort</p> <p style="text-align: center;">Page 76</p>

<p>1 of separate issue for them, and we'll just live within 2 them." I think part of what we want to do is to 3 encourage the press to see their ethical moral duties as 4 part of their own professional conduct, and I know most 5 members of the press do; I'm not saying they don't. 6 LORD JUSTICE LEVESON: No, no, it's much more important than 7 that. You couldn't just have the public, not least 8 because of the risk that the press would say, "Well, 9 that's what these individuals think. We don't agree and 10 we're just going to ignore it." 11 A. No, indeed, indeed. I just wanted to stress I think it 12 needs to involve both parties. It needs to involve 13 people from inside the press as well as from the public, 14 but it needs to be visibly answerable to the public. 15 LORD JUSTICE LEVESON: And independent, in the sense that 16 people should not -- or do you think it doesn't matter 17 whether, as it were -- the phrase that's been used in 18 the Inquiry -- they're marking their own homework? 19 A. Yes, I think that would be -- that would be problematic. 20 On the other hand, I think you'd want -- my sense is you 21 want at least some of them in there to stop it seeming 22 too adversarial, but you also want the public in there 23 and you want it to be visibly independent of government 24 and the state as well. 25 LORD JUSTICE LEVESON: I agree with that. Page 77</p>	<p>1 the same thought that I don't think you can take the 2 philosophical principles and crank a handle and get out 3 a policy proposal from it. I think a lot depends on the 4 particular symbolic importance of thinking we live in 5 a free society and I think we have to bear that in mind. 6 The second qualifier is that you might think some of 7 these requirements are things we do place on publicly 8 funded bodies but the press aren't publicly funded, 9 they're privately funded, and I won't want to suggest 10 nationalisation of the press. So I think there's an 11 interesting tension there, actually, between their 12 status as private and as public and that has to be borne 13 in mind when looking at these proposals. 14 Q. Their status as private bodies does not, of course, mean 15 that they should be free from all regulation. 16 A. Of course not. 17 Q. It's a question of balance. It might be said that if 18 the press acts in the public interest and in that sense 19 it's a public body, one of the principles which should 20 therefore apply to it is the principle of 21 accountability, and from that you can derive the 22 specific subprinciples which we can see in the second 23 paragraph on page 5. Is that a fair analysis? 24 A. That is a fair analysis, but there's a "but", I'm 25 afraid, as well. It's a fair analysis but I don't think Page 79</p>
<p>1 MR JAY: In terms of the sort of principles which would 2 underlie a system of press regulation, you describe 3 these on page 5 of your report, our page 00882. 4 A. Okay. 5 Q. The second paragraph. 6 A. Yes. 7 Q. "Matters such as requiring media to accompany stories 8 with details of payments made to or received from 9 members of the public in return for publishing the story 10 ... requiring editors' and proprietors' political and 11 financial interests to be registered publicly ..." 12 Those sound like arguably very sensible, pragmatic 13 solutions but what's the philosophical underpinning for 14 those solutions? 15 A. I think the philosophical underpinning is the thought 16 that the press is one of the main determinants of the 17 formal structure of the public sphere, the sphere in 18 which we all can have our say about how we live 19 together, and in this way it's not that unlike 20 government. So the thought is: the kind of things we 21 require other public bodies to fulfil, maybe we should 22 think about extending them to the press. 23 But I'd like to add two qualifiers, if I may. 24 Q. Certainly. 25 A. One is simply the same qualifier about tentativeness, Page 78</p>	<p>1 we can draw these lines very sharply, so I think there 2 will be private businesses that don't have as overtly 3 a public role as the press where we might also think 4 they play a sort of public role. You might think large 5 supermarkets are like this, just because they make 6 a very big difference to the kind of public sphere we 7 occupy, and I don't think they need to be subject to 8 exactly the same public requirements as the government. 9 I think's more of a sort of continuum, I would want 10 to suggest, than a sharp line where you say, "These are 11 public bodies and these aren't", and the press falls 12 sort of near that line and it is a public body but -- 13 yeah. 14 Q. Another pragmatic idea -- you advance this in the third 15 paragraph, halfway along: 16 "One possible change to support greater respect for 17 current law would be to increase the legal 18 responsibilities of proprietors, editors and directors 19 for the actions of their employees ..." 20 That would have knock-on advantages, but what's the 21 philosophical principle underlying that? 22 A. This is one of those cases where it seemed pretty clear 23 to me that there are ethical duties here that aren't 24 being respected. Whether we should use law to enforce 25 them -- here I'm suggesting we do -- again, I think we Page 80</p>

20 (Pages 77 to 80)

<p>1 need to be tentative. But the thought was that there 2 seems to be -- one of the cultural difficulties at the 3 moment is the sense that directors and managers are not 4 very willing to identify with the thing they direct or 5 manage and that this might be one way of increasing that 6 identification so that you feel genuine shame if your 7 body -- by "your body", I mean your corporate entity for 8 which you manage -- if that does something wrong, even 9 if it wasn't your fault in an individual sense. 10 So that's the purpose of the suggestion, and I would 11 want to add to it that idea that it's one of those cases 12 where we have a clear ethical duty. Should we have 13 a legal duty here? Perhaps; perhaps not. I think we 14 have to think about the knock-on effects of it and 15 that's something where someone with legal expertise to 16 follow that through should come in. 17 Q. May we turn to another important area, such as a code of 18 conduct. 19 A. I was thinking -- sorry, just one more point on that, 20 that last thing, which just occurred to me. I'm not 21 sure this is actually so relevant to you, but I think 22 it's worth mentioning, is I think the level of pay for 23 directors is relevant to this too. I think if you think 24 of people in charge of large organisations as people who 25 you have to recruit through a huge amount of pay, then</p> <p style="text-align: center;">Page 81</p>	<p>1 constraining power and enabling democratic 2 decision-making. 3 Then in the second paragraph, I talk about media 4 organisations being answerable to a public body because 5 of their role in shaping the public sphere and I suggest 6 that we shouldn't take this as a very demanding role. 7 We're not saying the press' sole role is to enable 8 democratic decision-making, is to hold the government to 9 account. I think that would be much too demanding and 10 it overlooks that first thing I said, which is that the 11 press just creates a public sphere, it's part of the 12 creation of that, and we want it to be a free public 13 sphere, so we don't want to say the press has to do X 14 and has to do Y, but nonetheless we want to make sure it 15 doesn't undermine or distort the instrumental ends that 16 it could achieve, such as holding government to account 17 or enabling democratic decision-making. 18 So the idea here is that we shouldn't censor -- 19 censure the press -- hold them to account or criticise 20 them for failing to promote democracy but if they 21 distort or pervert democratic decision-making then we 22 could rightly, I think, hold them to account for that 23 because of their very important role in enabling such 24 decision-making. 25 LORD JUSTICE LEVESON: You then have to define what you mean</p> <p style="text-align: center;">Page 83</p>
<p>1 you're not recruiting them for the intrinsic good of 2 being part of this organisation and doing it for its own 3 sake, and so I think there's a sort of tension in 4 society, evidenced both by that and by the need to give 5 directors more legal responsibility for what they do. 6 LORD JUSTICE LEVESON: I'd be very grateful if you didn't 7 draw me into the topic of directors' pay. 8 A. That's why I thought it may not be the relevant thing 9 here. 10 MR JAY: Okay. Code of conduct. You deal with this in the 11 general context, as it were, under question 8 and then 12 more specifically in relation to the current code -- 13 A. Yes. 14 Q. -- in section 9, but we're going to dwell a bit on 15 section 9 or question 9. Could I ask you, please, 16 though -- question 8, your page 7, our page 00884 -- 17 A. Yes certainly. 18 Q. -- to develop the point that you're making there, 19 please? 20 A. Okay. There were two paragraphs to question 8 and the 21 first paragraph just restates what I see as the 22 fundamental principles underlying the importance of 23 freedom of the press. So on the one hand the press' 24 role in constituting a public sphere in which we can 25 take part as equals; on the other hand, importance of</p> <p style="text-align: center;">Page 82</p>	<p>1 by "distort" and "pervert", which actually carries with 2 it an enormous value judgment. 3 A. Indeed. No, indeed, indeed. As a philosopher, I'm 4 tempted just to say "indeed" and duck the difficult 5 issue and leave that respectfully for you, but I don't 6 know, and I think -- let me think. I suppose the idea 7 I had in mind by "promoting" would be things like 8 a press that took it on itself to explicitly outline the 9 different parties' policies and to help readers work out 10 which one they would go for, and I certainly don't think 11 we need to see the press as doing that. 12 Distorting or perverting? I suppose lying about 13 a central party policy might be one sort of case like 14 that. Central political party policy. Misleading the 15 public about a crime committed by a central politician 16 might be another case. But these would have to be cases 17 of sort of knowingly misleading. I'm not saying if you 18 suspect this that you should be criticised for following 19 up your suspicions but that sort of thing. 20 MR JAY: The code of practice as currently constituted makes 21 it clear that the press must take care not to publish 22 inaccurate, misleading or distorted information. 23 A. Yes, yes. 24 Q. I think we can agree about that. But then the press is 25 free to be partisan.</p> <p style="text-align: center;">Page 84</p>

1 **A. Yes.**
 2 Q. So being partisan might, according to some, be liable to
 3 distort or pervert the democratic process. But the
 4 press is nonetheless free to do that. Do you see
 5 a difficulty there?
 6 **A. Yes, yes, yes, yes, yes, I do. I think this relates to**
 7 **the point I mentioned about the diversity of the press.**
 8 **If the press is going to play this role of giving**
 9 **a voice to people in the public sphere, then it's**
 10 **important it can represent the diversity in the public**
 11 **sphere.**
 12 **It's not clear -- well, it's clear to me that that**
 13 **shouldn't require that every newspaper has to cover the**
 14 **broad range of party political opinions or anything like**
 15 **that, but you might think it does support making sure**
 16 **that there's not a monopoly of opinion, that all the**
 17 **press speak with one voice.**
 18 Q. So one would need other levers aside from the code to
 19 ensure a plural press?
 20 **A. I think so. I think so. That was my sense, looking at**
 21 **the code, that it's not there to create a diverse press.**
 22 **That's for someone else -- some other aspect of**
 23 **(inaudible).**
 24 Q. You look at a number of specific points on the code
 25 under which 9.

Page 85

1 **A. Mm-hm.**
 2 Q. This is on your page 8, our page 00885. You say:
 3 "First of all, the code could do more to require
 4 proprietors, editors and journalist to declare their
 5 financial and also their political interests and to
 6 declare these to readers as well as editors."
 7 I don't think the code does anything to require
 8 proprietors, editors and journalist to do that.
 9 **A. That's right.**
 10 Q. Is there not, in this context though, a significant
 11 difference between financial interests -- and here we
 12 mean the financial interests of the proprietors -- and
 13 the political interests? Because if we were to require
 14 proprietors to declare their political interests,
 15 wouldn't we be interfering with their freedom to be
 16 partisan?
 17 **A. Mm. I think by declaring political interests, what**
 18 **I had in mind was something like a declaration that this**
 19 **newspaper is going to support this party, if it is, and**
 20 **these sorts of things. I mean, newspapers often do that**
 21 **anyway, but -- but that was the sort of thing -- I'm not**
 22 **sure whether there's a sharp distinction here between**
 23 **financial and political interests. I certainly felt the**
 24 **code could do a lot more to require declarations of**
 25 **financial interests. I was quite surprised that section**

Page 86

1 **13(2) only required journalists to declare financial**
 2 **interests to their editors and not even to readers, if**
 3 **you're -- I think there's something there which says**
 4 **that.**
 5 Q. Mm.
 6 **A. That seems really insufficient.**
 7 Q. That's where they're writing about shares or securities
 8 and whose performance they know.
 9 **A. Yes.**
 10 Q. So it's the specific context of financial journalism.
 11 **A. No, indeed. That's specifically financial journalism.**
 12 **That just struck me -- for political interests -- yes,**
 13 **I'm not sure. I think it depends whether a requirement**
 14 **could be found that was workable without being too**
 15 **restrictive, and you're right, we certainly wouldn't**
 16 **want to require -- we wouldn't want to limit the press**
 17 **so that it couldn't be partisan so long as we have**
 18 **a sufficiently diverse press, I think.**
 19 Q. One important point you make in the third paragraph, you
 20 say:
 21 "Although several aspects of the code cover duties
 22 owed to readers, the idea that ethical behaviour by the
 23 press involves treating readers respectfully could be
 24 made nor explicit."
 25 The first point I suppose one could ask you about is

Page 87

1 why the concept of respect is so important?
 2 **A. Yes.**
 3 Q. And secondly, why limit it to readers? Why not anybody
 4 who might be adversely affected by the lack of respect?
 5 **A. Yes. I don't think it should be limited to readers,**
 6 **actually. I think it was -- I was thinking about**
 7 **readers in that paragraph of the submission and I was**
 8 **thinking about section 1, which is the point I think**
 9 **where they talk about respect for the truth, and it**
 10 **seemed to me that could be thought of as respect partly**
 11 **for readers.**
 12 **But why respect? That's a good question. My sense**
 13 **is that that is the concept that -- that that is the**
 14 **fundamental moral concept here that goes along with**
 15 **duties. You respect people -- when you respect people,**
 16 **you're doing your duty to them. I wanted to use that**
 17 **concept partly for reasons I think I mentioned earlier**
 18 **in the written submission and partly because I think**
 19 **that's interestingly distinct, though related, from the**
 20 **concept of harm. I think sometimes you can harm people**
 21 **while respecting people. Sometimes respecting people**
 22 **requires you to harm them. You have to tell them**
 23 **unpleasant truths, these sorts of things.**
 24 **So I wanted to make it clear that the duties we're**
 25 **thinking about -- ethical duties of newspapers -- is not**

Page 88

<p>1 that whenever they're harming someone, there's a duty 2 that's been violated and that when you have people whose 3 interests or wellbeing are going to be interestingly in 4 conflict, you have a conflict, therefore, of duties. 5 Sometimes you can respect someone and that still 6 involves harming them. 7 LORD JUSTICE LEVESON: Yes, but there has to be 8 a countervailing benefit, if it is true respect. So if 9 I take your example of the bad news: a doctor tells 10 a patient that he or she is suffering from a serious 11 illness. Well, there's a corresponding right in the 12 patient to know -- 13 A. Indeed, yes. 14 LORD JUSTICE LEVESON: -- about their health. 15 A. Yes, that's right. No, that is right, and I think 16 that's definitely -- I believe that, but I think we then 17 need to notice that the benefit we're talking about here 18 might not be benefit in any obvious sense of wellbeing 19 or happiness. So I might benefit by learning I only 20 have nine months to live, but even if that makes me much 21 more miserable, even if I would have had a happier final 22 nine months by not knowing it, I still think I benefit, 23 but I think it's a rather morally loaded conception of 24 benefit there. It is not necessarily -- 25 LORD JUSTICE LEVESON: Well, it's one of the things that has Page 89</p>	<p>1 to focus on include the kind you're drawing attention 2 to, where it's a benefit of knowing the truth about 3 something, even if that actually makes my life get worse 4 in the sense of my subjective feelings. 5 I just wanted to draw attention to that partly in 6 order to stress that I think sometimes where it looks 7 like there's a tension between respect for readers and 8 respect for subjects of stories that's not necessarily 9 true. Have I got time to just say a moment about that? 10 MR JAY: Mm. 11 A. So I think I had in mind the following thoughts. 12 Suppose that most of us are interested in some grubby 13 detail of some politician's private life. In some 14 sense, you might think that's therefore a matter of 15 public interest but I think that would be wrong. You 16 might also think that what we have to do here is, on the 17 one hand, balance respect for the politician's privacy 18 with respect for what everyone -- everyone wanting to 19 know it. And I just wanted to try and make clear that 20 I think the bare fact we want to know it, it doesn't 21 mean it's really in our interests or going to benefit 22 us. I think if we thought about it in a quiet moment -- 23 do we want to be the kind of people who know this grubby 24 detail? Sometimes we do. Sometimes it's relevant and 25 necessary to their ability to pursue their duties, but Page 91</p>
<p>1 gone through the ethical considerations of doctors, 2 whereas years and years ago the medical view was 3 different -- 4 A. Yes, yes. 5 LORD JUSTICE LEVESON: -- as to what should be explained. 6 A. Yes. 7 LORD JUSTICE LEVESON: The whole concept of informed consent 8 has developed -- 9 A. Yes, yes, yes. 10 LORD JUSTICE LEVESON: -- over recent years and indeed got 11 legal ramifications associated with it. 12 A. Yes, yes. 13 LORD JUSTICE LEVESON: But there has to be something on the 14 other side. If there's nothing on the other side -- 15 A. Yes. 16 LORD JUSTICE LEVESON: -- then there is no counterbalance. 17 A. Yes, no, no, I completely agree, I completely agree. 18 I think the reason I'm stressing this is out of 19 an attempt to avoid the kind of muddled thinking which 20 I -- where I think you think: "This is going to make 21 this person happier so I have a duty to do it, or this 22 is going to make this person have a life that is worse 23 in simply subjective terms of how it feels, and 24 therefore it counts as something I have a duty not to 25 do." It seems to me that the kind of benefits we want Page 90</p>	<p>1 if it's simply knowing it for its own sake as a matter 2 of nosiness, I'm not sure we would all think we really 3 want that and therefore I'm not sure it's really in our 4 interests and therefore I'm not sure it's really 5 a matter of balancing the readers' interests against the 6 politician's interests. The reader doesn't really have 7 an interest. 8 That's not to say the press shouldn't be allowed to 9 publish that. They probably should in a liberal 10 society. I think it depends on the case. But I don't 11 think it has to be seen as a matter of conflicting 12 interests. 13 MR JAY: Thank you. You made some observations about the 14 public interest exception in the code. 15 A. Yes, yes. 16 Q. A couple of points. We can see from the code that -- 17 and this is dealing with the asterisk -- main 18 provisions in the code -- 19 A. Yes. 20 Q. -- where the exceptions are to the clauses which are 21 asterisked, but there's said to a public interest in 22 freedom of expression itself. 23 A. Yes. 24 Q. What's your view about that consideration, apart from 25 its apparently tautologous or circular nature? Page 92</p>

<p>1 A. Yes, I think it's true and maybe that's because it 2 doesn't tell us much. I had a worry about it, which was 3 the fact that freedom of expression is in the public 4 interest -- and it clearly is -- it doesn't follow that 5 every instance of expression is in the public interest, 6 as I'm sure you're all aware. 7 I should be clear -- there clearly are cases where 8 expression should be limited, cases such as incitement 9 to violence or slander or bad advertising, misleading 10 advertising might be another, and so I thought it 11 perhaps didn't really add very much to say there's 12 a public interest in freedom of expression in itself and 13 would be misleading if it was taken to suggest that that 14 sort of licences every expression. 15 Q. Can I ask you to explain the point you're making in the 16 penultimate paragraph about distinction in degrees of 17 normativity? 18 A. Yeah. This was just from my own reading of the code. 19 It looked as if there were only two degrees of 20 normativity in the code. Either you had a star and 21 exceptions could be made on public interest grounds for 22 exceptional cases where you can violate the code's 23 requirements or it didn't have a star and no exceptions 24 could be made. 25 I thought if you ignore all the detail and just</p> <p style="text-align: center;">Page 93</p>	<p>1 which you may not, if you want to add in ignore to what 2 you've said, you're very welcome to do so. 3 A. Okay, thank you. 4 LORD JUSTICE LEVESON: I'm very grateful to you for the time 5 that you've given the Inquiry. 6 A. Thank you for inviting me. Thank you. 7 MR JAY: Would you wish to rise for two minutes? 8 LORD JUSTICE LEVESON: Certainly. 9 (12.30 pm) 10 (A short break) 11 (12.32 pm) 12 MR JAY: Sir, the next witness is Professor Megone. Tab 49. 13 LORD JUSTICE LEVESON: Thank you. 14 PROFESSOR CHRISTOPHER BRUCE MEGONE (sworn) 15 Questions by MR JAY 16 MR JAY: Please take a seat. First of all, your full name? 17 A. Christopher Bruce Megone. 18 Q. Thank you. You've kindly provided us with a witness 19 statement, which runs to 14 pages, I think. Can I ask 20 you, please, to confirm the truth of that statement? 21 A. Yes. 22 Q. You are professor of interdisciplinary applied ethics at 23 the University of Leeds? 24 A. Yes. 25 Q. Could you tell us at least what your main research and</p> <p style="text-align: center;">Page 95</p>
<p>1 think: is it helpful to have a code with those two 2 degrees of normativity -- it probably is quite helpful 3 to have something simply like that, not to have too much 4 complexity. I suggested in my written statement that 5 a characterisation of the values that should underpin 6 journalism might be helpful too, but I don't think we 7 should go to the point of saying: here's best practice 8 in journalism, here's the best kind of journalism, we 9 should insist on that all the time. I think that would 10 go against the reasons for having a liberal public 11 sphere that I mentioned at the start which underpins the 12 importance of a free press. 13 But I think having just made it two degrees of 14 normativity and a list of values seemed to me that that 15 might get the right sort of helpful -- helpful 16 distinctions. 17 MR JAY: Thank you. That's very helpful, Dr Cruft. Those 18 are all the questions I have for you. 19 LORD JUSTICE LEVESON: It is helpful. I'm very conscious, 20 as I said to your predecessors, that asking people to 21 come and talk about these concepts off the top of their 22 head is quite difficult and may mean that when you 23 reflect on what you've said that, you've not quite 24 expressed yourself as you may have wished. So if, as 25 you reflect upon it, if you wish to reflect upon it,</p> <p style="text-align: center;">Page 94</p>	<p>1 philosophical interests are? 2 A. So my more theoretical interests are in Plato and 3 Aristotle's moral and political philosophy, and 4 neo-Aristotelian views of moral psychology -- that's 5 about rationality, desire and value -- and then I write 6 on medical ethics and business ethics principally. 7 Q. So interdisciplinary applied ethics -- between which 8 disciplines are we looking at? 9 A. So in my teaching, particularly, I work with colleagues 10 in engineering, biosciences, medicine, dentistry, so 11 right -- a whole range of areas. 12 Q. Thank you. The public interest, first of all, in a free 13 press -- in other words, a press free from censorship, 14 I suppose. How do you go about analysing that 15 statement? 16 A. So in line with what I said in the witness statement, 17 I think that public interest in a free press is 18 primarily an interest in a press which serves two 19 particular functions equivalent to the common good: one, 20 the function of informing -- providing information for 21 the public about a range of issues for them to make 22 choices about their lives and the kind of community that 23 they live in -- and secondly, the function of holding to 24 account those in positions of office, whether it be 25 political or commercial or cultural, who serve the</p> <p style="text-align: center;">Page 96</p>

<p>1 public.</p> <p>2 So provision of information, and through that</p> <p>3 provision of information, also holding people to</p> <p>4 account.</p> <p>5 Q. So in order to serve those public interests, as you say,</p> <p>6 the press will need to carry out its work with accuracy</p> <p>7 and rigour; is that right?</p> <p>8 A. Yes, that's right.</p> <p>9 Q. To what extent should the society as a whole, or</p> <p>10 a regulator within it, be able or free to impinge on the</p> <p>11 freedoms of the press, as you describe them?</p> <p>12 A. So I think that, as you say, there's a whole range of</p> <p>13 things that in order to fulfil those functions properly,</p> <p>14 the press needs to adhere to. You've mentioned</p> <p>15 impartiality, recognising its own potential conflicts of</p> <p>16 interest, avoidance of bias, truthfulness, making good</p> <p>17 judgments about what's important to bring to the</p> <p>18 attention of the public and what isn't, amongst a whole</p> <p>19 range of stories that may prevail on a daily basis, and</p> <p>20 then a number of constraints that they may have to</p> <p>21 adhere to which might be viewed as other parts of the</p> <p>22 public interest or the rights of individuals concerning</p> <p>23 matters of privacy, confidentiality and the like, which,</p> <p>24 even though there's a public interest in bringing</p> <p>25 information to people, may constrain that information</p> <p style="text-align: center;">Page 97</p>	<p>1 straightforward, is it? Because I could present a set</p> <p>2 of facts which are facts but which I have chosen very</p> <p>3 carefully to reflect an opinion which may not entirely</p> <p>4 be in any sense balanced.</p> <p>5 A. No, absolutely. I think that's -- I think it's</p> <p>6 particularly in areas -- I was thinking about this</p> <p>7 beforehand. For example, in the reporting of this</p> <p>8 Inquiry, media organisations themselves have interest</p> <p>9 because they're reporting about other media</p> <p>10 organisations and they may choose to select facts which</p> <p>11 present their competitors in a certain light. That</p> <p>12 could be seen as the interests of their own organisation</p> <p>13 colouring how they're presenting the facts. It may be</p> <p>14 seen as the political outlook of the organisation -- so</p> <p>15 commercial interests, for the first, political outlook</p> <p>16 by the second -- and I think that's where it's</p> <p>17 important, where you're attempting to present the news</p> <p>18 and give your readership information about what's going</p> <p>19 on, that the opinion side of the newspaper shouldn't</p> <p>20 intervene.</p> <p>21 LORD JUSTICE LEVESON: Yes, well, I understand. As I say</p> <p>22 though, the problem is that there isn't a bright line</p> <p>23 between fact and comment.</p> <p>24 A. No, no, no. I mean, I accept that, that there's grey</p> <p>25 areas in this. I'm afraid ethics is full of grey areas.</p> <p style="text-align: center;">Page 99</p>
<p>1 being brought for -- yeah, and those are rights of</p> <p>2 individuals and they also pertain to things like</p> <p>3 security, judicial process and so on, a number of other</p> <p>4 factors, which could be impinged if certain information</p> <p>5 is brought out at inappropriate times and so on.</p> <p>6 Q. You mentioned impartiality, Professor Megone. Under the</p> <p>7 code, the press is free to be partisan, presumably</p> <p>8 because society has made a judgment that the "rights of</p> <p>9 the press" are more important in terms of being able to</p> <p>10 be partisan than other rights in being impartial. How</p> <p>11 do you see that working?</p> <p>12 A. Yes. I suppose the press is -- I've talked about it</p> <p>13 presenting information. I suppose the press both</p> <p>14 presents information and presents opinion, and in the</p> <p>15 presentation of opinion, we accept that at least certain</p> <p>16 parts of the press are entitled to partiality. There's</p> <p>17 obviously some part of the media or press which is</p> <p>18 subject to constraints where they must be more</p> <p>19 impartial, present two sides of the coin on every case.</p> <p>20 So when it comes to opinion, we allow for partiality but</p> <p>21 then it's important for those organisations to present</p> <p>22 both opinion and facts, that they make clear when</p> <p>23 they're doing which. So you read the news sections and</p> <p>24 you expect those not to be clouded by partiality.</p> <p>25 LORD JUSTICE LEVESON: But that's not entirely</p> <p style="text-align: center;">Page 98</p>	<p>1 LORD JUSTICE LEVESON: Yes.</p> <p>2 A. But I still think nonetheless you can -- you know which</p> <p>3 bit of the newspaper is the comment section and you know</p> <p>4 which bit is the --</p> <p>5 LORD JUSTICE LEVESON: Although the code actually creates</p> <p>6 its own bright line, the requirement to distinguish.</p> <p>7 A. Yes. Yes; yeah.</p> <p>8 MR JAY: You make it clear that freedom of the press is not</p> <p>9 the same as freedom of expression, although there may be</p> <p>10 points of contact between them yes.</p> <p>11 Q. Can I ask you to develop the point that freedom of the</p> <p>12 press can, in certain circumstances, inhibit freedom of</p> <p>13 expression?</p> <p>14 A. Well, I was thinking there particularly about the</p> <p>15 opinion side of things, actually, so the extent to</p> <p>16 which -- I mean, even the heavyweight newspapers now</p> <p>17 have a lot more opinion columns than they used to. But</p> <p>18 even though you're presenting a number of opinions in</p> <p>19 the newspaper, there's only a small number of people who</p> <p>20 get to write for those newspapers and therefore if the</p> <p>21 main -- and there are a small number of newspapers.</p> <p>22 Now, if those newspapers' ownership is restricted, the</p> <p>23 way in which freedom of expression might be inhibited is</p> <p>24 that some people might not actually have access to this.</p> <p>25 So although opinions are being presented, there are</p> <p style="text-align: center;">Page 100</p>

25 (Pages 97 to 100)

<p>1 certain types of opinion which are systematically</p> <p>2 excluded, either because of the ownership structure of</p> <p>3 the press or the ownership structures and the editorial</p> <p>4 structures taken together.</p> <p>5 So you need a diversity in the press as well as</p> <p>6 freedom in order to maintain genuine variety of</p> <p>7 expression or to ensure that the whole range of opinions</p> <p>8 is reflected.</p> <p>9 Q. But is the issue this: that if the press isn't</p> <p>10 sufficiently plural, not sufficiently diverse, it means</p> <p>11 that certain opinions will not be expressed?</p> <p>12 A. Yes.</p> <p>13 Q. But the mere fact that the press expresses opinion, can</p> <p>14 that crowd out other opinions or is there, in effect, an</p> <p>15 infinite number of opinions? We're not talking about</p> <p>16 a commodity which is finite in number and therefore</p> <p>17 there is no objection to the press expressing arguably</p> <p>18 limited opinions with a loud voice?</p> <p>19 A. I think that -- I don't think actually there's -- in</p> <p>20 print, there are an infinite number of things that</p> <p>21 people could say. I think on most important questions</p> <p>22 there's probably a limited number of reasonable things</p> <p>23 that people could say. It's more a question of: are the</p> <p>24 structures of the press, as well as being free,</p> <p>25 sufficiently diverse to ensure that the reasonable</p> <p style="text-align: center;">Page 101</p>	<p>1 question 7.</p> <p>2 A. Mm-hm.</p> <p>3 Q. You itemise some of these:</p> <p>4 "(a) Obligations to readers and consumers of</p> <p>5 accuracy, rigour, honesty and truthfulness."</p> <p>6 And then (b):</p> <p>7 "Similar obligations follow to those who are</p> <p>8 reported on, whether as stories or images, whether as</p> <p>9 primarily or secondary parties."</p> <p>10 A. Mm-hm.</p> <p>11 Q. Then there are obligations not to interfere with private</p> <p>12 rights.</p> <p>13 A. Mm.</p> <p>14 Q. In terms of the crucial issue of balance, you go on to</p> <p>15 say there isn't a simple algorithm for resolving</p> <p>16 conflicts. But what are the general principles which</p> <p>17 are in play, resolving conflicts in this domain?</p> <p>18 A. Well, you have how important the information you're</p> <p>19 wishing to present is, and the importance will -- the</p> <p>20 public good has a range of -- it might be important to</p> <p>21 making decisions -- politician decisions about</p> <p>22 education, health, welfare, so on. It could be</p> <p>23 important for preservation of security, and you're</p> <p>24 balancing that against the fact that in some of these</p> <p>25 obligations there are kind of side constraints, so about</p> <p style="text-align: center;">Page 103</p>
<p>1 things that could be said are represented?</p> <p>2 So to take ethical matters, for example -- I mean,</p> <p>3 I think that there is more discussion of medical ethics</p> <p>4 in the newspapers but I think sometimes certain types of</p> <p>5 opinions on key ethical issues are not so well</p> <p>6 represented as others.</p> <p>7 Q. Thank you. Ethical duties of the press in their public</p> <p>8 role. It's under question 7, slightly out of sequence.</p> <p>9 Is it inconsistent or consistent with the notion of</p> <p>10 a free press that the press should nonetheless owe</p> <p>11 ethical obligations?</p> <p>12 A. No, no, I think that's -- I mean, I think freedom and</p> <p>13 responsibility are not incompatible notions. What</p> <p>14 I suppose I'm -- principally behind the notion of</p> <p>15 freedom in my account is freedom from censorship, from</p> <p>16 authorities coming in and telling the press what they</p> <p>17 may or may not say with respect to output, but they may</p> <p>18 nonetheless have a number of responsibilities they need</p> <p>19 to respect in producing those outputs. I think</p> <p>20 that's -- yeah -- very important. No, I don't see them</p> <p>21 as inconsistent.</p> <p>22 Q. Yes. The sort of responsibilities you have in mind, on</p> <p>23 the -- your document doesn't have internal numbering.</p> <p>24 It's our page 00913, but on the second page of the</p> <p>25 section, which is dealing with responsibilities, it's</p> <p style="text-align: center;">Page 102</p>	<p>1 what you may do to children and so on. Some of these</p> <p>2 obligations are not side constraints but requirements</p> <p>3 that in presenting that information, you do so in tender</p> <p>4 ways.</p> <p>5 Going back to the last point -- liberty, freedom and</p> <p>6 responsibility -- it's not licensed. Freedom is not</p> <p>7 licensed, and that's the way in which all these</p> <p>8 responsibilities bear on how you exercise your freedom.</p> <p>9 So you have those guiding aims of the media that I set</p> <p>10 out at the beginning -- holding people accountable and</p> <p>11 presenting information -- serving those roles and then</p> <p>12 these constraints of two sorts.</p> <p>13 Q. When you refer to the importance of information,</p> <p>14 obviously the more important the information is, the</p> <p>15 less restriction upon the dissemination of it you would</p> <p>16 like to impose?</p> <p>17 A. Yes.</p> <p>18 Q. That's obvious.</p> <p>19 A. Yes.</p> <p>20 Q. But may there be a distinction then between what the</p> <p>21 press does in terms of its core function, which is to</p> <p>22 contribute to the public good in a democratic society,</p> <p>23 and some of the other functions of the press, which may</p> <p>24 be to entertain?</p> <p>25 A. Yes, exactly.</p> <p style="text-align: center;">Page 104</p>

<p>1 Q. But if you're talking about entertainment, then you're 2 more likely to be looking at possible constraints? 3 A. Exactly. 4 Q. Because other people's rights may come in and of course, 5 the nature of the information is, by definition, less 6 important. 7 A. Absolutely, yes. I suppose what I'd say, just going to 8 that -- I mean, it's difficult to -- I mean, one has in 9 mind these general principles but elaborating and 10 fleshing them out is a very much a case-by-case matter, 11 on a sort of casuistical approach, helps people to come 12 to appreciate what counts as significant and what counts 13 as less significant and so on, and that's partly why 14 I think one can have these codes but for them to be 15 lived codes, people have to think through what these 16 slightly abstract notions mean and that is, as I say, 17 partly casuistic and experience, and therefore 18 developing sort of a kind of practical wisdom in that 19 light. 20 LORD JUSTICE LEVESON: But you've had to do that in the 21 other work you've done, I notice in relation to your 22 work with accountants. 23 A. Yes. 24 LORD JUSTICE LEVESON: So that's thought the practical 25 implications through to a very different type of</p> <p style="text-align: center;">Page 105</p>	<p>1 and you're excluding the possibility of the casuistical 2 reasoning and you're building up a corpus of caselaw, if 3 you like, from experience, on the other. 4 Do you have a view as to whether the existing 5 Editors' Code, without looking at the detail of it, 6 strikes the right balance between those two competing 7 objectives? 8 A. Yeah, I don't -- I think it it's -- my -- yes, I think 9 the concern -- I have some concern about the code but 10 not particularly about it going into too much detail 11 and -- or too little. I think it's clear enough in that 12 sort of way. I suppose I felt that for me, it's 13 a problem -- when I read it through, its problem was 14 that it reads primarily as a list of prohibitions with 15 a slightly hand-waving reference to the public interest. 16 If I was a practising journalist, I would find it 17 difficult to see how the whole thing hung together in 18 terms of my professional -- in terms of developing good 19 judgment as a professional journalist. 20 Q. We should come back to that because that's a very 21 important point. 22 A. Yes. 23 Q. I need to pick up some other points before we get there, 24 as it were. Question 4. I looked at ethical duties, 25 question 7, out of sequence but at question 4, you make</p> <p style="text-align: center;">Page 107</p>
<p>1 endeavour. 2 A. Yes. Well, I suppose I'd say the thing that was more 3 analogous would be the -- also with the engineers, where 4 there was -- I worked with the engineers and the Royal 5 Academy of Engineering came up with a statement of four 6 ethical principles which were quite abstract, and what 7 we did with them was produce a guide to those principles 8 which was a set of case studies to try and make them 9 lived for practising engineers. 10 LORD JUSTICE LEVESON: I think I knew about the accountants. 11 A. Yes, that's right. That's the one I sent through 12 because that was very much about emphasising the 13 importance of culture in organisations, and part of 14 developing that culture is allowing people to think 15 these things through on a case-by-case basis and discuss 16 them. 17 LORD JUSTICE LEVESON: I'm only proving I've read it. 18 A. Sorry. 19 MR JAY: I suppose the difficulty with a code is that 20 there's always a tension between setting out principles 21 at a high level of generality, which people will 22 naturally understand, on the one hand, and setting out 23 too much detail on the other, because if you set out too 24 much detail, you know from experience you run into 25 difficulty because individual cases may be more subtle</p> <p style="text-align: center;">Page 106</p>	<p>1 some points there about maximising the overall public 2 interest and the dangers, for example, in concentrating 3 ownership in a small number of individuals. Can I ask 4 you, please, to develop the points you make under this 5 heading, Professor Megone? 6 A. Right. It's an issue we've already touched on about the 7 concentration of a small number of journalists -- of 8 owners and editors may have an effect on the opinion 9 side of a press' activity and the range of opinion that 10 might be presented. There's also questions with respect 11 to ownership about -- possibly about the commitment of 12 the owners to the society in which they live, and 13 therefore their -- so if you have foreign owners, it 14 might be the case that they have less of a commitment to 15 a common good in that society. They have less interest 16 in it. They don't live in that society; they live 17 somewhere else. The pressing nature of the common good 18 in that society may seem less important than perhaps 19 commercial interests and so on. At least it's something 20 that if one were the foreign owner, one would have to be 21 aware of. 22 Even with respect to presentation of facts of your 23 information, I think a range of media organisations 24 serves as one of the ways -- one of the checks on that. 25 So competing newspapers can actually serve to qualify,</p> <p style="text-align: center;">Page 108</p>

<p>1 correct and so on the factual information that is</p> <p>2 presented by showing that one newspaper has missed out</p> <p>3 crucial things and so on and so forth.</p> <p>4 So I think in various ways, competition between the</p> <p>5 media in both representation of views and with respect</p> <p>6 to facts is enhanced by diversity.</p> <p>7 Q. Thank you. You also refer to relationships between</p> <p>8 members of a free press and public figures and the sort</p> <p>9 of issues and problems which might arise there.</p> <p>10 A. Yes.</p> <p>11 Q. Could I ask you, please, to expand on that? Top of our</p> <p>12 page 00909.</p> <p>13 A. Well, I suppose that the press is presenting information</p> <p>14 to the public. There are lots of people who, for</p> <p>15 different reasons, have an interest in conveying their</p> <p>16 information and in some cases their views, their</p> <p>17 opinions to the public. So there will be politicians,</p> <p>18 business people, perhaps senior people in other</p> <p>19 positions of influence and organisations, maybe cultural</p> <p>20 organisations, who want to get certain information</p> <p>21 across to the public and are competing for space with</p> <p>22 the media. So they will have an interest in having</p> <p>23 certain kinds of relationships to ensure that that</p> <p>24 information gets across, and I think journalists have an</p> <p>25 interest in that as well because it helps them -- gives</p> <p style="text-align: center;">Page 109</p>	<p>1 guarantee the press serves its distinctive role in</p> <p>2 contributing to the public interest."</p> <p>3 That argument is or has been advanced on occasion</p> <p>4 before us, but can I ask you, please, to explain your</p> <p>5 think the press' assumption is too swift?</p> <p>6 A. I suppose if you go back to the PCC code of ethics, it</p> <p>7 has -- although I don't think it has a very satisfactory</p> <p>8 account of the public interest, it explicitly states</p> <p>9 that freedom of expression is itself part of the public</p> <p>10 interest, and I think that it's -- and that, the public</p> <p>11 interest, qualifies a number of the constraints that are</p> <p>12 placed on the media in that code, and I think a kind of</p> <p>13 slippage can happen in which this freedom of expression</p> <p>14 is seen to be the primary public interest the public has</p> <p>15 in the press, and then that can then seem as liable to</p> <p>16 trump many of the other side constraints.</p> <p>17 Q. Mm.</p> <p>18 A. So -- and if one's a journalist and one values being</p> <p>19 allowed to write what one thinks is important, yes,</p> <p>20 by -- there's a kind of, as I say, a natural slippage in</p> <p>21 which this freedom of expression can be seen to be the</p> <p>22 dominating aspect of one's code.</p> <p>23 LORD JUSTICE LEVESON: Should it be rebalanced? And if so,</p> <p>24 how?</p> <p>25 A. Well, it's -- yes, I think it should. I mean -- so when</p> <p style="text-align: center;">Page 111</p>
<p>1 them crucial conduits to getting at certain kinds of</p> <p>2 information that they want to get at. But clearly,</p> <p>3 unless you're careful, these potentially valuable,</p> <p>4 mutually valuable relationships can be distorted in</p> <p>5 certain ways, so that on the one hand the journalist</p> <p>6 might be encouraged to think that they, by their -- the</p> <p>7 people who are their conduits, that they should present</p> <p>8 information in certain sorts of ways that are more</p> <p>9 amenable to those people, and on the other hand, it</p> <p>10 could be the case that those people are in positions</p> <p>11 which could affect the media organisation's own</p> <p>12 operation and they may be encouraged to think that if</p> <p>13 they do that in certain sorts of ways they will get</p> <p>14 a better press, you know.</p> <p>15 So it's a natural relationship to have between</p> <p>16 politicians, business and the like and the media, but</p> <p>17 it's one that can be -- needs to be handled with great</p> <p>18 care.</p> <p>19 Q. Mm. That leads on to question 5. You were asked for</p> <p>20 your views on the extent to which the overall public</p> <p>21 interest is currently well served, both in principle and</p> <p>22 in practice. You make an interesting point in the</p> <p>23 paragraph beginning:</p> <p>24 "In my view, the press itself at present assumes too</p> <p>25 quickly that freedom of the press is sufficient to</p> <p style="text-align: center;">Page 110</p>	<p>1 I read the code I was a little -- properly, you know,</p> <p>2 thinking about it for this -- particularly for this</p> <p>3 Inquiry -- I read it more cursorily for teaching</p> <p>4 students -- it is striking that there are parts of that</p> <p>5 code which explicitly rather strongly regulate against,</p> <p>6 prohibit some sorts of activities which have clearly</p> <p>7 been going on, as has come before this Inquiry, and</p> <p>8 I think that what needs to be done is that the people</p> <p>9 who are -- the journalists and editors and media</p> <p>10 organisation owners whose activities fall under this</p> <p>11 code need to think through more carefully how those</p> <p>12 different parts of the code bear on one another.</p> <p>13 So it isn't -- it's partly having a clearer sense,</p> <p>14 a broader sense of the public interest and understanding</p> <p>15 the -- how free expression contributes to serving that</p> <p>16 public interest, it isn't itself the whole of the public</p> <p>17 interest, and then it's secondly recognising that</p> <p>18 although the public interest in providing information</p> <p>19 and holding people to account is very important, there</p> <p>20 are these very serious other constraints and they do</p> <p>21 need to be taken very seriously, and that freedom of</p> <p>22 expression doesn't dominate.</p> <p>23 So, well -- and how -- well, as I say, I think that</p> <p>24 part of the problem must be the culture of the</p> <p>25 organisations. It must be that in the -- I mean, to</p> <p style="text-align: center;">Page 112</p>

1 take the phone hacking which has come before you. My
 2 amateur suspicion is there must have been people in
 3 organisations where this was going on who were aware of
 4 it and must have been concerned but didn't raise their
 5 voices. One can think of this happening in other
 6 organisations, in hospitals and so on, where things have
 7 been going on and whistle-blowing doesn't happen in this
 8 culture.

9 So I think there must be with a cultural issue about
 10 the capacity of people to raise concerns about when they
 11 think that certain things are being done which shouldn't
 12 be done, even though that would prevent certain things
 13 being freely expressed. So I think it's very much about
 14 this code becoming much more a lived code in
 15 organisations and an open culture in which people can
 16 express their concerns. And the editors, of course --
 17 I've said something about the responsibility of editors
 18 and so on and part of the structural things you might
 19 do --

20 LORD JUSTICE LEVESON: But is it simply the responsibility
 21 of editors? You said, in the course of that answer that
 22 what needs to be done is that the people who are --
 23 the journalists, the editors, the proprietors, they need
 24 to get to grips with it, but is this something that also
 25 ought to happen externally or should it just be left to

Page 113

1 them to do?

2 A. Again I think there should be a reporting process to an
 3 external organisation but I think the purpose of that
 4 reporting should not -- at the moment, it seems as if
 5 the Press Complaints Commission is primarily tasked with
 6 dealing with post hoc complaints and allowing people
 7 then to have an answer or to have remedies. So there
 8 might be something which is addressed -- a process of
 9 reporting which was designed to focus on the character
 10 and culture of the organisations.

11 So the suggestion I had, which is a bit like goes
 12 on -- the corporate governance reporting that goes on in
 13 business -- I think the corporate governance reporting
 14 in business could be better done, but I think that there
 15 could be something -- a report which the editor drew up
 16 each year which looked at the processes and the
 17 behaviours of the organisation against the objectives --
 18 the moral objectives of that organisation to promote the
 19 public interest, and that would report to an auditor or
 20 an ombudsman, both about the structures and about the
 21 outputs or the effects of those structures on the
 22 behaviours of the organisation.

23 So it would be -- yes, there would be a focus on the
 24 internal thing but you'd have a reporting mechanism.
 25 But the reporting mechanism wouldn't just be designed to

Page 114

1 deal with complaints; it would also perhaps be an annual
 2 kind of corporate governance report which would
 3 encourage the development of an appropriate culture. So
 4 it's a kind of reporting mechanism designed to focus on
 5 character enhancement rather than complaints.

6 LORD JUSTICE LEVESON: In relation to the development of the
 7 code, we heard from Ofcom last week that actually they
 8 consider it unimaginable -- I think that was the word
 9 that Mr Richards used -- that, as it were, those in the
 10 business at the time should sit on these bodies, that it
 11 had to be done independently, perhaps with people who
 12 had been in the bodies but not currently serving. Do
 13 you have -- is there an ethical or a philosophical --

14 A. Well, I suppose from my -- it touches on the
 15 interdisciplinary nature of my work.

16 LORD JUSTICE LEVESON: That's why you're here, Professor.

17 A. Yes. I think that in this area, if you just had someone
 18 like me as an ethicist, for example -- what I found in
 19 other works, say in engineering ethics, is I lack the
 20 experience of what it is like being that kind of person.
 21 I am unaware of the pressures they're under, and so
 22 I think you would need, as you've suggested, people who
 23 are experienced in the media -- perhaps, as you suggest,
 24 not current but people who are sufficiently close, so
 25 recent members of the media -- to know -- to not have --

Page 115

1 to have views about how culture and practice can be
 2 enhanced which are not -- you know, philosophers, we're
 3 often criticised for being -- I won't say cloud cuckoo
 4 land but in an --

5 LORD JUSTICE LEVESON: An ivory tower.

6 A. At a remove, yes. So my work is enhanced if I'm doing
 7 it together with people who can qualify and inform what
 8 I am saying by detailed knowledge of what it's like to
 9 be -- yeah. But maybe, as you say -- no.

10 MR JAY: You had a number of specific points to make about
 11 the code. Indeed, these will be valuable points, given
 12 your interdisciplinary experience. You can draw on
 13 codes from analogous or otherwise areas. But one point
 14 you made is the code appears to be full of prohibitions
 15 and that's a defect. Why is that a defect?

16 A. As I say, I think it encourages a view of ethic as
 17 coming into the picture when things are being done
 18 wrong, going wrong, and then encourages the view that
 19 the complaints commission -- the press -- I forget the
 20 name -- that you go to it to register a complaint,
 21 rather than the purpose of a code as something like to
 22 develop good professional judgment, when ethics is a key
 23 part of good professional judgment, as well as, of
 24 course, experience of assessment of facts and so on and
 25 so forth.

Page 116

1 So I think you need a code which has a more --
 2 expresses in a more positive way the positive
 3 contribution that the press plays to the common good,
 4 contributes to the common good, and then the restraints
 5 on the ways in which you may behave in pursuing that
 6 public good, and I think the role of those constraints
 7 then becomes a bit more intelligible if you're clear
 8 about the public good, the importance of what you're
 9 doing, and the extent to which those constraints may
 10 sometimes be overridden becomes more intelligible, if
 11 you're clear about the good.

12 So, yeah, those are the principle concerns. In
 13 ethics, we have a positive connotation as well as
 14 a negative one and if there's a kind of over-arching
 15 understanding from the code rather than a kind of
 16 piecemeal set of "don't to this, don't do that" ...

17 Q. In terms of positive contribution, would you be
 18 including within that a public interest in freedom of
 19 expression itself and what else, in any event, would you
 20 be including?

21 A. I'd want to explain the role of freedom of expression in
 22 terms of its importance in contributing to the two
 23 over-arching goods that I have claimed. So freedom of
 24 expression's important because the press has this role
 25 of presenting information to enable us to make choices

Page 117

1 about all aspects of our life. What that means is we
 2 don't want -- powerful organisations must not be in
 3 a position to stop certain information getting to us,
 4 whether it's government or business or -- and secondly,
 5 on that side, freedom of expression is important in
 6 allowing a diverse set of opinions to be presented.
 7 There's the opinion and fact side. Then freedom of
 8 expression is important in order to allow us to hold
 9 people accountable. So there mustn't be people who can
 10 stop certain things getting out because if those things
 11 were to get out, it would be bad for them and the
 12 responsibilities they have to us.

13 So that's the way I would say it comes in. It's
 14 understood as a mean, as serving an instrumental role in
 15 the service of these -- this greater good.

16 Q. How would the code be framed so as to foster the right
 17 sort of culture you were referring to? It's not just
 18 a culture which understands the proper contours of
 19 freedom of expression but it's a culture which is
 20 beneficial in a whole range of other respects. Because
 21 one sees that in, well, a whole host of professional
 22 codes. Quite a lot of the code is about inculcating
 23 correct behaviour and correct judgments but if that's
 24 important for journalism, editorial practice, how would
 25 the code be drafted so as to do that?

Page 118

1 A. That's somewhat more emphasis on certain aspirational
 2 things. So if you take the accuracy section of the
 3 code, the press must state they're not printing
 4 inaccurate or distorted information, I suppose that one
 5 could place that more positively, that the aspiration to
 6 present the facts, to present the truth impartially --
 7 I can't do it off the top of the my head, but I think
 8 there would be a way of stating that in a more
 9 aspiration role as a sort of high calling to accuracy
 10 and rigour.

11 So some of it would be on the emphasis on aspiration
 12 to honesty, truth, rigour, not just mentioning all the
 13 things you mustn't do in pursuing those things. So
 14 getting a sense of, yeah, positive attributes of --

15 LORD JUSTICE LEVESON: To provide the context better to
 16 assist to justify the negatives.

17 A. Yes. Yes.

18 LORD JUSTICE LEVESON: Yes.

19 MR JAY: Thank you. Finally, the other factors, aside from
 20 the code, which might create the right sort of culture,
 21 could you summarise those for us, please?

22 A. Yes. So this is in the -- yes. So issues about
 23 leadership. That, from this other work in other
 24 organisations, seems tremendously important.

25 LORD JUSTICE LEVESON: And this is the accountants?

Page 119

1 A. Yes, it is, absolutely. I talked about an open culture,
 2 which I think does need unpacking, but that would
 3 include opportunities for discussion of difficult
 4 issues, perhaps a confidential something to whom people
 5 could turn within an organisation if they had concerns
 6 for advice as to how they would pursue those concerns,
 7 proper whistle-blowing procedures. I mean those are
 8 rather negative. Rewards for positive behaviour.
 9 I think we have a list of ten, but the most important we
 10 would say are leadership issues.

11 LORD JUSTICE LEVESON: And what you don't think is
 12 necessarily the answer is simply training?

13 A. Well, yes. We want to say that with some care. There
 14 are certain types of ethics training which are not very
 15 effective, and they won't work just by themselves. You
 16 can't just send people off for an afternoon -- and we've
 17 had this reported to us in a range of other contexts:
 18 don't just send people off for an afternoon and expect
 19 ethics training to change, because they'll go back to an
 20 office where there's a certain kind of culture and
 21 accepted norms, and the accepted norms will dominate
 22 anything they might have thought about in that afternoon
 23 behaviourally, so there's kind of a psychological claim
 24 incorporated in that.

25 LORD JUSTICE LEVESON: Yes, it's not just a question of

Page 120

<p>1 ticking the box: had the ethics training, therefore 2 that's done; now I can go back to doing what I do. 3 A. Exactly. However, we would say that ethics training 4 incorporated within or additional to these other things, 5 so, for example, bringing -- some people like 6 a philosopher and potentially another journalist working 7 together and going through some challenging case studies 8 within an organisation which is taking these things 9 seriously can enhance and aid people because you do need 10 time to reflect on these challenges and often in the 11 day-to-day hubbub of working life you don't have that 12 time, so as a kind of enhancement but it has to be with 13 these other things, leadership and so on. 14 LORD JUSTICE LEVESON: Thank you. 15 MR JAY: Those are all the points I had arising out of 16 Professor Megone's evidence. 17 LORD JUSTICE LEVESON: Professor Megone, thank you very much 18 indeed. You said it's quite difficult to think of 19 things off the top of your head and I entirely recognise 20 that. I think the most important material that you 21 provided us with is extremely valuable. Your oral 22 elaboration assists, but if there's anything you do want 23 to add in the light of questions you've been asked or 24 you've thought of, please don't hesitate. 25 A. Thank you very much.</p> <p style="text-align: center;">Page 121</p>	
<p>1 LORD JUSTICE LEVESON: Thank you very much for coming. 2 2.15 pm. 3 (1.15 pm) 4 (The luncheon adjournment) 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p style="text-align: center;">Page 122</p>	

A	<p>acting 44:14</p> <p>actions 80:19</p> <p>activities 112:6 112:10</p> <p>activity 108:9</p> <p>actor 44:10</p> <p>actors 67:7</p> <p>acts 44:17 79:18</p> <p>add 30:4 39:13 51:13 63:20 66:19 76:19 78:23 81:11 93:11 95:1 121:23</p> <p>addition 35:13</p> <p>additional 121:4</p> <p>address 17:4 30:25</p> <p>addressed 114:8</p> <p>adds 28:7</p> <p>adhere 97:14,21</p> <p>adhered 54:17</p> <p>adjournment 122:4</p> <p>adultery 39:20 47:1</p> <p>advance 80:14</p> <p>advanced 11:23 21:22 111:3</p> <p>advantages 80:20</p> <p>adversarial 76:21 77:22</p> <p>adversely 26:15 88:4</p> <p>advertising 93:9 93:10</p> <p>advice 120:6</p> <p>affairs 40:11</p> <p>affect 110:11</p> <p>affirm 47:8</p> <p>affirmed 2:8,9 2:10 64:7</p> <p>Afghanistan 18:16</p> <p>afraid 58:15 68:3 71:13 75:10 79:25 99:25</p> <p>afternoon 120:16,18,22</p> <p>ago 71:14 74:20 90:2</p> <p>agree 8:4,6 14:17 16:22 24:12 25:10,16 30:5 39:12 45:13,17 47:25 50:25 57:15 77:9,25 84:24 90:17,17</p> <p>ahead 46:3 52:17</p> <p>aid 121:9</p> <p>aims 24:5,5 104:9</p> <p>airport 32:12</p> <p>algorithm 71:12 71:15 103:15</p> <p>allow 13:2 23:17 49:13 50:9 98:20 118:8</p> <p>allowed 11:10 62:23 92:8 111:19</p> <p>allowing 106:14 114:6 118:6</p> <p>alluded 12:8 41:23 54:14</p> <p>alongside 1:8</p> <p>alternative 53:22</p> <p>alternatives 40:20</p> <p>amateur 62:24 113:2</p> <p>amateurs 60:13</p> <p>amateur-ish 61:11</p> <p>amenable 110:9</p> <p>Amendment 48:3</p> <p>American 41:15 41:15</p> <p>amount 18:2 21:2 81:25</p> <p>analogous 106:3 116:13</p> <p>analogy 49:23</p> <p>analyse 1:6 17:22 72:16</p> <p>analysing 96:14</p> <p>analysis 17:10 29:9,10 46:12 79:23,24,25</p> <p>angle 30:15</p> <p>announce 13:25</p> <p>annual 115:1</p> <p>answer 10:7 23:11 24:1 40:19 56:7,10 58:9,16 59:15 60:8 113:21 114:7 120:12</p> <p>answerability 75:25 76:12</p> <p>answerable 70:22 76:4 77:14 83:4</p> <p>answered 22:24</p> <p>answering 23:4</p> <p>answers 13:15 23:7 40:7,7</p> <p>Anthony 70:20</p> <p>anti-discrimin... 37:15</p> <p>anybody 27:12 88:3</p> <p>anybody's 14:1</p> <p>anyway 12:18 33:3 86:21</p> <p>apart 9:22 92:24</p> <p>apparently 43:8 92:25</p> <p>airport 32:12</p> <p>algorithm 71:12 71:15 103:15</p> <p>applied 95:22 96:7</p> <p>apply 19:25 30:19 35:12 38:24 47:16 49:8 79:20</p> <p>appreciate 60:7 105:12</p> <p>approach 1:21 12:3 20:12,12 30:15 39:24 105:11</p> <p>appropriate 43:7 45:24 46:22 49:2,19 50:2 62:4 67:9 74:5 75:6 115:3</p> <p>appropriately 46:16 68:10</p> <p>area 3:14 5:5 14:22 49:25 50:7,19 70:17 81:17 115:17</p> <p>areas 3:7,9,18 12:17 16:24 21:17 58:14 61:5 62:9 96:11 99:6,25 99:25 116:13</p> <p>arguably 78:12 101:17</p> <p>arguing 13:12</p> <p>argument 13:7,9 13:10 18:15 28:15,15 31:25 42:11,12 50:4 54:23 111:3</p> <p>arguments 4:9</p> <p>arises 45:21</p> <p>arising 6:19 35:13 121:15</p> <p>Aristotle's 96:3</p> <p>Article 5:20,20 5:21,21</p> <p>articulate 69:18</p> <p>aside 54:7 85:18 119:19</p> <p>asked 23:12 59:23 110:19 121:23</p> <p>asking 60:8 94:20</p> <p>aspect 44:15 65:8 85:22 111:22</p> <p>aspects 28:2 43:20 55:23 87:21 118:1</p> <p>aspiration 119:5 119:9,11</p> <p>aspirational 119:1</p> <p>asserting 5:4</p> <p>asserts 5:7</p> <p>assesses 76:14</p> <p>assessment 116:24 116:24</p> <p>assist 23:8 36:13 75:3,9 119:16</p> <p>assists 121:22</p> <p>associated 12:24 90:11</p> <p>assume 76:11</p> <p>assumed 17:16 31:5 63:7</p> <p>assumes 5:24 110:24</p> <p>assuming 7:12</p> <p>assumption 111:5</p> <p>assumptions 19:21</p> <p>asterisked 92:17 92:21</p> <p>asymmetry 19:11</p> <p>attempt 32:7 55:25 90:19</p> <p>attempted 17:11 61:13</p> <p>attempting 99:17</p> <p>attention 21:3 33:3,12 91:1,5 97:18</p> <p>attitudes 17:17 31:14</p> <p>attracted 65:7</p> <p>attributes 119:14</p> <p>audience 32:25 33:6</p> <p>auditor 114:19</p> <p>authorities 57:23 102:16</p> <p>authority 33:4 35:21 43:9 50:23</p> <p>autonomous 7:20 54:4</p> <p>autonomy 7:23 8:9,16 13:9</p> <p>available 18:7 52:18 57:2 63:21</p> <p>avoid 90:19</p> <p>avoidance 97:16</p> <p>aware 93:6 108:21 113:3</p>	<p>76:7</p> <p>bad 48:23 89:9 93:9 118:11</p> <p>balance 1:12 53:24 55:1,4 75:7,22 79:17 91:17 103:14 107:6</p> <p>balanced 71:9 99:4</p> <p>balancing 92:5 103:24</p> <p>band 50:6</p> <p>bandwidth 50:9 52:14,18,19 53:7,10,12</p> <p>bare 67:5 91:20</p> <p>basically 36:9</p> <p>basis 27:6 41:3 55:22 61:15 97:19 106:15</p> <p>bear 1:17 71:17 79:5 104:8 112:12</p> <p>bearing 55:13</p> <p>bears 5:15</p> <p>becoming 113:14</p> <p>beginning 104:10 110:23</p> <p>begs 18:12</p> <p>behave 117:5</p> <p>behaviour 31:10 31:12 34:16 47:3 87:22 118:23 120:8</p> <p>behaviourally 120:23</p> <p>behaviours 114:17,22</p> <p>beings 35:12</p> <p>beliefs 14:13</p> <p>believe 2:21 8:10 24:10 41:25 89:16</p> <p>believes 20:4,5</p> <p>beneficial 15:13 118:20</p> <p>benefit 10:9 25:22,23 44:11 89:8,17,18,19 89:22,24 91:2 91:21</p> <p>benefits 69:21 90:25</p> <p>Benthamite 58:1</p> <p>Bernard 12:21</p> <p>best 23:25 24:12 36:5 60:7 63:15 71:7 75:6 94:7,8</p> <p>beta 23:16</p> <p>better 23:16 28:13 55:22 56:1,2 59:9 110:14 114:14 119:15</p> <p>beyond 7:23 9:15 22:22 46:1 47:19,19 56:14</p> <p>bias 97:16</p> <p>big 80:6</p> <p>biosciences 96:10</p> <p>Birkbeck 2:13</p> <p>bit 13:20 52:19 54:17 82:14 100:3,4 114:11 117:7</p> <p>bits 34:16</p> <p>black 49:25</p> <p>blamed 58:20</p> <p>blaming 35:9</p> <p>blanket 27:6</p> <p>blow 32:12</p> <p>blunt 36:4 47:6</p> <p>board 11:18</p> <p>bodies 78:21 79:8,14 80:11 115:10,12</p> <p>body 76:14 79:19 80:12 81:7,7 83:4</p> <p>bomb 6:22</p> <p>book 12:21 44:13 60:9</p> <p>borne 79:12</p> <p>bothered 23:16</p> <p>boundaries 60:21</p> <p>box 121:1</p> <p>brakes 59:10</p> <p>brazen 42:24</p> <p>breach 57:24</p> <p>break 64:2,4 95:10</p> <p>breaking 49:3</p> <p>breaks 25:7</p> <p>bright 99:22 100:6</p> <p>bring 45:4 97:17</p> <p>bringing 54:2 97:24 121:5</p> <p>brings 1:23</p> <p>broad 37:15 46:18 85:14</p> <p>broader 112:14</p> <p>broadly 25:5 31:22</p> <p>broad-ranging 19:13</p> <p>brought 98:1,5</p> <p>Bruce 95:14,17</p> <p>building 107:2</p> <p>built 40:14</p> <p>bulwark 25:18 29:3,8,14,22 30:7,8</p> <p>bundle 64:11</p> <p>burden 9:19,22</p> <p>business 47:2 96:6 109:18 110:16 114:13</p>
	B	

114:14 115:10 118:4 businesses 80:2 buy 26:11 29:23 31:2 buying 25:23	caution 38:24 caveat 22:7 62:22 celebrity 21:4 30:12 53:6 cancel 83:18 censorship 96:13 102:15 censure 83:19 central 71:24 84:13,14,15 centre 53:12 certain 4:24 5:4 5:19,20 16:6 17:2 18:3 19:21 20:13 25:1,5,6 26:8 28:16 30:10 31:12,14,14,21 32:17 33:1 35:18,19,20 36:1 37:22 38:8 40:6,14 41:2,10 43:25 47:6 48:7 49:1 51:18,23,25 52:2 55:5 57:11 58:14 60:21,25 61:3 98:4,15 99:11 100:12 101:1 101:11 102:4 109:20,23 110:1,5,8,13 113:11,12 118:3,10 119:1 120:14,20 certainly 8:6 10:15 17:23 35:8 38:14 52:3 66:18 78:24 82:17 84:10 86:23 87:15 95:8 cetera 16:14,15 cf 17:9 challenges 121:10 challenging 121:7 chance 42:6 change 55:25 58:13 59:14,18 59:19 62:6 80:16 120:19 changed 59:5,18 61:19 changes 58:5 59:16 changing 58:22 character 16:16 38:7 41:25 42:4 114:9 115:5 characterisation 94:5	characterise 26:4 characterised 9:2 54:22 characters 31:7 charge 62:25 81:24 cheat 42:9 67:1 cheats 42:8 check 69:22 checks 108:24 child 68:14 children 27:22 60:19 104:1 chilling 41:8 choice 30:21 73:25 choices 96:22 117:25 choose 56:8 69:4 99:10 chose 59:23 chosen 99:2 Christopher 95:14,17 circular 92:25 circumstances 6:20 9:1 67:12 73:23 74:17 100:12 cited 12:21 59:21 citizenry 37:7 citizens 7:20 29:17 30:3 36:25 city 74:10 civil 33:24 civility 31:22 claim 5:5,7 12:7 12:8 48:22 120:23 claimed 117:23 claiming 30:7 claims 4:11 16:19 Clarence 43:6 clause 72:8 clauses 92:20 cleaned 18:18 clear 5:25 12:18 21:17 30:13 40:22 48:22 53:15 54:12 55:3 68:11,24 71:9 75:24 76:11 80:22 81:12 84:21 85:12,12 88:24 91:19 93:7 98:22 100:8 107:11 117:7 117:11 clearer 112:13 clearly 10:7 12:1 93:4,7 110:2 112:6	close 115:24 closely 12:24 cloud 116:3 clouded 98:24 club 44:25 code 1:24,25 30:19 40:1 58:14,14 72:8 81:17 82:10,12 84:20 85:18,21 85:24 86:3,7 86:24 87:21 92:14,16,18 93:18,20 94:1 98:7 100:5 106:19 107:5,9 111:6,12,22 112:1,5,11,12 113:14,14 115:7 116:11 116:14,21 117:1,15 118:16,22,25 119:3,20 codes 58:5,11 63:5 105:14,15 116:13 118:22 code's 93:22 codify 49:12 coin 98:19 colleague 70:19 colleagues 47:21 48:24 96:9 collective 28:1 College 2:13 colouring 99:13 columns 100:17 combination 56:4 come 7:7 10:11 40:6 46:5 58:17 63:13 81:16 94:21 105:4,11 107:20 112:7 113:1 comes 12:12 22:20 33:7 35:20 98:20 118:13 comfortable 23:6 69:4 coming 2:24 10:24 64:1 102:16 116:17 122:1 comment 11:24 11:25 20:18 33:2 62:23 99:23 100:3 commercial 30:24 96:25 99:15 108:19 commission 114:5 116:19 commitment	8:14,16 108:11 108:14 committed 21:1 84:15 commodity 101:16 common 96:19 108:15,17 117:3,4 communicate 14:3 48:19 communication 8:19 15:23 communications 21:15 communicative 8:3 14:13 communicator 25:17 community 69:12 96:22 compatible 28:25 compelled 71:20 compelling 6:4 35:7 47:16 competing 3:1 6:8,16 8:25 39:25 73:20 107:6 108:25 109:21 competition 24:11,22 109:4 competitors 99:11 complain 57:1 complaint 116:20 complaints 114:5,6 115:1 115:5 116:19 completely 90:17 90:17 complexity 94:4 compliance 75:1 complicated 47:7 comply 74:2 complying 47:13 57:10 compartment 55:23 compromise 58:3 conceal 43:20 concede 6:6 53:19 concentrate 46:10 concentrating 108:2 concentration 108:7 concept 30:14 76:16 88:1,13 88:14,17,20	90:7 conception 14:19 89:23 concepts 1:7,8 3:4,16 4:4 14:25 64:25 94:21 concern 21:5 32:14 47:2 107:9,9 concerned 21:1 23:15 34:15,17 113:4 concerning 97:22 concerns 26:7 113:10,16 117:12 120:5,6 conditions 25:2,2 conducive 14:18 24:12 conduct 1:24 77:4 81:18 82:10 conduits 110:1,7 confers 41:16 confess 75:8 confident 69:18 confidential 72:11 73:17 120:4 confidentiality 1:11 97:23 confirm 95:20 conflict 54:9,22 89:4,4 conflicting 92:11 conflicts 62:3 97:15 103:16 103:17 confronted 53:21 confusion 23:20 conglomeration 15:3 connection 3:11 10:22 48:2 connects 43:22 48:1 51:3 notation 117:13 conscious 23:13 63:12,14 94:19 consensus 5:11 consent 90:7 consequence 17:6 47:12 52:13 consequences 7:9,9 18:1 53:3 74:2 consequential 41:12 consider 2:3 13:13 71:5 115:8	considerable 13:1 15:4 30:21 consideration 6:16,20 19:22 34:10 42:21 54:3 92:24 considerations 1:21 6:8 9:1,8 35:24 46:23,24 47:15 51:25 75:7 90:1 considered 68:15 75:4 considering 1:16 21:12 27:3 constituent 102:9 constantly 31:24 51:5 constitute 65:11 constituted 84:20 constitutes 20:10 constituting 66:11 76:3 82:24 constitution 48:3 constitutions 48:18 constrain 97:25 constrained 65:17 constraining 83:1 constraints 30:16 97:20 98:18 103:25 104:2,12 105:2 111:11,16 112:20 117:6,9 construed 34:1 consumers 60:18 103:4 contact 100:10 contain 2:18 contemplate 56:18 contemplating 22:4 content 10:8 context 3:4,24 16:9 21:11 31:16,18,19 36:20 38:4 50:17 51:12 52:6 68:18 70:16 71:4 82:11 86:10 87:10 119:15 contexts 29:13 39:4 48:10 68:15,18,18 120:17 contextual 72:3 continue 25:25 continued 53:1
-----------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

continuously 61:14	113:16,21 116:24	120:20	defame 20:6	9:18	disagree 53:9	56:13,16,21
continuum 80:9	courses 3:10	culture-shaping 19:17	defeated 6:20	detrimental 17:24	disagreement 53:11 54:17,18	70:25 71:2,2,6
contours 118:18	court 32:10	cumulative 52:22	defect 116:15,15	develop 13:20	disastrous 25:8	71:12 82:2
contract 25:4	50:21 74:3	cumulatively 53:3	defendant 70:22	23:17 82:18	disciplines 96:8	84:11 88:16
contractual 64:23	courts 12:25	curb 16:13	deficient 55:21	100:11 108:4	discourage 41:11	98:23 116:6
contrary 44:1	cover 55:23	currency 4:11	define 30:22	116:22	51:24	117:9 121:2
contrast 31:3	85:13 87:21	current 80:17	33:19 83:25	developed 90:8	discouraging 47:2	46:25 54:5
contribute 104:22	covers 50:1	82:12 115:24	definite 69:10	developing 105:18 106:14	discourse 4:6 5:3	55:24 103:17
contributes 112:15 117:4	crank 79:2	currently 84:20	definitely 89:16	107:18	discover 12:24	dominate 112:22
contributing 111:2 117:22	create 31:13	110:21 115:12	definition 58:14	development 8:8	discretion 40:3	120:21
contribution 117:3,17	60:23 61:8	cursorily 112:3	105:5	115:3,6	40:23 50:8	dominating 111:22
control 63:3	85:21 119:20	cuts 62:3	degree 33:7	dialogue 63:15	53:7	doubt 37:7 66:14
Convention 5:19	created 68:1	<hr/> D <hr/>	degrees 93:16,19	dictate 40:19	discuss 18:24	Dr 64:6,7,9
11:1	30:21 51:16	daily 26:11 27:6	94:2,13	difference 5:17	106:15	94:17
conveying 109:15	69:14 83:11	97:19	deliver 4:20 12:9	11:19 34:4	discussed 48:2	drafted 118:25
core 104:21	100:5	danger 16:24	12:19 23:1,25	35:5 46:6	discussion 10:17	dramatically 23:20
corn 10:23	19:21 42:23	27:4,11 45:16	delivers 24:5	50:16 64:25	18:7 63:19	draw 67:24 68:2
corporate 66:5	83:12	48:11 57:13	demanding 83:6	72:4 80:6	102:3 120:3	68:3,7,23 69:2
81:7 114:12,13	credibly 20:8	dangerous 24:24	83:9	86:11	displayed 27:22	69:9 80:1 82:7
115:2	crime 20:25	41:22	democracies 12:15	differences 65:4	disreputable 42:5,7	91:5 116:12
corpus 107:2	84:15	dangers 108:2	democracy 7:15	different 1:19,20	dissemination 104:15	drawing 31:3
correct 8:10 22:1	crimes 21:19	data 2:4	7:22,24 8:13	1:21 5:10	25:17	91:1
22:3 39:23	criminal 11:3	date 17:3	8:17 13:11	10:19 13:15	distance 43:2	drawn 74:9,12
48:13 49:23	21:19 70:18,20	day 21:8 26:9	15:13 16:14	14:6 15:25	distill 10:18	dreadfully 57:8
52:15 55:21	48:12	days 17:3	27:9 83:20	16:20,25 23:22	distinct 7:15	drew 114:15
109:1 118:23	criticise 83:19	day-to-day 121:11	democratic 29:17,18 54:21	28:12 35:2	14:22 21:17	driven 10:12
118:23	criticised 1:15	deal 4:7,8 7:6	69:24 83:1,8	38:23 49:22	88:19	drives 1:5
correlation 74:24	84:18 116:3	15:2 49:13	83:17,21 85:3	50:22 57:22	distinction 16:23	dropping 63:23
correlative 5:8	crossword 26:9	82:10 115:1	104:22	62:16 64:21	17:1 33:20	duck 18:6,18
11:20	26:16	dealers 10:23	demonstrated 55:20	69:4 70:14,15	34:2 38:20	84:4
corresponding 89:11	crosswords 29:24	dealing 29:2,3	dentistry 96:10	70:17 71:25	68:6 86:22	Duff's 70:20
cost 10:10	crowd 101:14	30:9 62:6	depend 70:16	84:9 90:3	93:16 104:20	duties 6:15 9:6,7
costs 4:25	crowded 10:2,4	92:17 102:25	71:4 73:7 74:7	105:25 109:15	distinctions 94:16	9:17 10:8
coterminous 14:25 15:8	10:22 11:14	114:6	depending 13:15	112:12	distinctive 111:1	11:20 12:2
Couched 73:16	crowds 18:9	debase 4:11	depends 41:24	differentiate 4:12 40:1	distinguish 4:5	34:24 35:3,6,6
counterbalance 90:16	crucial 103:14	debate 2:19	79:3 87:13	67:10	distinctive 111:1	35:11,13,15
countervailing 40:12 61:7	109:3 110:1	10:14 12:1	92:10	differently 16:25	6:13 7:1 13:21	36:20,21 46:7
89:8	Crucially 48:21	54:6 66:14	depth 62:10	63:21	14:12 24:9	46:7,8,9 47:9
counter-produ... 47:5	Cruft 64:6,7,9	decades 61:14	derivative 66:6	difficult 2:23	33:17 100:6	64:20,20,22
country 11:3	94:17	decant 31:7,21	derive 79:21	8:15 29:7	distinguishing 4:3	66:14,16,20,21
27:23 34:6	crusading 40:13	decide 72:4	describe 17:5	33:10 40:5	distort 83:15,21	66:24 67:2,4,6
48:5	cuckoo 116:3	decides 18:20	78:2 97:11	47:11 49:7,11	84:1 85:3	75:17 77:3
counts 90:24	cultural 54:19	decisions 103:21	described 46:17	71:3 84:4	distorted 84:22	80:23 87:21
105:12,12	75:14 81:2	103:21	deserve 44:2	94:22 105:8	110:4 119:4	88:15,24,25
couple 92:16	96:25 109:19	decision-making 69:24 83:2,8	deserving 18:17	107:17 120:3	distorting 84:12	89:4 91:25
course 5:18 11:9	113:9	83:17,21,24	designed 114:9	121:18	diverse 70:2	102:7 107:24
15:7 16:4	culture 1:18 25:5	declaration 86:18	114:25 115:4	difficulties 81:2	85:21 87:18	duty 4:20,23,24
26:18 29:19	30:13 33:25	declarations 37:5 86:24	desire 96:5	difficulty 23:19	101:10,25	5:1,8,13,15
49:12 54:18	34:17,19,20,21	declare 86:4,6,14	desired 56:17	85:5 106:19,25	118:6	6:18 9:14 10:5
56:11,13 59:13	47:18,18 55:19	87:1	destroy 6:23	dimension 14:5,9	diversity 54:22	15:17 34:25
59:13 63:1	55:25 56:3,14	declaring 86:17	destroyed 74:11	dinner 38:9	85:7,10 101:5	37:12 43:3
72:25,25 73:24	58:13,22 59:14	decriminalisati... 59:16	detail 1:7 91:13	dire 36:13	109:6	66:25 67:12,13
79:14,16 105:4	59:18,18 60:15	deep 40:9	91:24 93:25	direct 11:13	Divisional 32:10	67:16,18,19
	60:23 61:10	deeper 17:10	106:23,24	25:21 70:14	doctor 89:9	74:24 81:12,13
	106:13,14	Defamation 21:18	107:5,10	74:21,24 81:4	doctors 90:1	88:16 89:1
	112:24 113:8		detailed 116:8	directed 26:3	document 102:23	90:21,24
	113:15 114:10		details 27:7 78:8	57:2	dogma 54:10	dwelt 82:14
	115:3 116:1		determinants 78:16	direction 49:18	doing 10:6,7	<hr/> E <hr/>
	118:17,18,19		determine 5:22	58:7	19:6 26:24	eager 4:8
	119:20 120:1		71:3	directly 8:15		earlier 9:2 50:16
			determining	directors 80:18		66:13 72:19
				81:3,23 82:5,7		88:17

earn 44:19 45:5 45:14	encourage 10:13 41:10 77:3 115:3	26:9,14,25 28:16	euro 18:16	expected 1:24	15:1 17:7 19:7 19:8 32:3 38:3	field 32:13
easier 29:5	encouraged 110:6,12	entertainment 25:20,21 26:3 26:8,10,11,22 27:1,3,6,25 28:6 29:4,23 30:2 43:19 105:1	European 5:19 11:1 41:17	experience 62:17 105:17 106:24 107:3 115:20 116:12,24	53:17 59:4 97:9 100:15 110:20 117:9	figure 27:12 figures 42:23 109:8
easy 56:23	encourages 116:16,18	entirely 16:22 98:25 99:3 121:19	event 117:19	experienced 115:23	external 114:3	film 44:14
Eaves 17:20	encouraging 75:1	entire 74:10	everybody 12:11 59:8	expertise 81:15	externally 113:25	final 55:18 89:21
editor 40:3 41:3 45:24 63:8 114:15	endeavour 56:2 106:1	entities 66:5	everything's 57:4	experts 61:16	extra 35:13,15 35:25 51:15,16 52:7	Finally 119:19
editorial 101:3 118:24	endorsing 16:24	entitled 98:16	evidence 2:3 12:21 17:19 42:14,19 64:10 121:16	explain 93:15 111:4 117:21	extraordinarily 14:17 24:8 38:16	financial 24:15 37:6,7,8 78:11 86:5,11,12,23 86:25 87:1,10 87:11
editors 1:25 40:23 62:25 72:8 78:10 80:18 86:4,6,8 87:2 107:5 108:8 112:9 113:16,17,21 113:23	ends 83:15	entity 81:7	evidenced 82:4	explained 90:5	extreme 74:17	find 12:25 27:14 29:5,7 42:23 107:16
education 31:8 32:7 69:23 103:22	enforce 31:12 55:22 56:11 66:21 67:2 80:24	equal 37:14,18 65:12	exactly 18:23 58:6 80:8 104:25 105:3 121:3	explanation 73:14	extremely 17:9 42:18 50:8 63:9 121:21	finding 69:2
effect 11:13,14 18:1,9 19:17 19:17 20:22 21:7 31:12 41:9 51:4 52:21,22 56:17 59:14 60:15 101:14 108:8	enforceability 25:3	equality 12:20 17:20	example 4:14 6:3 6:22 9:25 10:2 18:3 26:16 28:21 30:11 31:8 32:13 36:14 41:10 44:8 47:1,1 53:5 65:23 68:13 69:3,4 70:17 72:6 74:14 89:9 99:7 102:2 108:2 115:18 121:5	explicit 87:24 explicitly 84:8 111:8 112:5	eye 52:17	fine 26:5,11 62:2
effective 2:2 29:22 57:18 120:15	enforceable 46:21	equally 63:14	exposed 27:14 43:17 44:3 58:2	expose 40:15 44:15	fact 74:1	finite 101:16
effects 25:8 26:8 26:23 32:20 41:12 51:19 81:14 114:21	enforced 56:12 56:12,15,20,25 58:24,25 66:25	equals 82:25	express 51:18 63:16,21 113:16	exposure 27:7 44:7 45:6	face 74:1 fact 2:18 13:5 18:23 20:14 36:10 37:21 42:17 67:6 91:20 93:3 99:23 101:13 103:24 118:7	fire 10:1,4,22
effort 64:13	enforcement 47:20,20 58:11 58:18 59:5,12 75:17	equivalent 25:3 96:19	expressed 50:12 62:22 94:24 101:11 113:13	expresses 101:13 117:2	factors 72:3 98:4 119:19	firmly 18:22
either 35:8 39:21 41:14 49:5 55:21 73:25 76:14 93:20 101:2	engaging 75:1 engage 7:11 engaged 25:7 engages 31:24	establish 3:22 esteem 32:25 47:21	examples 9:25 21:11 26:23 74:9,12	expressing 11:11 14:4 51:19 101:17	facts 98:22 99:2 99:2,10,13 108:22 109:6 116:24 119:6	first 2:5 3:6,8,22 4:1 7:14,17 8:23 15:2 17:4 17:12 21:24 26:4 31:1 40:4 48:3 53:25 56:20 64:17,24 82:21 83:10 86:3 87:25 95:16 96:12 99:15
effort 64:13	engineer 75:1 engaged 25:7	ethical 1:16,21 30:14,19 34:10 34:24 35:23 36:2,3 39:23 40:1 46:7,8,12 46:17,18,22 47:8,9 48:13 54:20 55:21 56:1 60:21 66:16,20,24 67:4,6,12,13 77:3 80:23 81:12 87:22 88:25 90:1 102:2,5,7,11 106:6 107:24 115:13	exceeding 59:4	expressed 50:12 62:22 94:24 101:11 113:13	fail 61:14	fit 3:2
effects 25:8 26:8 26:23 32:20 41:12 51:19 81:14 114:21	engineering 96:10 106:5 115:19	ethic 116:16	exception 73:10 92:14	expresses 101:13 117:2	failing 74:2 83:20	five 21:3
effort 64:13	engineers 106:3 106:4,9	ethical 1:16,21 30:14,19 34:10 34:24 35:23 36:2,3 39:23 40:1 46:7,8,12 46:17,18,22 47:8,9 48:13 54:20 55:21 56:1 60:21 66:16,20,24 67:4,6,12,13 77:3 80:23 81:12 87:22 88:25 90:1 102:2,5,7,11 106:6 107:24 115:13	exceptional 93:22	expressing 11:11 14:4 51:19 101:17	fair 32:15,16 49:23 79:23,24 79:25	fleshing 105:10
either 35:8 39:21 41:14 49:5 55:21 73:25 76:14 93:20 101:2	enhance 56:3 121:9	ethic 116:16	exceptionless 73:3,5	expression 1:12 3:25 7:17 11:6 11:10 14:23 15:6,9,23 16:5 16:11,18 19:13 19:24 20:9 30:18 52:4 53:13,16 54:15 55:2,6,11,12 65:1,4,9,10,16 65:19,24 66:1 66:2,10 92:22 93:3,5,8,12,14 100:9,13,23 101:7 111:9,13 111:21 112:15 112:22 117:19 117:21 118:5,8 118:19	factually 109:1	focus 1:23 26:2 91:1 114:9,23 115:4
effects 25:8 26:8 26:23 32:20 41:12 51:19 81:14 114:21	enhanced 109:6 116:2,6	ethicist 115:18	exceptions 72:24 73:7 92:20 93:21,23	expressions 101:13 117:2	fairly 19:12 25:1	focused 21:5
effort 64:13	enhancement 115:5 121:12	ethics 1:18 33:17 33:17,21,25 34:4,13,14 36:8 39:17 42:3 55:19 56:3 58:5 95:22 96:6,6,7 99:25 102:3 111:6 115:19 116:22 117:13 120:14,19 121:1,3	excluding 107:1	expressive 14:8 14:10,14,16	faiths 54:16	focusing 20:19
either 35:8 39:21 41:14 49:5 55:21 73:25 76:14 93:20 101:2	enormous 21:2 49:25 84:2	ethics 1:18 33:17 33:17,21,25 34:4,13,14 36:8 39:17 42:3 55:19 56:3 58:5 95:22 96:6,6,7 99:25 102:3 111:6 115:19 116:22 117:13 120:14,19 121:1,3	exercise 2:25 43:10 49:2 55:10 104:8	expressly 73:19	fall 46:24 112:10	fold 51:11
effort 64:13	enshrines 37:14	ethics 1:18 33:17 33:17,21,25 34:4,13,14 36:8 39:17 42:3 55:19 56:3 58:5 95:22 96:6,6,7 99:25 102:3 111:6 115:19 116:22 117:13 120:14,19 121:1,3	exercising 30:18 32:4	extend 9:10 36:12 49:18	falls 80:11	follow 4:17 8:15 24:2 29:19,20 36:22 66:20 67:8 72:19 81:16 93:4 103:7
effects 25:8 26:8 26:23 32:20 41:12 51:19 81:14 114:21	ensure 15:18 26:7 39:6 44:17,23 62:7 67:20 85:19 101:7,25 109:23	ethically 30:19 47:14 62:25	exerts 19:19	extension 1:12 3:25 7:17 11:6 11:10 14:23 15:6,9,23 16:5 16:11,18 19:13 19:24 20:9 30:18 52:4 53:13,16 54:15 55:2,6,11,12 65:1,4,9,10,16 65:19,24 66:1 66:2,10 92:22 93:3,5,8,12,14 100:9,13,23 101:7 111:9,13 111:21 112:15 112:22 117:19 117:21 118:5,8 118:19	family 3:5 5:17 famous 6:22 44:9 44:9	following 76:1 84:18 91:11
effort 64:13	ensured 38:15	ethicist 115:18	exists 4:21 21:24 25:1 31:18	expression's 117:24	fair 2:19 9:11 10:14 17:12 40:25 41:15 52:20	follows 5:5 61:11
either 35:8 39:21 41:14 49:5 55:21 73:25 76:14 93:20 101:2	ensures 24:16 44:22	ethics 1:18 33:17 33:17,21,25 34:4,13,14 36:8 39:17 42:3 55:19 56:3 58:5 95:22 96:6,6,7 99:25 102:3 111:6 115:19 116:22 117:13 120:14,19 121:1,3	existence 5:13 74:10	expressive 14:8 14:10,14,16	faithful 80:11	follow-up 39:24
effects 25:8 26:8 26:23 32:20 41:12 51:19 81:14 114:21	ensuring 37:18 43:17 48:6 63:5	ethics 1:18 33:17 33:17,21,25 34:4,13,14 36:8 39:17 42:3 55:19 56:3 58:5 95:22 96:6,6,7 99:25 102:3 111:6 115:19 116:22 117:13 120:14,19 121:1,3	existing 72:8 107:4	expressly 73:19	fairly 19:12 25:1	football 32:12 44:10,14,20,25
effort 64:13	enter 68:17,19	ethics 1:18 33:17 33:17,21,25 34:4,13,14 36:8 39:17 42:3 55:19 56:3 58:5 95:22 96:6,6,7 99:25 102:3 111:6 115:19 116:22 117:13 120:14,19 121:1,3	expand 8:5 109:11	extend 9:10 36:12 49:18	faithful 80:11 favours 55:1 favours 53:13,14	form 19:24 27:6 27:7
either 35:8 39:21 41:14 49:5 55:21 73:25 76:14 93:20 101:2	entertain 26:6,7 26:24 104:24	ethics 1:18 33:17 33:17,21,25 34:4,13,14 36:8 39:17 42:3 55:19 56:3 58:5 95:22 96:6,6,7 99:25 102:3 111:6 115:19 116:22 117:13 120:14,19 121:1,3	expansive 41:16	extending 78:22 extends 40:25	feature 59:19	forms 4:6 20:13 22:8,8 47:19 47:20 69:22
effects 25:8 26:8 26:23 32:20 41:12 51:19 81:14 114:21	entertained 28:4 28:8	ethics 1:18 33:17 33:17,21,25 34:4,13,14 36:8 39:17 42:3 55:19 56:3 58:5 95:22 96:6,6,7 99:25 102:3 111:6 115:19 116:22 117:13 120:14,19 121:1,3	expect 27:13 98:24 120:18	extensive 8:14,18 43:10	feel 10:12 11:15 27:21 35:8 41:14 43:1 54:12 81:6	forgiveness 73:17
effort 64:13	entertaining 28:8	ethics 1:18 33:17 33:17,21,25 34:4,13,14 36:8 39:17 42:3 55:19 56:3 58:5 95:22 96:6,6,7 99:25 102:3 111:6 115:19 116:22 117:13 120:14,19 121:1,3		extent 9:16 12:4	feels 90:23 felt 86:23 107:12	

formulate 23:7	54:2,6,6,8,14	getting 6:10	114:12,13	harasser 43:8	Hornsby 2:6,8	immorality
formation	54:23 55:1,6	23:16 28:8	115:2	hard 68:3,23	2:12 3:8,9 7:18	39:19 41:20
11:24	55:11,12 64:25	47:22 49:24	governed 63:6	69:1	7:19 10:20	impact 19:15
forth 31:10	65:4,5,7,8,10	62:12 71:15	government	harm 10:24	14:8 15:2,4,25	32:17,23,25
35:16 41:5	65:16,19,22,24	110:1 118:3,10	16:13 29:15	11:13 60:2	17:12,13 20:18	38:12 50:24
60:22 109:3	66:1,2,9 70:4	119:14	30:1 77:23	88:20,20,22	21:13,16 24:7	impacting 26:15
116:25	82:23 86:15	give 18:3 36:16	78:20 80:8	harming 89:1,6	24:8 26:4,5,17	impartial 98:10
foster 31:14	92:22 93:3,12	60:8 69:19,25	83:8,16 118:4	hate 3:11 21:19	26:21 33:13,16	98:19
118:16	100:8,9,11,12	82:4 99:18	governments 8:1	hatred 11:2,15	34:5 37:11	impartiality
found 87:14	100:23 101:6	given 22:21	grateful 2:17	14:11	38:5,13 39:3	97:15 98:6
115:18	102:12,15,15	37:16 48:5	82:6 95:4	head 37:15 94:22	43:12 44:16	impartially
foundational	104:5,6,8	53:14 69:3	great 4:7,8 22:18	119:7 121:19	45:4,12 47:25	119:6
70:12	110:25 111:9	95:5 116:11	43:9 49:13	heading 108:5	51:3 52:21,24	impeccable
foundations 70:9	111:13,21	gives 109:25	110:17	health 68:14,20	55:3 58:9	47:14
four 106:5	112:21 117:18	giving 9:20 85:8	greater 19:19,23	89:14 103:22	62:23	impinge 39:22
framed 118:16	117:21,23	go 16:17 26:1	30:10 33:7	hear 21:4 51:10	hospitals 113:6	97:10
Fred 33:1	118:5,7,19	35:6 41:9	51:20 80:16	heard 3:23 11:8	host 118:21	impinged 98:4
Fred's 33:3	freedoms 3:24	42:25 47:19	118:15	12:16 17:15,15	house 18:7,18	implement 36:1
free 1:5,6 3:11	22:10 97:11	50:20 53:5	grey 50:1,4,6,19	53:10 115:7	hubbub 121:11	36:3 72:5
3:25 6:11 7:15	freely 113:13	57:8 58:4	50:25 51:1,2	hearing 51:8	huge 12:11 42:14	implemented
7:17,21 8:3,7	friend 67:13	59:10 61:8	60:1 99:24,25	hears 11:7	81:25	6:12 8:1
8:14,14,18,19	friends 67:1	66:18 67:22	grips 113:24	heavily 54:24	hugely 27:24	implications
8:19,21 9:11	fulfil 78:21 97:13	84:10 94:7,10	ground 50:1	heavyweight	60:25	27:8 105:25
9:12,13,24	fulfilled 5:6 16:5	96:14 103:14	grounded 9:25	100:16	human 3:20 5:19	implicit 8:20
11:5,7,9,18	full 65:18 95:16	111:6 116:20	65:25	heckle 13:3	35:12 46:19	56:6
12:5,7,8,9,13	99:25 116:14	120:19 121:2	grounds 93:21	held 33:1 34:6	64:22	implies 5:12
12:19 13:6,7	fully 1:13 29:17	goal 52:18	group 17:16,17	help 16:13 36:6	humiliation 28:9	imply 14:23 73:3
13:13,14,23	36:25	goes 9:14 29:10	17:18 37:20,22	36:13 58:15	hung 107:17	importance 1:5
14:15,18,20	function 14:14	40:25 45:18	38:16 39:7	84:9	hypocrisy 68:20	8:7 12:5,7
15:9,12 19:4	25:14 26:3,22	52:19 55:1	groups 11:13,15	helpful 11:20	hypocrite 40:16	13:13 20:19,23
20:4 21:22	31:20 96:20,23	88:14 114:11	grubby 91:12,23	34:23 63:9		28:2 54:14
22:2,23,24,25	104:21	114:12	guarantee 111:1	66:15 69:8	I	69:23 71:18
23:2,5,21,21	functions 14:16	going 6:13 10:1	guess 12:4	72:13 94:1,2,6	idea 5:13 24:16	72:2 73:7
23:23,24,24	39:23 96:19	16:8 20:8	guide 106:7	94:15,15,17,19	24:18 30:6	75:14,15,23
24:3,3,6,9,11	97:13 104:23	32:10 36:5	guidelines 56:1	helps 65:11	34:11 35:22	79:4 82:22,25
24:12,14,14,23	fundamental	40:9,10 42:9	58:5 62:5	105:11 109:25	54:3 57:22	94:12 103:19
24:25 25:1,9	36:11 82:22	50:20 56:9	guiding 69:9	hesitate 63:23	69:11 76:7	104:13 106:13
25:11,11,12,15	88:14	61:15 65:25	104:9	121:24	80:14 81:11	117:8,22
25:20 29:1,12	funded 79:8,8,9	66:15 67:24	guilty 35:8	hesitated 18:14	83:18 84:6	important 1:7,13
29:12,13 30:16	further 36:3	68:2 71:7 73:1	guns 59:6	high 27:23	87:22	1:16 3:4 4:12
32:4 36:23,24	47:12 51:23,25	73:13 74:11		106:21 119:9	ideal 57:17,21	4:16 12:5 17:1
41:15,15 48:1	G	76:6 77:10	H	higher 36:3 46:9	ideally 57:9,15	18:8,10,10,13
48:4,10,13,17	garnered 63:4	82:14 85:8	habituated 57:10	Hill 43:6	61:9	18:17,21,24
48:19 61:22,24	gaze 44:18,21	86:19 89:3	hacking 21:15	hinting 46:8	ideas 47:8	20:21 23:23
65:1,16 71:8	58:2	90:20,22 91:21	113:1	historic 72:2	ideas 11:9 12:10	24:3,8 27:24
75:14,15 79:5	gender 3:12 33:5	99:18 104:5	halfway 80:15	historical 42:14	12:20 23:18	29:11,12,16,25
79:15 83:12	general 1:25	105:7 107:10	hand 5:22,23	history 71:4	24:11,15 40:14	30:2 33:20
84:25 85:4	22:2 39:9	112:7 113:3,7	65:4 74:25	hoc 114:6	identification	34:2 44:4
94:12 96:12,13	61:17 65:9	116:18 121:7	77:20 82:23,25	hold 16:23 43:8	81:6	47:17 50:8
96:17 97:10	82:11 103:16	good 5:24 7:5	91:17 106:22	60:6 62:19,20	identified 28:2	60:25 62:24
98:7 101:24	105:9	11:22 21:13,21	110:5,9	70:21 83:8,19	47:8	65:8,9,23 66:9
102:10 109:8	generality 32:8	22:19 23:5	handle 79:2	83:22 118:8	identify 20:13	69:22,24 71:5
112:15	106:21	28:1 42:15,18	handled 110:17	holding 83:16	21:17 81:4	71:6 72:22
freedom 1:12	generally 5:3	42:18 48:19,23	hands 22:20	96:23 97:3	ignore 77:10	73:9 76:3 77:6
3:25 7:16,17	41:11 42:23	48:25 49:2,5	hand-waving	104:10 112:19	93:25 95:1	81:17 83:23
12:18 13:1,17	46:17	69:13,15 72:17	107:15	holds 25:18	illness 89:11	85:10 87:19
13:17,18 14:2	generate 10:5,17	82:1 88:12	Hang 45:25	homework 77:18	image 44:12	88:1 97:17
14:23,23,24	22:9 28:18,19	96:19 97:16	happen 111:13	homosexuality	images 35:16	98:9,21 99:17
15:6,7,10,11	28:20,22 32:14	103:20 104:22	113:7,25	59:17	103:8	101:21 102:20
15:15,18,22,23	generated 6:15	107:18 108:15	happening 113:5	honest 37:1	imagine 20:25	103:18,20,23
16:9,19 20:3,9	9:6	108:17 116:22	happier 89:21	62:12	52:25 65:15	104:14 105:6
21:23 22:5,6,8	gentleman 32:11	116:23 117:3,4	90:21	honesty 103:5	immediately	107:21 108:18
22:8,11,15,16	genuine 81:6	117:6,8,11	happiness 25:24	119:12	67:8 72:18	111:19 112:19
22:19,20 27:5	101:6	118:15	89:19	hope 2:25 14:20	Immigration	117:24 118:5,8
30:18 48:15	genuinely 73:11	goods 117:23	happy 25:22,23	61:1	11:3	118:24 119:24
53:13,16,24		governance	35:6	hopeless 29:9	immoral 47:3	120:9 121:20

impose 4:23 9:17 9:19 10:10 11:5 46:9 52:7 104:16	65:19,25 66:1 81:9 106:25 individuals 7:20 8:8 11:15 15:16 30:18,22 31:21,25 43:15 50:3 51:17 52:4,11 54:4 60:18 66:11,12 77:9 97:22 98:2 108:3	19:22 32:19 35:14 36:16 51:15,15 70:13 institutions 12:23 50:5 70:10,24 71:16 instrument 36:4 47:6 instrumental 24:4 28:15 69:21 83:15 118:14 insufficient 46:10 87:6 insufficiently 69:18,18 intelligible 117:7 117:10 interaction 31:10 interception 21:15 interdisciplinary 95:22 96:7 115:15 116:12 interest 1:4,8,9 3:7,14,18 4:14 4:16,16,22,22 5:4,6 8:13 9:11 9:12,14,16 10:4 11:19 15:10 16:5 21:5 25:15,16 25:19 28:1 29:1 32:15 41:2,11 45:8 65:1 66:3 68:14 71:8 79:18 91:15 92:7,14,21 93:4,5,12,21 96:12,17,18 97:16,22,24 99:8 107:15 108:2,15 109:15,22,25 110:21 111:2,8 111:10,11,14 112:14,16,17 112:18 114:19 117:18	71:10 74:8 78:11 86:5,11 86:12,13,14,17 86:23,25 87:2 87:12 89:3 91:21 92:4,5,6 92:12 96:1,2 97:5 99:12,15 108:19 interfere 10:6,16 11:22 103:11 interfering 53:15 86:15 internal 102:23 114:24 international 3:21 interrogate 28:5 intervene 49:20 49:21 99:20 intimately 57:14 intolerable 51:4 intrinsic 28:3 82:1 introduce 31:19 54:13 introduces 34:11 intrude 45:18 intuitions 68:11 invaded 28:10 invasions 28:22 investigate 42:22 investigative 57:1 inviting 95:6 involve 77:12,12 involved 1:14 involvement 76:13 involves 10:9 75:24 76:13 87:23 89:6 irrelevant 37:21 issue 6:10,24,25 10:19 18:13 21:8 26:13,21 32:1 46:11 65:22 68:20 77:1 84:5 101:9 103:14 108:6 113:9 issues 1:16 2:4 3:10,20 17:2 18:8,11 21:8 25:10 29:2,4 30:10,12,12 41:2,4,6,6 53:24,24 75:4 96:21 102:5 109:9 119:22 120:4,10 itemise 103:3 items 16:25 it'll 29:5 ivory 116:5	<hr/> J <hr/> Jay 2:5,11,12 3:6 3:13,17 7:14 10:15 11:17 21:17 25:15 27:18 32:22 39:11 45:21 46:2,5 53:5 63:9 64:6,8,9 69:1 73:16 78:1 82:10 84:20 91:10 92:13 94:17 95:7,12,15,16 100:8 106:19 116:10 119:19 121:15 Jen 50:16 Jennifer 2:8 13:22 jeopardy 43:16 44:6,17 job 42:1,18 jobs 28:17 John 2:10 10:22 49:21 54:25 61:19 John's 15:17 joined 44:25 journalism 87:10,11 94:6 94:8,8 118:24 journalist 55:7 55:10 73:23,24 86:4,8 107:16 107:19 110:5 111:18 121:6 journalists 15:7 33:22 63:6 71:20 72:10 87:1 108:7 109:24 112:9 113:23 journey 75:5 judge 40:2 judges 71:1 judgment 43:10 49:13 63:1 84:2 98:8 107:19 116:22 116:23 judgments 97:17 118:23 judicial 98:3 July 1:1 jump 46:3 jungle 24:25 juridical 4:3 juries 71:1 jurisprudence 2:16 jurisprudential 23:14 Justice 1:3 2:7 2:23 6:21 9:22 10:11 11:3	13:19 18:12,22 20:1,7 21:10 21:14 23:6,13 26:13,19 32:2 35:2 38:23 44:7,24 45:8 45:20 49:7,10 49:23 50:12 51:1 52:12,16 56:8,23 57:19 57:21 58:24 59:2,22 62:11 62:14,19 63:11 64:12 67:23 68:1,25 72:24 73:22 74:14,20 74:23 75:3,11 76:8,10,16 77:6,15,25 82:6 83:25 89:7,14,25 90:5,7,10,13 90:16 94:19 95:4,8,13 98:25 99:21 100:1,5 105:20 105:24 106:10 106:17 111:23 113:20 115:6 115:16 116:5 119:15,18,25 120:11,25 121:14,17 122:1 justification 11:23 21:21 29:8 53:15 64:20 justified 7:12,13 66:2,10 73:11 justifies 1:5 22:5 55:11 justify 38:21 119:16	91:1,23 94:8 96:22 103:25 105:18 111:12 111:20 115:2,4 115:20 117:14 117:15 120:20 120:23 121:12 kindly 64:10 95:18 kinds 27:15,16 31:14,21 40:14 55:3 109:23 110:1 knew 106:10 knock-on 80:20 81:14 know 10:14,25 13:22 23:5 28:5 29:16 33:16 39:18 44:2 50:18 52:25 58:16 59:3 60:12,12 61:1 63:5,7 68:12 75:9 77:4 84:6 87:8 89:12 91:19,20 91:23 100:2,3 106:24 110:14 112:1 115:25 116:2 knowing 89:22 91:2 92:1 knowingly 84:17 knowledge 14:14 25:3 116:8 knows 6:22
in 4:23 9:17 9:19 10:10 11:5 46:9 52:7 104:16	65:19,25 66:1 81:9 106:25 individuals 7:20 8:8 11:15 15:16 30:18,22 31:21,25 43:15 50:3 51:17 52:4,11 54:4 60:18 66:11,12 77:9 97:22 98:2 108:3	19:22 32:19 35:14 36:16 51:15,15 70:13 institutions 12:23 50:5 70:10,24 71:16 instrument 36:4 47:6 instrumental 24:4 28:15 69:21 83:15 118:14 insufficient 46:10 87:6 insufficiently 69:18,18 intelligible 117:7 117:10 interaction 31:10 interception 21:15 interdisciplinary 95:22 96:7 115:15 116:12 interest 1:4,8,9 3:7,14,18 4:14 4:16,16,22,22 5:4,6 8:13 9:11 9:12,14,16 10:4 11:19 15:10 16:5 21:5 25:15,16 25:19 28:1 29:1 32:15 41:2,11 45:8 65:1 66:3 68:14 71:8 79:18 91:15 92:7,14,21 93:4,5,12,21 96:12,17,18 97:16,22,24 99:8 107:15 108:2,15 109:15,22,25 110:21 111:2,8 111:10,11,14 112:14,16,17 112:18 114:19 117:18	71:10 74:8 78:11 86:5,11 86:12,13,14,17 86:23,25 87:2 87:12 89:3 91:21 92:4,5,6 92:12 96:1,2 97:5 99:12,15 108:19 interfere 10:6,16 11:22 103:11 interfering 53:15 86:15 internal 102:23 114:24 international 3:21 interrogate 28:5 intervene 49:20 49:21 99:20 intimately 57:14 intolerable 51:4 intrinsic 28:3 82:1 introduce 31:19 54:13 introduces 34:11 intrude 45:18 intuitions 68:11 invaded 28:10 invasions 28:22 investigate 42:22 investigative 57:1 inviting 95:6 involve 77:12,12 involved 1:14 involvement 76:13 involves 10:9 75:24 76:13 87:23 89:6 irrelevant 37:21 issue 6:10,24,25 10:19 18:13 21:8 26:13,21 32:1 46:11 65:22 68:20 77:1 84:5 101:9 103:14 108:6 113:9 issues 1:16 2:4 3:10,20 17:2 18:8,11 21:8 25:10 29:2,4 30:10,12,12 41:2,4,6,6 53:24,24 75:4 96:21 102:5 109:9 119:22 120:4,10 itemise 103:3 items 16:25 it'll 29:5 ivory 116:5	<hr/> J <hr/> Jay 2:5,11,12 3:6 3:13,17 7:14 10:15 11:17 21:17 25:15 27:18 32:22 39:11 45:21 46:2,5 53:5 63:9 64:6,8,9 69:1 73:16 78:1 82:10 84:20 91:10 92:13 94:17 95:7,12,15,16 100:8 106:19 116:10 119:19 121:15 Jen 50:16 Jennifer 2:8 13:22 jeopardy 43:16 44:6,17 job 42:1,18 jobs 28:17 John 2:10 10:22 49:21 54:25 61:19 John's 15:17 joined 44:25 journalism 87:10,11 94:6 94:8,8 118:24 journalist 55:7 55:10 73:23,24 86:4,8 107:16 107:19 110:5 111:18 121:6 journalists 15:7 33:22 63:6 71:20 72:10 87:1 108:7 109:24 112:9 113:23 journey 75:5 judge 40:2 judges 71:1 judgment 43:10 49:13 63:1 84:2 98:8 107:19 116:22 116:23 judgments 97:17 118:23 judicial 98:3 July 1:1 jump 46:3 jungle 24:25 juridical 4:3 juries 71:1 jurisprudence 2:16 jurisprudential 23:14 Justice 1:3 2:7 2:23 6:21 9:22 10:11 11:3	13:19 18:12,22 20:1,7 21:10 21:14 23:6,13 26:13,19 32:2 35:2 38:23 44:7,24 45:8 45:20 49:7,10 49:23 50:12 51:1 52:12,16 56:8,23 57:19 57:21 58:24 59:2,22 62:11 62:14,19 63:11 64:12 67:23 68:1,25 72:24 73:22 74:14,20 74:23 75:3,11 76:8,10,16 77:6,15,25 82:6 83:25 89:7,14,25 90:5,7,10,13 90:16 94:19 95:4,8,13 98:25 99:21 100:1,5 105:20 105:24 106:10 106:17 111:23 113:20 115:6 115:16 116:5 119:15,18,25 120:11,25 121:14,17 122:1 justification 11:23 21:21 29:8 53:15 64:20 justified 7:12,13 66:2,10 73:11 justifies 1:5 22:5 55:11 justify 38:21 119:16	91:1,23 94:8 96:22 103:25 105:18 111:12 111:20 115:2,4 115:20 117:14 117:15 120:20 120:23 121:12 kindly 64:10 95:18 kinds 27:15,16 31:14,21 40:14 55:3 109:23 110:1 knew 106:10 knock-on 80:20 81:14 know 10:14,25 13:22 23:5 28:5 29:16 33:16 39:18 44:2 50:18 52:25 58:16 59:3 60:12,12 61:1 63:5,7 68:12 75:9 77:4 84:6 87:8 89:12 91:19,20 91:23 100:2,3 106:24 110:14 112:1 115:25 116:2 knowing 89:22 91:2 92:1 knowingly 84:17 knowledge 14:14 25:3 116:8 knows 6:22
in 4:23 9:17 9:19 10:10 11:5 46:9 52:7 104:16	65:19,25 66:1 81:9 106:25 individuals 7:20 8:8 11:15 15:16 30:18,22 31:21,25 43:15 50:3 51:17 52:4,11 54:4 60:18 66:11,12 77:9 97:22 98:2 108:3	19:22 32:19 35:14 36:16 51:15,15 70:13 institutions 12:23 50:5 70:10,24 71:16 instrument 36:4 47:6 instrumental 24:4 28:15 69:21 83:15 118:14 insufficient 46:10 87:6 insufficiently 69:18,18 intelligible 117:7 117:10 interaction 31:10 interception 21:15 interdisciplinary 95:22 96:7 115:15 116:12 interest 1:4,8,9 3:7,14,18 4:14 4:16,16,22,22 5:4,6 8:13 9:11 9:12,14,16 10:4 11:19 15:10 16:5 21:5 25:15,16 25:19 28:1 29:1 32:15 41:2,11 45:8 65:1 66:3 68:14 71:8 79:18 91:15 92:7,14,21 93:4,5,12,21 96:12,17,18 97:16,22,24 99:8 107:15 108:2,15 109:15,22,25 110:21 111:2,8 111:10,11,14 112:14,16,17 112:18 114:19 117:18	71:10 74:8 78:11 86:5,11 86:12,13,14,17 86:23,25 87:2 87:12 89:3 91:21 92:4,5,6 92:12 96:1,2 97:5 99:12,15 108:19 interfere 10:6,16 11:22 103:11 interfering 53:15 86:15 internal 102:23 114:24 international 3:21 interrogate 28:5 intervene 49:20 49:21 99:20 intimately 57:14 intolerable 51:4 intrinsic 28:3 82:1 introduce 31:19 54:13 introduces 34:11 intrude 45:18 intuitions 68:11 invaded 28:10 invasions 28:22 investigate 42:22 investigative 57:1 inviting 95:6 involve 77:12,12 involved 1:14 involvement 76:13 involves 10:9 75:24 76:13 87:23 89:6 irrelevant 37:21 issue 6:10,24,25 10:19 18:13 21:8 26:13,21 32:1 46:11 65:22 68:20 77:1 84:5 101:9 103:14 108:6 113:9 issues 1:16 2:4 3:10,20 17:2 18:8,11 21:8 25:10 29:2,4 30:10,12,12 41:2,4,6,6 53:24,24 75:4 96:21 102:5 109:9 119:22 120:4,10 itemise 103:3 items 16:25 it'll 29:5 ivory 116:5	<hr/> K <hr/> keen 10:17 keep 9:25 23:17 keeping 52:17 key 102:5 116:22 kind 4:10 5:11 5:16 16:19 19:17 20:10,11 22:4 25:5,6 31:12,14,20 32:17 34:21 35:18,19,20 36:1,7,16 38:9 40:24 41:10 42:1 46:14,20 46:21,25 47:6 49:14 52:2 54:6,8 55:2 57:7 74:8,12 75:24 78:20 80:6 90:19,25	91:1,23 94:8 96:22 103:25 105:18 111:12 111:20 115:2,4 115:20 117:14 117:15 120:20 120:23 121:12 kindly 64:10 95:18 kinds 27:15,16 31:14,21 40:14 55:3 109:23 110:1 knew 106:10 knock-on 80:20 81:14 know 10:14,25 13:22 23:5 28:5 29:16 33:16 39:18 44:2 50:18 52:25 58:16 59:3 60:12,12 61:1 63:5,7 68:12 75:9 77:4 84:6 87:8 89:12 91:19,20 91:23 100:2,3 106:24 110:14 112:1 115:25 116:2 knowing 89:22 91:2 92:1 knowingly 84:17 knowledge 14:14 25:3 116:8 knows 6:22	
in 4:23 9:17 9:19 10:10 11:5 46:9 52:7 104:16	65:19,25 66:1 81:9 106:25 individuals 7:20 8:8 11:15 15:16 30:18,22 31:21,25 43:15 50:3 51:17 52:4,11 54:4 60:18 66:11,12 77:9 97:22 98:2 108:3	19:22 32:19 35:14 36:16 51:15,15 70:13 institutions 12:23 50:5 70:10,24 71:16 instrument 36:4 47:6 instrumental 24:4 28:15 69:21 83:15 118:14 insufficient 46:10 87:6 insufficiently 69:18,18 intelligible 117:7 117:10 interaction 31:10 interception 21:15 interdisciplinary 95:22 96:7 115:15 116:12 interest 1:4,8,9 3:7,14,18 4:14 4:16,16,22,22 5:4,6 8:13 9:11 9:12,14,16 10:4 11:19 15:10 16:5 21:5 25:15,16 25:19 28:1 29:1 32:15 41:2,11 45:8 65:1 66:3 68:14 71:8 79:18 91:15 92:7,14,21 93:4,5,12,21 96:12,17,18 97:16,22,24 99:8 107:15 108:2,15 109:15,22,25 110:21 111:2,8 111:10,11,14 112:14,16,17 112:18 114:19 117:18	71:10 74:8 78:11 86:5,11 86:12,13,14,17 86:23,25 87:2 87:12 89:3 91:21 92:4,5,6 92:12 96:1,2 97:5 99:12,15 108:19 interfere 10:6,16 11:22 103:11 interfering 53:15 86:15 internal 102:23 114:24 international 3:21 interrogate 28:5 intervene 49:20 49:21 99:20 intimately 57:14 intolerable 51:4 intrinsic 28:3 82:1 introduce 31:19 54:13 introduces 34:11 intrude 45:18 intuitions 68:11 invaded 28:10 invasions 28:22 investigate 42:22 investigative 57:1 inviting 95:6 involve 77:12,12 involved 1:14 involvement 76:13 involves 10:9 75:24 76:13 87:23 89:6 irrelevant 37:21 issue 6:10,24,25 10:19 18:13 21:8 26:13,21 32:1 46:11 65:22 68:20 77:1 84:5 101:9 103:14 108:6 113:9 issues 1:16 2:4 3:10,20 17:2 18:8,11 21:8 25:10 29:2,4 30:10,12,12 41:2,4,6,6 53:24,24 75:4 96:21 102:5 109:9 119:22 120:4,10 itemise 103:3 items 16:25 it'll 29:5 ivory 116:5	<hr/> L <hr/> lack 30:22 88:4 115:19 laid 43:18 land 116:4 language 3:10 4:12 72:13 large 17:17 44:19 70:22,25 80:4 81:24 law 3:21 5:17 6:9 6:12 7:5,5,7 12:25 21:19 24:11,22,25 30:15,17,21 31:6,20,23,23 34:8 36:1,4,15 46:14,21,23 47:5,10,14,15 47:19,23 48:6 49:3,18,20,20 49:21 50:21 55:22,23 56:11 56:15,19,25 57:7,13,15 58:7,21 59:4 59:11,16,19 61:1,3 67:3	91:1,23 94:8 96:22 103:25 105:18 111:12 111:20 115:2,4 115:20 117:14 117:15 120:20 120:23 121:12 kindly 64:10 95:18 kinds 27:15,16 31:14,21 40:14 55:3 109:23 110:1 knew 106:10 knock-on 80:20 81:14 know 10:14,25 13:22 23:5 28:5 29:16 33:16 39:18 44:2	

73:3,22,23 74:1 80:17,24 laws 22:14 25:3 31:11,13 55:24 58:12 law's 46:19 47:2 56:12 law-abiding 31:21 lay 70:18 71:1,1 76:13 lead 25:8 76:24 leadership 119:23 120:10 121:13 leading 9:12 leads 4:10 63:3 110:19 learning 89:19 leave 40:23 50:7 54:7 61:16 84:5 lecturer 64:16 Leeds 95:23 left 37:6 40:2 50:4,19,25 113:25 legal 3:19 6:2,5 6:21 35:23 41:17 46:7,9 46:11 47:19 48:4 53:23 72:20,21 75:17 80:17 81:13,15 82:5 90:11 legislation 2:4 37:13,15,17 38:13,17,22 48:5 56:18 legislators 60:17 legitimate 13:4 21:18 26:15 28:6 31:20,23 35:9 40:7 41:18 45:16,17 LESLEY 2:9 let's 13:19 18:4 74:17 level 6:11 21:2 76:13 81:22 106:21 levers 85:18 LEVESON 1:3 2:7,23 6:21 9:22 10:11 13:19 18:12,22 20:1,7 21:10 21:14 23:6,13 26:13,19 32:2 35:2 38:23 44:7,24 45:8 45:20 49:7,10 49:23 50:12 51:1 52:12,16 56:8,23 57:19 57:21 58:24	59:2,22 62:11 62:14,19 63:11 64:12 67:23 68:1,25 72:24 73:22 74:14,20 74:23 75:3,11 76:8,10,16 77:6,15,25 82:6 83:25 89:7,14,25 90:5,7,10,13 90:16 94:19 95:4,8,13 98:25 99:21 100:1,5 105:20 105:24 106:10 106:17 111:23 113:20 115:6 115:16 116:5 119:15,18,25 120:11,25 121:14,17 122:1 lexicon 3:22 liable 32:19,20 85:2 111:15 libel 66:24 liberal 54:21 66:23 67:2 69:11,16 71:24 92:9 94:10 liberty 30:19 43:20 104:5 licences 93:14 licensed 104:6,7 lie 37:8,9 67:1,12 life 4:17,18 21:9 27:14 28:7,13 33:24 42:6,25 43:18,20 44:15 44:16 90:22 91:3,13 118:1 121:11 light 41:1 63:19 63:24 99:11 105:19 121:23 liked 17:5 limit 59:4 70:3 72:1 87:16 88:3 limitations 19:24 20:2 28:18,20 limited 12:14 18:2 19:14 51:16 71:9 88:5 93:8 101:18,22 limitless 18:11 limits 8:19 20:5 76:25 line 46:1 67:24 68:1,12,24 69:3,10 80:10 80:12 96:16 99:22 100:6 lines 59:9 80:1	link 74:21 list 94:14 107:14 120:9 listen 9:13,20 listening 14:1 little 38:8,10 75:8,10,13 107:11 112:1 live 27:11 75:15 77:1 78:18 79:4 89:20 96:23 108:12 108:16,16 lived 71:25 105:15 106:9 113:14 lives 27:8 28:11 42:22 45:2 60:21 96:22 loaded 89:23 London 2:13 long 44:21 87:17 long-term 59:17 look 7:8,8 12:23 26:12 40:12 41:13 85:24 looked 64:24 93:19 107:24 114:16 looking 13:16 57:23 62:16 79:13 85:20 96:8 105:2 107:5 looks 75:16 91:6 LORD 1:3 2:7 2:23 6:21 9:22 10:11 13:19 18:12,22 20:1 20:7 21:10,14 23:6,13 26:13 26:19 32:2 35:2 38:23 44:7,24 45:8 45:20 49:7,10 49:23 50:12 51:1 52:12,16 56:8,23 57:19 57:21 58:24 59:2,22 62:11 62:14,19 63:11 64:12 67:23 68:1,25 72:24 73:22 74:14,20 74:23 75:3,11 76:8,10,16 77:6,15,25 82:6 83:25 89:7,14,25 90:5,7,10,13 90:16 94:19 95:4,8,13 98:25 99:21 100:1,5 105:20 105:24 106:10 106:17 111:23	113:20 115:6 115:16 116:5 119:15,18,25 120:11,25 121:14,17 122:1 lose 10:1 47:21 lot 16:8 25:13 27:20 33:3,11 41:21 45:9,14 54:1,18 63:12 68:9 70:15 71:3 79:3 86:24 100:17 118:22 lots 21:10 109:14 loud 17:9 101:18 low 21:2 luncheon 122:4 lying 84:12 <hr/> M <hr/> magistrates 71:2 main 3:7,9,14,18 7:14 24:5 36:24 46:23 61:22 64:18,19 78:16 92:17 95:25 100:21 maintain 28:16 101:6 maintained 67:21 majority 42:15 making 19:15 62:2 75:5,6,24 82:18 85:15 93:15 97:16 103:21 man 43:7 48:25 manage 81:5,8 managers 81:3 manifestation 52:13 manifesting 61:10 market 21:22 22:2 23:1,21 23:24 24:3,3,9 24:11,12,14,15 24:24,25 25:1 25:10,12,12 marketplace 11:8 12:10,19 marking 77:18 mate 37:25 38:14 material 121:20 matter 7:2 20:21 20:24 28:12 30:20 32:8,24 37:25 38:3,5 41:21,22 42:17 43:14 44:3 49:22 50:22 60:1 68:10,11 68:16,16 73:22	77:16 91:14 92:1,5,11 105:10 mattered 41:21 matters 30:1 39:21 53:6 54:19,19,20 65:14 78:7 97:23 102:2 mature 7:15 maximising 108:1 mean 8:24 14:8 23:3 30:7 34:9 38:8,21 39:3 39:19 41:14 44:25 45:2,4 52:24 75:21 79:14 81:7 83:25 86:12,20 91:21 94:22 99:24 100:16 102:2,12 105:8 105:8,16 111:25 112:25 118:14 120:7 means 2:19 17:13 58:22 69:24 101:10 118:1 meant 76:10 measure 22:4 57:8 measures 56:1 mechanism 46:20,21 74:25 114:24,25 115:4 mechanisms 76:15 media 60:18,19 61:6,12 78:7 83:3 98:17 99:8,9 104:9 108:23 109:5 109:22 110:11 110:16 111:12 112:9 115:23 115:25 mediate 45:22 medical 27:21 90:2 96:6 102:3 medicine 96:10 medium 59:17 megaphone 17:5 17:11 18:1,9 19:17 20:22 21:7 51:3 52:13,21 Megone 95:12,14 95:17 98:6 108:5 121:17 Megone's 121:16 member 17:16 17:17 37:22	39:7 69:12 members 77:5 78:9 109:8 115:25 men 3:2 Mendus 2:6,9,14 3:13,14 8:4,6 11:25 13:22 16:22 17:25 18:14 19:5 22:17 23:9,19 27:1,20 29:10 32:22,23 36:18 36:19 38:6 39:4,12 41:19 41:20 45:13 48:21 49:9,11 50:11,14 51:2 52:23 54:11,12 57:15,20 58:1 58:21 59:1,13 61:17 62:12,18 mention 32:24 37:11 mentioned 4:4 13:10 21:19,20 37:22 66:13 69:7 71:21 85:7 88:17 94:11 97:14 98:6 mentioning 81:22 119:12 mere 20:14 101:13 merely 25:9 32:3 46:10 52:12 middle 50:1 mid-point 53:9 Mill 10:23 12:9 14:15,17 49:21 million 51:8,11 mind 1:17 3:9 36:19 71:17 79:5,13 84:7 86:18 91:11 102:22 105:9 minds 8:2 minimum 28:20 36:2 minority 34:4 minute 71:14 minutes 95:7 misdescribe 55:5 miserable 89:21 mislead 74:13 misleading 74:15 84:14,17,22 93:9,13 missed 109:2 mistake 15:24 20:16 22:21 misused 74:16 Mm 46:5 86:17 87:5 91:10 103:13 110:19	111:17 Mm-hm 21:16 86:1 103:2,10 model 76:24 moderate 45:22 modern 3:14 12:15 modes 26:8 moment 32:11 61:19 81:3 91:9,22 114:4 moments 74:20 Monday 1:1 money 18:19 44:13,19 45:5 45:9,15 monitored 51:5 monitoring 62:9 monitors 52:18 monopoly 85:16 months 75:12 89:20,22 moral 3:18 4:3 5:14 25:6 33:4 33:22 36:17 40:13 49:16 66:6 72:10,14 72:14,15,18 73:2,4,16 76:25 77:3 88:14 96:3,4 114:18 morality 6:10 7:2 30:22 33:19,19,21,25 34:8,12 36:8,9 39:16 40:15 43:3,13 44:1 morality's 36:14 morally 6:6 31:7 42:5 48:23 49:2 74:4 89:23 morning 60:3 motivation 61:25 62:1 motive 55:10,14 mouth 39:2 move 5:3 7:14 8:12 13:18 14:22 23:21 30:14 59:22 moving 23:4 46:11 52:17 58:7,8 75:16 muddled 90:19 multicultural 54:16 murder 22:15,16 61:1,2 mustn't 23:10 118:9 119:13 mutually 110:4 muzzling 20:3,10 <hr/> N <hr/>
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------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name 95:16 116:20	3:2 25:24,25 26:1,12 85:13	73:15,16,18	99:19 100:15	owe 67:12,13 102:10	84:9 103:9	116:7 118:9,9
narrow 53:7 60:1	86:19 99:19 100:3,19 109:2	obligations 46:9 73:4 102:11 103:4,7,11,25 104:2	100:17 101:1 101:13 108:8,9 118:7	owed 87:22	partisan 84:25 85:2 86:16 87:17 98:7,10	120:4,16,18 121:5,9
narrowed 50:7	newspapers	104:2	opinions 2:20,21 11:11 33:3,23 45:6 85:14	owes 67:16	partly 12:14 69:14 70:8	people's 22:5,15 27:7 29:14 32:21 43:12 59:12 105:4
narrower 50:9 52:14	17:21 18:17 24:17 29:24	observations	100:18,25	owner 108:20	88:10,17,18	perceived 19:20
narrowly 34:1	38:25 65:24	92:13	101:7,11,14,15	owners 108:8,12 108:13 112:10	91:5 105:13,17	perceptions
nation 75:15	86:20 88:25	obtain 44:11	101:18 102:5	ownership 24:20 100:22 101:2,3	112:13	32:21
nationalisation	100:16,20,21	obvious 89:18	109:17 118:6	108:3,11	partner 42:19 67:1	performance
79:10	100:22 102:4	obviously 58:18	opportunities	O'Neill 37:4	parts 97:21 98:16 112:4,12	87:8
natural 110:15 111:20	108:25	98:17 104:14	120:3	P	party 84:13,14 85:14 86:19	person 21:5 30:25 39:22 42:5 44:9,12 49:5 73:15 90:21,22 115:20
naturally 106:22	newspaper's	occasion 111:3	opposed 13:17 15:16 18:25 39:16 41:3	page 78:3,3 79:23 82:16,16 86:2,2 102:24 102:24 109:12	PCC 111:6	personal 4:22 12:2 30:20 39:16,16,19 40:15 41:20 43:2 44:1 70:8
nature 64:19 92:25 105:5	66:4	occasionally	optimalistic 14:18	pages 46:4 95:19	peculiarly 17:14	personality 42:2
108:17 115:15	nine 75:12 89:20	1:15	optional 35:24	paid 18:6	pejoratively 37:20 38:15,19	personally 12:3 45:13
near 80:12	89:22	occasions 1:3	oral 121:21	paragraph 78:5 79:23 80:15 82:21 83:3 87:19 88:7 93:16 110:23	pen 39:2	persuaded 42:11 42:12,13
nearly 37:25	non-interference	occupy 80:7	order 9:7 25:14 45:22 74:2 91:6 97:5,13 101:6 118:8	paragraphs	penultimate	persuasive 14:5
necessarily	30:11	occurred 81:20	35:12	82:20	93:16	pertain 98:2
13:25 16:11	non-pejorative	Ofcom 115:7	organ 17:8 49:10	parallel 31:25	people 4:8 5:1,3 6:24 7:10,22 7:24 8:9 11:10 11:13 12:17 13:14 18:24 19:20 20:6 22:12 24:17 25:2,6,22,23 26:11 27:15,16 27:18,20 28:3 28:9,16 29:23 31:7,20 32:3 33:1,11,19 34:6,12 35:16 36:11 38:8,9 39:17 40:10 41:9 44:2,19 45:14 48:6 50:20 51:8 53:8 54:1,3 57:10 59:10 60:5,17,19,24 61:2 69:17 74:16 77:13,16 81:24,24 85:9 88:15,15,20,21 88:21 89:2 91:23 94:20 97:3,25 100:19 100:24 101:21 101:23 104:10 105:11,15 106:14,21 109:14,18,18 110:7,9,10 112:8,19 113:2 113:10,15,22 114:6 115:11 115:22,24	person's 41:25 42:4
36:5 56:14,23	38:2	offend 38:1	organisation	part 4:25 16:5 17:25 30:3 41:24 49:17 50:15 59:15 66:3,12 68:21 69:13,16 77:2 77:4 82:2,25 83:11 98:17 106:13 111:9 112:24 113:18 116:23	perspective 3:3 59:25 60:10 65:3	persuaded 42:11 42:12,13
57:25 62:1	non-values 4:14	offended 60:5	82:2 99:12,14 112:10 114:3 114:17,18,22 120:5 121:8	parallels 21:10	perspective 3:3 59:25 60:10 65:3	persuaded 42:11 42:12,13
63:15 89:24	normally 28:8	offending 51:6	organisations	part 4:25 16:5 17:25 30:3 41:24 49:17 50:15 59:15 66:3,12 68:21 69:13,16 77:2 77:4 82:2,25 83:11 98:17 106:13 111:9 112:24 113:18 116:23	persuaded 42:11 42:12,13	persuaded 42:11 42:12,13
91:8 120:12	normativity	offensive 13:3 19:2,3,15 31:10 52:5 60:5	30:17 81:24 83:4 98:21 99:8,10 106:13 108:23 109:19 109:20 112:25 113:3,6,15 114:10 118:2 119:24	partially 98:16 98:20,24	persuaded 42:11 42:12,13	persuaded 42:11 42:12,13
necessary 2:1 61:16 91:25	norms 46:15 47:19 120:21 120:21	offer 60:11	organ 17:8 49:10	participate	persuaded 42:11 42:12,13	persuaded 42:11 42:12,13
need 4:5 7:24 9:7 13:12 19:7 20:16 22:22,25 23:5,22,24 27:2 36:14 40:21,24 49:18 66:22 73:13 76:11 80:7 81:1 82:4 84:11 85:18 89:17 97:6 101:5 102:18 107:23 112:11 112:21 113:23 115:22 117:1 120:2 121:9	nosiness 92:2 note 63:23 notice 33:2 89:17 105:21 noticed 32:3,6,14 32:20 35:17 noting 17:25 notion 35:22 47:18 102:9,14 notional 53:9,12 notions 102:13 105:16 nuance 49:14 nuanced 63:16 number 10:13 12:6 15:4 19:6 64:25 85:24 97:20 98:3 100:18,19,21 101:15,16,20 101:22 102:18 108:3,7 111:11 116:10 numbering 102:23 numbers 42:15	office 42:1 96:24 120:20 officers 59:6 officials 43:13,23 44:5,5 Oh 20:7 26:5 47:13 okay 23:9,19 31:4 41:17 54:11 58:1 65:6 78:4 82:10,20 95:3 ombudsman 114:20 once 20:1 21:1 22:19,22 26:21 47:7 one's 24:19 26:22 29:2 37:25 38:7 43:18,20 44:16 44:18 111:18 111:22 online 26:12 63:22 Onora 37:4 open 37:2 43:18 66:8 113:15 120:1 operate 40:22 57:8 operating 25:20 30:8 operation 110:12 operationalise 30:6 opinion 33:7 85:16 98:14,15 98:20,22 99:3	organisation 82:2 99:12,14 112:10 114:3 114:17,18,22 120:5 121:8	participate 24:14 participates 34:20 participating 2:24 participation 70:18 particular 1:25 15:11 16:2 32:1 34:14 35:14 37:10 46:20,20,21 52:24 53:20 55:12,13 68:21 70:12 71:16,18 71:18 72:23 73:8 79:4 96:19 particularly 21:14 35:7 43:5 49:4 96:9 99:6 100:14 107:10 112:2 parties 77:12	part 4:25 16:5 17:25 30:3 41:24 49:17 50:15 59:15 66:3,12 68:21 69:13,16 77:2 77:4 82:2,25 83:11 98:17 106:13 111:9 112:24 113:18 116:23	perspective 3:3 59:25 60:10 65:3
needed 58:13	O	Oh 20:7 26:5 47:13	organisations	partially 98:16 98:20,24	persuaded 42:11 42:12,13	persuaded 42:11 42:12,13
needlessly 37:20	Object 17:20	okay 23:9,19 31:4 41:17 54:11 58:1 65:6 78:4 82:10,20 95:3	30:17 81:24 83:4 98:21 99:8,10 106:13 108:23 109:19 109:20 112:25 113:3,6,15 114:10 118:2 119:24	participate 24:14 participates 34:20 participating 2:24 participation 70:18 particular 1:25 15:11 16:2 32:1 34:14 35:14 37:10 46:20,20,21 52:24 53:20 55:12,13 68:21 70:12 71:16,18 71:18 72:23 73:8 79:4 96:19 particularly 21:14 35:7 43:5 49:4 96:9 99:6 100:14 107:10 112:2 parties 77:12	persuaded 42:11 42:12,13	persuaded 42:11 42:12,13
needs 7:22 15:15 44:3 77:12,12 77:14 97:14 110:17 112:8 113:22	objection 101:17 objective 28:13 objectives 24:6 107:7 114:17 114:18 obligation 37:19 72:10,14,15,15 72:19,20,21 73:2,5,8,11,12	one's 24:19 26:22 29:2 37:25 38:7 43:18,20 44:16 44:18 111:18 111:22 online 26:12 63:22 Onora 37:4 open 37:2 43:18 66:8 113:15 120:1 operate 40:22 57:8 operating 25:20 30:8 operation 110:12 operationalise 30:6 opinion 33:7 85:16 98:14,15 98:20,22 99:3	organisations 30:17 81:24 83:4 98:21 99:8,10 106:13 108:23 109:19 109:20 112:25 113:3,6,15 114:10 118:2 119:24	partially 98:16 98:20,24	persuaded 42:11 42:12,13	persuaded 42:11 42:12,13
negative 117:14 120:8	object 17:20	once 20:1 21:1 22:19,22 26:21 47:7 one's 24:19 26:22 29:2 37:25 38:7 43:18,20 44:16 44:18 111:18 111:22 online 26:12 63:22 Onora 37:4 open 37:2 43:18 66:8 113:15 120:1 operate 40:22 57:8 operating 25:20 30:8 operation 110:12 operationalise 30:6 opinion 33:7 85:16 98:14,15 98:20,22 99:3	organisations 30:17 81:24 83:4 98:21 99:8,10 106:13 108:23 109:19 109:20 112:25 113:3,6,15 114:10 118:2 119:24	partially 98:16 98:20,24	persuaded 42:11 42:12,13	persuaded 42:11 42:12,13
negatives 119:16	objection 101:17	once 20:1 21:1 22:19,22 26:21 47:7 one's 24:19 26:22 29:2 37:25 38:7 43:18,20 44:16 44:18 111:18 111:22 online 26:12 63:22 Onora 37:4 open 37:2 43:18 66:8 113:15 120:1 operate 40:22 57:8 operating 25:20 30:8 operation 110:12 operationalise 30:6 opinion 33:7 85:16 98:14,15 98:20,22 99:3	organisations 30:17 81:24 83:4 98:21 99:8,10 106:13 108:23 109:19 109:20 112:25 113:3,6,15 114:10 118:2 119:24	partially 98:16 98:20,24	persuaded 42:11 42:12,13	persuaded 42:11 42:12,13
negotiations	objection 101:17	once 20:1 21:1 22:19,22 26:21 47:7 one's 24:19 26:22 29:2 37:25 38:7 43:18,20 44:16 44:18 111:18 111:22 online 26:12 63:22 Onora 37:4 open 37:2 43:18 66:8 113:15 120:1 operate 40:22 57:8 operating 25:20 30:8 operation 110:12 operationalise 30:6 opinion 33:7 85:16 98:14,15 98:20,22 99:3	organisations 30:17 81:24 83:4 98:21 99:8,10 106:13 108:23 109:19 109:20 112:25 113:3,6,15 114:10 118:2 119:24	partially 98:16 98:20,24	persuaded 42:11 42:12,13	persuaded 42:11 42:12,13
25:7	objection 101:17	once 20:1 21:1 22:19,22 26:21 47:7 one's 24:19 26:22 29:2 37:25 38:7 43:18,20 44:16 44:18 111:18 111:22 online 26:12 63:22 Onora 37:4 open 37:2 43:18 66:8 113:15 120:1 operate 40:22 57:8 operating 25:20 30:8 operation 110:12 operationalise 30:6 opinion 33:7 85:16 98:14,15 98:20,22 99:3	organisations 30:17 81:24 83:4 98:21 99:8,10 106:13 108:23 109:19 109:20 112:25 113:3,6,15 114:10 118:2 119:24	partially 98:16 98:20,24	persuaded 42:11 42:12,13	persuaded 42:11 42:12,13
neither 18:25	objection 101:17	once 20:1 21:1 22:19,22 26:21 47:7 one's 24:19 26:22 29:2 37:25 38:7 43:18,20 44:16 44:18 111:18 111:22 online 26:12 63:22 Onora 37:4 open 37:2 43:18 66:8 113:15 120:1 operate 40:22 57:8 operating 25:20 30:8 operation 110:12 operationalise 30:6 opinion 33:7 85:16 98:14,15 98:20,22 99:3	organisations 30:17 81:24 83:4 98:21 99:8,10 106:13 108:23 109:19 109:20 112:25 113:3,6,15 114:10 118:2 119:24	partially 98:16 98:20,24	persuaded 42:11 42:12,13	persuaded 42:11 42:12,13
neo-Aristotelian	objection 101:17	once 20:1 21:1 22:19,22 26:21 47:7 one's 24:19 26:22 29:2 37:25 38:7 43:18,20 44:16 44:18 111:18 111:22 online 26:12 63:22 Onora 37:4 open 37:2 43:18 66:8 113:15 120:1 operate 40:22 57:8 operating 25:20 30:8 operation 110:12 operationalise 30:6 opinion 33:7 85:16 98:14,15 98:20,22 99:3	organisations 30:17 81:24 83:4 98:21 99:8,10 106:13 108:23 109:19 109:20 112:25 113:3,6,15 114:10 118:2 119:24	partially 98:16 98:20,24	persuaded 42:11 42:12,13	persuaded 42:11 42:12,13
96:4	objection 101:17	once 20:1 21:1 22:19,22 26:21 47:7 one's 24:19 26:22 29:2 37:25 38:7 43:18,20 44:16 44:18 111:18 111:22 online 26:12 63:22 Onora 37:4 open 37:2 43:18 66:8 113:15 120:1 operate 40:22 57:8 operating 25:20 30:8 operation 110:12 operationalise 30:6 opinion 33:7 85:16 98:14,15 98:20,22 99:3	organisations 30:17 81:24 83:4 98:21 99:8,10 106:13 108:23 109:19 109:20 112:25 113:3,6,15 114:10 118:2 119:24	partially 98:16 98:20,24	persuaded 42:11 42:12,13	persuaded 42:11 42:12,13
never 6:15,19 8:25 47:13 57:19,20	objection 101:17	once 20:1 21:1 22:19,22 26:21 47:7 one's 24:19 26:22 29:2 37:25 38:7 43:18,20 44:16 44:18 111:18 111:22 online 26:12 63:22 Onora 37:4 open 37:2 43:18 66:8 113:15 120:1 operate 40:22 57:8 operating 25:20 30:8 operation 110:12 operationalise 30:6 opinion 33:7 85:16 98:14,15 98:20,22 99:3	organisations 30:17 81:24 83:4 98:21 99:8,10 106:13 108:23 109:19 109:20 112:25 113:3,6,15 114:10 118:2 119:24	partially 98:16 98:20,24	persuaded 42:11 42:12,13	persuaded 42:11 42:12,13
new 55:24 56:18	objection 101:17	once 20:1 21:1 22:19,22 26:21 47:7 one's 24:19 26:22 29:2 37:25 38:7 43:18,20 44:16 44:18 111:18 111:22 online 26:12 63:22 Onora 37:4 open 37:2 43:18 66:8 113:15 120:1 operate				

piece 10:24 41:25 42:5 52:24 54:10	78:10 84:14 85:14 86:5,13 86:14,17,23 87:12 96:3,25 99:14,15	practice 39:21 56:3 72:8 84:20 94:7 110:22 116:1 118:24	35:12,20 36:22 36:23,24 37:1 37:11,16,17,23 38:11,18 39:8 43:18 44:7 48:16 49:10 50:6,22 51:7,9 51:12,15,18,19 52:6,8,9 53:2 55:20 56:3 58:19 60:4,6 61:21,22,25,25 63:6 65:1,5,7 65:17,17,23 66:9,16 67:4 67:13 69:17,19 69:21 70:2,3 71:8 75:14,16 76:2,23,24 77:3,5,8,13 78:2,16,22 79:8,10,18 80:3,11 82:23 82:23 83:7,11 83:13,19 84:8 84:11,21,24 85:4,7,8,17,19 85:21 87:16,18 87:23 92:8 94:12 96:13,13 96:17,18 97:6 97:11,14 98:7 98:9,12,13,16 98:17 100:8,12 101:3,5,9,13 101:17,24 102:7,10,10,16 104:21,23 108:9 109:8,13 110:14,24,25 111:1,5,15 114:5 116:19 117:3,24 119:3	71:23 72:1 79:20 80:21 110:21 117:12 principles 69:2,9 69:25 70:9,15 71:15,18 72:5 76:2 78:1 79:2 79:19 82:22 103:16 105:9 106:6,7,20 print 14:9 39:9 101:20 printed 51:9 printing 119:3 priority 57:7 privacy 1:11 28:10,23 39:15 40:9,19,25 41:7 43:16 44:4,6 53:5,14 53:24 54:1,5 55:2,7,9,15,17 91:17 97:23 private 1:10 27:8 27:14 29:6 30:17 34:7,17 42:6,22 43:14 43:14,21 44:3 44:15,16 45:1 46:25 50:17 52:6,10 68:7 68:11,16 79:12 79:14 80:2 91:13 103:11 privately 79:9 privileged 54:8 privileges 73:20 probably 15:24 22:1 25:5 33:2 61:15 92:9 94:2 101:22 problem 52:16 62:16 99:22 107:13,13 112:24 problematic 33:9 43:5 49:15 60:14 77:19 problems 5:2 61:20 76:24 109:9 procedures 120:7 proceed 22:3 process 85:3 98:3 114:2,8 processes 114:16 produce 106:7 producing 56:17 102:19 professional 57:12 77:4 107:18,19 116:22,23 118:21	professor 2:8,9 2:10,12,12,13 2:14,15,15 3:8 3:9,13,14,18 4:1 5:9,24 6:25 7:18,19 8:4,6 8:22,24 10:3 10:20 11:25 13:22 14:8 15:2,4,20,21 15:24 16:22 17:12,13,25 18:14 19:5,10 20:4,8,18 21:13,16,24,25 22:17 23:9,13 23:19 24:7,8 24:23 26:4,5 26:17,21 27:1 27:20,24 29:10 30:5,25 31:2,5 32:16,22,23 33:13,16 34:5 35:1,4 36:18 36:19 37:11 38:5,6,13 39:3 39:4,12 40:4,5 41:19,20 43:12 44:16 45:4,12 45:13 46:6,13 47:25 48:21 49:9,11 50:11 50:14 51:2,3 51:13 52:15,21 52:23,24 53:19 54:11,12 55:3 56:5,10 57:6 57:15,20 58:1 58:9,21 59:1 59:13 60:12 61:17 62:12,18 62:23 95:12,14 95:22 98:6 108:5 115:16 121:16,17 professors 2:6 profit 62:2,2 profitability 41:5 profits 62:8 profit-making 61:7,21 prohibit 112:6 prohibitions 107:14 116:14 proliferation 4:10 promote 15:14 34:22 55:25 56:13 83:20 114:18 promoted 15:19 24:17 promoting 17:14 84:7 proper 11:4	118:18 120:7 properly 6:2 25:12 46:24 47:10 56:19 97:13 112:1 property 25:4 28:21 64:22 proposal 79:3 proposals 75:18 75:21 79:13 propound 67:14 proprietors 78:10 80:18 86:4,8,12,14 113:23 protect 41:7 72:10 73:17 protected 43:14 protection 1:10 2:4 protest 55:8 provide 27:5 61:23 119:15 provided 64:11 95:18 121:21 provides 29:23 providing 96:20 112:18 proving 106:17 provision 30:2 61:24 62:4 72:23 97:2,3 provisions 92:18 prurient 41:10 prying 40:10 psychological 120:23 psychology 96:4 pub 32:4 33:1 public 1:4,8,9 15:9 25:15,19 27:12,14,17,25 28:1 29:1 31:9 39:23 41:2 42:10,22,25 43:3,13,23 44:4,5,18,21 45:2,6,9,15 58:2 60:2 65:1 65:11,13 66:4 66:11,16 68:6 68:10,17,19 69:11,16,19 70:22,24 71:8 75:25 76:3,5 76:12,18,20,22 77:7,13,14,22 78:9,17,21 79:12,18,19 80:3,4,6,8,11 80:12 82:24 83:4,5,11,12 84:15 85:9,10 91:15 92:14,21 93:3,5,12,21 94:10 96:12,17
-------------------------------------------------	--------------------------------------------------------------------------	----------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

96:21 97:1,5 97:18,22,24 102:7 103:20 104:22 107:15 108:1 109:8,14 109:17,21 110:20 111:2,8 111:9,10,14,14 112:14,16,16 112:18 114:19 117:6,8,18 publications 17:13 publicly 78:11 79:7,8 publish 84:21 92:9 published 63:2 publishing 38:25 55:13,15 78:9 punish 10:6 punished 74:6 punishment 3:20 purport 26:24 purpose 10:12 31:23 61:22 81:10 114:3 116:21 purposes 6:2,5 46:16,16,17 pursue 46:22 91:25 120:6 pursued 47:10 pursuing 68:22 117:5 119:13 pursuit 13:5 46:19 put 2:16 3:4 10:19 18:15 22:20 42:8 43:16 44:5,16 45:1 60:1 63:12 64:13 67:23	22:5,25 23:4,9 23:11,11 24:21 26:6 28:5,14 29:11 30:6 32:23 33:14 34:7,8 39:24 39:25 40:4,5 42:7 45:20,23 47:7 55:14,16 55:18 58:9 59:14,15,22 72:17 79:17 82:11,15,16,20 88:12 101:23 102:8 103:1 107:24,25,25 110:19 120:25 questions 2:11 7:1,23 10:12 18:16,18 23:7 33:24,25 34:13 34:17 35:2,5 40:6 43:7,22 49:19 58:16 59:11 64:8 94:18 95:15 101:21 108:10 121:23 quickly 75:16 110:25 quiet 23:17 91:22 quite 2:23 4:15 6:2 8:14 9:22 11:4 12:1 23:17,20,22 27:2,20 36:11 42:11 54:23 68:11,12 70:6 86:25 94:2,22 94:23 106:6 118:22 121:18	107:13 112:1,3 reader 92:6 readers 67:6,16 67:18 84:9 86:6 87:2,22 87:23 88:3,5,7 88:11 91:7 92:5 103:4 readership 99:18 readily 5:4 14:10 74:16 reading 93:18 reads 107:14 real 59:11 realise 26:10 56:16 realises 56:14 realising 70:13 70:15 really 13:25 24:21 28:4,7 49:4 53:21 57:7,18 62:9 65:18 73:9 87:6 91:21 92:2,3,4,6 93:11 realm 48:23 49:16 65:11,13 reason 5:16 15:14,24 18:14 19:22 24:5 47:4 51:6 54:7 57:16 61:2 71:21 90:18 reasonable 53:8 101:22,25 reasonably 1:24 reasoning 107:2 reasons 6:4 7:5 19:12 22:21 24:4 25:21 35:7 36:3,10 36:11,12,12,23 36:24 40:12 41:18,23 42:13 46:23 47:16 50:21 56:24 72:21 88:17 94:10 109:15 rebalanced 111:23 received 78:8 recognise 15:15 41:1 45:15 48:16 121:19 recognised 1:19 recognising 97:15 112:17 records 27:21 recruit 81:25 recruiting 82:1 redress 73:14 refer 1:18 104:13 109:7 reference 1:17	37:20 38:2,15 38:21 72:13 107:15 references 38:19 referred 39:5 referring 13:23 53:7 118:17 reflect 94:23,25 94:25 99:3 121:10 reflected 101:8 reflective 63:25 reflects 38:6 regard 41:8 54:8 75:7 regards 30:16 register 116:20 registered 78:11 regulate 112:5 regulating 24:20 regulation 32:1 35:23 66:20 67:8,9 75:24 78:2 79:15 regulator 67:20 97:10 regulators 76:22 regulatory 56:2 58:6 62:5 related 14:22 57:14 65:22 88:19 relates 85:6 relating 3:10 25:4 relation 2:3 17:8 21:14,19 29:5 29:8 59:4 75:3 82:12 105:21 115:6 relationship 64:21 66:13 110:15 relationships 109:7,23 110:4 relatively 37:13 relevance 39:16 relevant 32:18 32:21 39:17,20 68:21 81:21,23 82:8 91:24 religious 11:2 54:19 remark 50:18,18 remarks 13:3 19:14,16 52:5 remedies 114:7 remember 66:10 66:22 remove 116:6 removed 59:3 repeat 63:13 report 19:8 78:3 114:15,19 115:2 reported 21:9	103:8 120:17 reporting 37:8,9 37:19 38:18 99:7,9 114:2,4 114:9,12,13,24 114:25 115:4 reports 55:7 represent 17:21 17:22 70:24 85:10 representation 109:5 representative 43:24 represented 102:1,6 reputation 40:14 require 53:23 73:23 78:21 85:13 86:3,7 86:13,24 87:16 required 87:1 requirement 53:23 63:24 87:13 100:6 requirements 31:9 36:17 79:7 80:8 93:23 104:2 requires 25:13 56:25 57:1,2 88:22 requiring 78:7 78:10 research 3:8 64:18 70:8 95:25 reserve 19:1,2 resist 36:9 resolving 103:15 103:17 resource 18:11 57:2 respect 31:24 36:11 37:12 61:7 80:16 88:1,4,9,10,12 88:15,15 89:5 89:8 91:7,8,17 91:18 102:17 102:19 108:10 108:22 109:5 respected 80:24 respectfully 84:5 87:23 respecting 88:21 88:21 respects 118:20 response 55:21 responsibilities 35:3 36:21,22 37:1,3 80:18 102:18,22,25 104:8 118:12 responsibility 33:9 35:1	37:12,24 39:8 39:10 63:4 82:5 102:13 104:6 113:17 113:20 responsible 38:25 39:1 60:17 restates 82:21 restraints 117:4 restricted 24:10 38:17 73:3 100:22 restricting 22:6 22:15 restriction 13:6 20:9,13,15 21:22 22:12,13 104:15 restrictions 11:5 13:1 20:17 21:18 25:13 28:25 51:24 52:7 restrictive 87:15 restricts 22:4 results 69:14 retain 43:2 return 78:9 reveal 68:20 71:20 73:24,25 74:5 revealing 68:20 Rewards 120:8 rhetorically 4:9 Richards 115:9 right 1:12 3:25 4:13,19,19,21 5:6,7,12,14,22 6:4,5,6,17,18 6:19 7:2,8,16 7:19,21 8:12 8:21,22,22,24 8:25 9:3,5,7,10 9:15,24 10:3,8 10:16,21 11:18 11:21 19:1,2 19:13 27:18,20 32:4,17 35:4 37:14 39:13 40:18,25 43:1 43:16 44:6 46:13 48:1,4,7 48:17 49:1,3 50:15 51:17,18 51:22 52:1,5,7 52:8 53:16,17 53:23 55:8,9 55:11,12,17 57:4 60:4 65:24 66:1,9 73:21 74:6,18 74:24 75:22 86:9 87:15 89:11,15,15 94:15 96:11	97:7,8 106:11 107:6 108:6 118:16 119:20 rightly 83:22 rights 3:20,24 4:2,10,11,12 5:3,9,18,19,19 5:20,25 6:1,1 6:11,14,14,15 7:5,6 11:19,22 12:2 19:4 22:9 26:15 39:15 41:16,16 44:12 48:22,24,25 50:2 60:2 64:19,20,22,22 64:22,23 66:1 66:13 71:10 73:20 97:22 98:1,8,10 103:12 105:4 rigour 97:7 103:5 119:10 119:12 riot 10:23 11:14 rise 95:7 risk 46:11,12 77:8 road 59:9 role 1:23 16:14 33:24 35:14 37:17 54:20 66:16 69:17 76:3,5 80:3,4 82:24 83:5,6,7 83:23 85:8 102:8 111:1 117:6,21,24 118:14 119:9 roles 104:11 room 12:11 27:10 39:5,25 49:13 53:8 68:9 rough 12:20 roughly 25:3 65:12 round 14:19 route 30:3 70:12 Rowan 64:6,7 Royal 106:4 rubric 15:22 rules 31:9 38:23 run 39:14 106:24 runs 95:19
Q qualification 9:24 10:21 qualifications 11:2,12 qualified 5:18,21 5:23 8:22 9:9 11:17 26:18 72:15 qualifier 78:25 79:6 qualifiers 78:23 qualifies 111:11 qualify 108:25 116:7 que 14:13 question 5:24 6:13,14 7:3,4 9:4,5,18,23 10:3 18:12,20 20:11,18,22	R race 33:5 Racial 11:2 racist 50:18 52:3 railway 6:23 raise 20:22 55:18 113:4,10 raises 6:9 18:20 55:14 raising 51:22 ramifications 90:11 range 55:25 67:7 85:14 96:11,21 97:12,19 101:7 103:20 108:9 108:23 118:20 120:17 rationality 31:13 rationality 96:5 reached 14:21 read 17:21 24:17 98:23 106:17	S sake 82:3 92:1 sanctioning 35:10 satisfactory 111:7 satisfied 25:2 satisfies 60:2 saying 38:14 40:17 46:8				

50:16,24 70:5 72:22 73:1 77:5 83:7 84:17 94:7 116:8 says 6:17 7:7 11:1 12:11,23 72:9 87:3 scrutiny 27:14 seat 95:16 second 7:3 27:4 28:15 42:20 51:21 72:25 78:5 79:6,22 83:3 99:16 102:24 secondary 103:9 secondly 25:22 88:3 96:23 112:17 118:4 section 55:20 82:14,15 86:25 88:8 100:3 102:25 119:2 sections 98:23 securities 87:7 security 98:3 103:23 see 2:20,25 7:23 26:23 33:23 53:18 59:8 61:10 63:22 65:22 66:15 73:10,11 77:3 79:22 82:21 84:11 85:4 92:16 98:11 102:20 107:17 seeking 44:11 seeks 49:8 seen 24:15 27:9 61:14 62:25 70:21 75:18,20 92:11 99:12,14 111:14,21 sees 59:10 118:21 select 99:10 self 76:17 self-determina... 1:10 self-enclosed 46:14 self-regulation 58:8 61:12 75:19 76:7 self-regulatory 76:14 seminar 12:11 13:2 39:5 send 120:16,18 senior 64:16 109:18 sense 5:12 9:10 22:9,10,16 44:11 76:21	77:15,20 79:18 81:3,9 85:20 88:12 89:18 91:4,14 99:4 112:13,14 119:14 sensible 78:12 sent 106:11 separate 76:23 77:1 separated 42:2 sequence 102:8 107:25 series 9:8 20:17 serious 16:24 25:10 27:8 61:20,20 89:10 112:20 seriously 112:21 121:9 servants 27:17 serve 9:11 96:25 97:5 108:25 served 59:17 110:21 serves 25:18 96:18 108:24 111:1 service 118:15 servicing 104:11 112:15 115:12 118:14 set 2:20 3:7 46:15 60:20 76:25 99:1 104:9 106:8,23 117:16 118:6 setting 53:11 106:20,22 sexist 50:18 sexual 43:8 shame 81:6 shameless 42:24 shape 31:6,20 shaped 16:7 shaping 83:5 shares 87:7 sharp 80:10 86:22 sharply 80:1 short 64:4 95:10 shortly 3:6 shout 10:5 13:3 shouting 10:1,4 show 20:15 showing 49:4 109:2 shown 21:6 side 90:14,14 99:19 100:15 103:25 104:2 108:9 111:16 118:5,7 sides 98:19 significance 52:9 significant 12:15	50:5 59:19 86:10 105:12 105:13 Similar 103:7 simple 44:7 48:22 49:6 103:15 simply 5:16 16:17 20:23 32:24 33:6 44:13 45:8,23 55:22 61:10 78:25 90:23 92:1 94:3 113:20 120:12 sincerely 2:21 Sir 95:12 sit 115:10 situation 24:25 40:8 45:23 53:21 57:9 70:21 situations 6:7 slack 13:8 slander 93:9 slap 47:22 slight 53:10 slightly 10:19 55:1 102:8 105:16 107:15 slippage 111:13 111:20 slow 59:9 small 27:22 51:11 100:19 100:21 108:3,7 societies 40:11 society 19:21 27:12 29:18 33:10 35:20 40:8 45:24 54:15,20 57:3 57:24 65:10,15 65:18 66:23,24 67:2 71:5,24 71:25 79:5 82:4 92:10 97:9 98:8 104:22 108:12 108:15,16,18 sole 83:7 solutions 78:13 78:14 somebody 4:20 45:25 50:17 56:25 someone's 5:14 37:21 something's 32:19 68:10 somewhat 119:1 soon 59:8 sooner 12:12 sorry 2:21 72:25 76:9 81:19 106:18	sort 6:9 15:24 17:3 18:3 24:13,16,17 27:3 28:9 31:17 32:25 35:7 36:6 39:21 41:9 42:17 47:3 51:14 52:5,10 58:1 60:15 61:15 63:14 76:25 78:1 80:4,9,12 82:3 84:13,17,19 86:21 93:14 94:15 102:22 105:11,18 107:12 109:8 118:17 119:9 119:20 sorts 4:13 5:10 16:2,6 20:2 24:4 31:9 35:23 41:2,12 50:21 61:9 64:21 74:19 86:20 88:23 104:12 110:8 110:13 112:6 sound 11:10 21:20 78:12 sounded 2:22 source 25:20 73:24,25 sources 28:6 71:21 72:11 73:17 space 18:2,7,9,17 30:21 51:16 109:21 speak 3:2 10:15 11:17 30:19 38:7 60:13 85:17 speaking 62:25 71:22 special 35:14 37:12,17,24 39:9 specialised 3:15 3:20 species 26:11 specific 43:4 79:22 85:24 87:10 116:10 specifically 1:17 14:16 15:15 17:19 32:9 54:13 82:12 87:11 specify 9:5,6,7 10:8 specifying 53:22 speech 1:5 3:11 3:11,25 6:11 7:15,17,21 8:2	8:7,14,18,19 8:21 9:10,11 9:12,13,24 10:25 11:5,7,9 11:16,18 12:5 12:7,8,13,16 12:17,19 13:2 13:6,7,13,14 13:23,24 14:8 14:13,15,18,19 14:20,21 15:11 15:12,16,18 19:4,18 20:4 25:11 30:16 32:4,17 39:4 41:15,15 48:2 48:4,10,13,17 51:4,7,8 52:10 52:10 69:19 speech/freedom 54:15 speed 59:4,6,8,10 speeding 59:12 spent 18:4 sphere 46:25 66:4,12 68:17 68:19 69:11,16 76:4 78:17,17 80:6 82:24 83:5,11,13 85:9,11 94:11 spoke 33:18 spoken 1:4 14:10 14:11 spontaneously 60:24 spree 9:10 squeamishness 36:7 stake 1:14 74:8 74:11 stamped 67:21 stand 48:25 50:2 standards 36:2,4 57:11 60:25 61:4 star 93:20,23 start 20:12 42:21 69:7 94:11 starting 1:21 64:9 state 11:21 22:2 54:21 67:19 77:24 119:3 stated 43:25 45:6 statement 33:5 65:6 94:4 95:19,20 96:15 96:16 106:5 states 111:8 statesmen 42:16 stating 119:8 station 6:23 status 65:12 66:6 66:7 69:15 79:12,14	statutory 61:15 75:20 76:6 stays 49:16 step 56:20 stereotypes 17:14 19:21 stereotypical 17:22 18:5 Stirling 64:17 stop 77:21 118:3 118:10 stopped 75:12 stories 67:7,14 78:7 91:8 97:19 103:8 story 37:10,19 37:21,25 38:18 55:8,13,15 63:2,3 78:9 straightforward 49:5 99:1 straightforwar... 36:22 stress 75:23 77:11 91:6 stressing 90:18 strict 5:12 strike 72:17 75:22 strikes 12:13 107:6 striking 112:4 stringency 58:13 stringent 25:1 55:24 58:7 stronger 29:2 strongly 112:5 struck 76:1 87:12 structural 113:18 structure 61:18 62:7 75:6 78:17 101:2 structures 16:3,6 101:3,4,24 114:20,21 Stuart 10:23 49:21 student 39:6 students 13:2 23:10 112:4 studies 106:8 121:7 subject 51:23 52:1 60:11 73:19 80:7 98:18 subjective 20:21 20:24 90:23 91:4 subjects 15:25 67:7 91:8 submission 2:17 2:18 64:10,14 68:8 69:8 88:7	88:18 submissions 2:20 submitted 17:20 subprinciples 79:22 substitute 34:25 subtle 106:25 suddenly 21:4 43:21,21 Sudoku 29:24 Sue 35:18 suffering 89:10 sufficient 4:23 26:2 44:8,15 45:10,12,14 110:25 sufficiently 87:18 101:10 101:10,25 115:24 suggest 79:9 80:10 83:5 93:13 115:23 suggested 20:20 94:4 115:22 suggesting 26:19 34:11 80:25 suggestion 81:10 114:11 suggests 57:24 suitably 46:17 sum 18:19 summarise 119:21 sums 44:19 supermarkets 80:5 supplies 25:24 support 80:16 85:15 86:19 suppose 24:1 57:16 58:3 65:14 69:25 74:10 76:19 84:6,12 87:25 91:12 96:14 98:12,13 102:14 105:7 106:2,19 107:12 109:13 111:6 115:14 119:4 supposed 4:6 7:25 sure 22:1 25:15 26:5,17,17 31:2 56:24 57:21,24 72:7 81:21 83:14 85:15 86:22 87:13 92:2,3,4 93:6 surely 26:21 34:18 58:5 surface 14:3 surprised 86:25
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<p>use 15:17 17:5 36:20 38:24 52:1 80:24 88:16 useful 29:9,10 46:12 68:7 69:14 uses 53:1 usually 11:9 39:20</p> <hr/> <p style="text-align: center;">V</p> <p>valid 28:24 valuable 22:8,9 22:10,14,16 46:16 110:3,4 116:11 121:21 value 2:25 22:24 23:2,2,23 28:3 28:7 46:19 54:1,2,8 65:9 84:2 96:5 values 4:13 56:14 61:9 94:5,14 111:18 vanished 73:13 variation 41:18 variety 101:6 various 4:9 31:9 70:25 109:4 vast 12:17 62:7 verdict 38:20 versus 53:24 54:6 victim 21:3 victims 21:6 view 14:4 16:21 18:3,5,23 34:5 45:10,12,15 46:12 59:12,24 61:11,11,23 62:12 65:7 66:2,24 70:20 70:23 71:9 75:13 76:13 90:2 92:24 107:4 110:24 116:16,18 viewed 97:21 views 9:21 10:18 17:22 39:25 43:25 44:1 62:21 63:16,18 96:4 109:5,16 110:20 116:1 vilified 11:16 39:6 violate 35:8 93:22 violated 29:6,7 55:16 89:2 violating 5:14 57:13 73:15 74:18 violation 5:15 73:10</p>	<p>violence 93:9 virtue 31:22 39:7 42:3 45:5 48:12 55:9 57:12 visibly 59:10 77:14,23 visit 56:16 vocabulary 52:25 voice 17:7,9 69:20 85:9,17 101:18 voices 17:9 113:5 voluntarily 44:22,24 45:1 voluntary 44:17 vote 22:20 voted 43:24 voters 7:25 vulnerable 17:14</p> <hr/> <p style="text-align: center;">W</p> <p>wall 26:1 want 6:8 7:1 10:11 12:12 13:14 19:2 22:13 30:4 37:11 40:23 41:11 45:21 46:3,3 47:8 51:24,25 52:1 53:19 57:9 58:3 61:4,24 63:20,24 75:23 77:2,20,21,22 77:23 79:9 80:9 81:11 83:12,13,14 87:16,16 90:25 91:20,23 92:3 95:1 109:20 110:2 117:21 118:2 120:13 121:22 wanted 33:16 77:11 88:16,24 91:5,19 wanting 36:23 36:24 91:18 wants 49:12 warded 27:19 warned 56:8 wary 70:5 74:11 wasn't 26:19 58:17 81:9 way 7:12 8:10 11:17 12:3 16:12 22:2 23:1,25 35:10 35:25 36:5,15 39:22 40:9,20 41:14 45:18 46:3 47:10,19 51:6 52:2 55:18 56:15</p>	<p>58:4 59:25 60:1,14 62:8 63:15,17 65:25 67:23 68:7 70:13 71:6,13 78:19 81:5 100:23 104:7 107:12 117:2 118:13 119:8 ways 4:24 5:10 30:13 31:6 44:18 47:22 53:22 62:5 67:3 70:14,25 71:2 104:4 108:24 109:4 110:5,8,13 117:5 wealth 28:17,19 week 21:1,3 115:7 weighed 55:4 weighing 55:7 weighs 54:23 weight 4:7,8,23 26:2 welcome 95:2 welfare 103:22 wellbeing 89:3 89:18 well-known 69:20 we'll 64:2 77:1 we're 12:4 13:12 17:6 20:25 21:4 22:23 27:3 38:10 40:9 53:7 55:4 55:6 60:16,16 60:23 68:5 74:16 77:10 82:14 83:7 88:24 89:17 101:15 116:2 we've 3:22 13:10 17:5,11 24:15 47:8 52:19 53:10 60:3 63:17,19 108:6 120:16 whatsoever 30:20 whistle-blowing 113:7 120:7 white 49:25 widely 17:15 42:2,7 wider 3:4 18:8 32:24 33:6 38:8,10,12 41:2,6 41:2,6 wife 42:9 Williams 12:22 willing 27:16 72:1 81:4 win 54:9</p>	<p>window 62:16 windows 10:19 wins 53:17 55:17 wisdom 105:18 wish 23:11 29:16 63:16 94:25 95:7 wished 94:24 wishing 103:19 witness 64:6 95:12,18 96:16 witnesses 2:5 64:24 women 17:22,24 18:5 54:20 wonder 17:25 word 15:18 22:1 22:19 36:20,20 38:24 52:25 76:17 115:8 words 29:4 36:7 39:9 51:9 96:13 work 14:5 68:9,9 70:20 71:6,7 84:9 96:9 97:6 105:21,22 115:15 116:6 119:23 120:15 workable 87:14 worked 106:4 working 21:20 61:12 98:11 121:6,11 works 115:19 world 12:10 13:24 22:18 42:24 57:17 58:1 worry 74:17 75:11 93:2 worrying 75:17 worse 90:22 91:3 worth 17:25 81:22 worthwhile 22:11 wouldn't 6:8 11:25 16:10 26:16 31:17 44:19 52:4,8 59:20 86:15 87:15,16 114:25 wrist 47:22 write 96:5 100:20 111:19 writer 44:10 writing 44:13 63:13 87:7 written 15:5 37:4 63:18 65:6 68:8 69:8 88:18 94:4 wrong 5:14 9:9 27:15,15 51:11</p>	<p>51:11 57:9 81:8 91:15 116:18,18</p> <hr/> <p style="text-align: center;">X</p> <p>X 83:13</p> <hr/> <p style="text-align: center;">Y</p> <p>Y 83:14 yeah 80:13 93:18 98:1 100:7 102:20 107:8 116:9 117:12 119:14 year 114:16 years 3:16,19 21:3 23:14 90:2,2,10 York 2:15</p> <hr/> <p style="text-align: center;">0</p> <p>00882 78:3 00884 82:16 00885 86:2 00909 109:12 00913 102:24</p> <hr/> <p style="text-align: center;">1</p> <p>1 88:8 1.15 122:3 10 5:21 10.00 1:2 11.41 64:3 11.47 64:5 12.30 95:9 12.32 95:11 13(2) 87:1 14 72:8 95:19 16 1:1 1960 34:6</p> <hr/> <p style="text-align: center;">2</p> <p>2 5:20 2,000 6:23 2.15 122:2 2012 1:1 25 3:16</p> <hr/> <p style="text-align: center;">3</p> <p>3 5:20</p> <hr/> <p style="text-align: center;">4</p> <p>4 107:24,25 40-odd 23:14 47 64:11 49 95:12</p> <hr/> <p style="text-align: center;">5</p> <p>5 78:3 79:23 110:19 500 21:6</p> <hr/> <p style="text-align: center;">7</p> <p>7 82:16 102:8 103:1 107:25</p>	<hr/> <p style="text-align: center;">8</p> <p>8 5:21 82:11,16 82:20 86:2</p> <hr/> <p style="text-align: center;">9</p> <p>9 82:14,15,15 85:25 9-page 64:10 95 17:3</p>
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